



# Legislative Approaches of Protection of Foreign Investment in Nepal and Ways of Minimizing the Ambit of Challenges

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## Abstract

*Nepal witnessed multiple political transition and constitutional development over seven decades. Nepal retains one of the youngest constitution in the world with most federal and democratic nature being oriented to socialism economy. Despite various political transitions and stability from last decade after the promulgation of the Constitution of Nepal, 2015, the county could not ensure the expected level of economic progress regardless of understanding that foreign investment is one of the pillar of economic progress. The Constitution of Nepal, 2015 and the new Foreign Investment and Technology Transfer Act, 2019 recognized the importance of foreign investment for overall economic development. Likewise, the largest foreign investment retaining countries like China and India have made a liberal, stable, fair, transparent and accountable regime to promote and protect foreign investment. However, in Nepalese context, despite having friendly environment commitments, there is no remarkable step taken to manage challenges that have surfaced at all level regardless of having ample of areas wherein foreigner can make investment as FITTA has opened and various protection mechanism are tendered. This article analyzes foreign investment scenario of Nepal by evaluating the modes, protection mechanism and challenges and extends the possible means of reforms.*

*Keywords: Foreign investment, repatriation, nationalization and expropriation, arbitration, equal treatment*

## Introduction

The United Nations Trade and Development (UNCTAD) is of the view that Global foreign direct investment (FDI) fell by 11%, marking the second consecutive year of decline and confirming a deepening slowdown in productive capital flows. The World Investment Report confirms that Global foreign direct investment (FDI) fell by 11% to \$1.5 trillion in 2024, marking the second straight year of decline.<sup>14</sup> The Report further mentions that Modest growth seemed possible at the

<sup>14</sup> World Investment Report 2025. (n.d.-d). [https://unctad.org/system/files/official-document/wir2025\\_overview\\_en.pdf](https://unctad.org/system/files/official-document/wir2025_overview_en.pdf)

start of the year, but escalating trade tensions, geo-political fragmentation and economic volatility have led to sharp downward revisions of most FDI prospects. These include GDP growth, capital formation, trade flows, financial market stability and investor confidence. Early 2025 data show record-low deal and project activity. It also confirms that FDI to developed economies fell by 22%.<sup>15</sup>

As stated in the foregoing paragraph regarding decline of foreign investment, the impact has not excluded Nepal despite the fact that the foreign investment law of Nepal FITTA 2019 has tendered multiple avenues of investment and commitments of protection by ensuring favorable environment. This can be marked from the foreign investment statistics projected in the Department of Industry sites.<sup>16</sup> However, due to country's huge natural resources, relation with large neighboring economies, capable human resources, low competitive environment and potentiality of high profitability are the affirmative factors of investment option. In addition, progressive policies of foreign investment and wider sectors of investment in the areas of hydroelectricity, aviation, telecom, construction, manufacturing, alternative energy, tourism, mines and minerals and education, Nepal has always remained as potential investment destination for foreign investors.

## Forms of Foreign Investment

The FITTA 2019 was enacted with the realization that, in the process of industrialization of the country, it is expedient to promote foreign investment and technology transfer for making the economy viable, dynamic and competitive through the maximum mobilization of the limited capital, human and the other natural resources. The preamble of the FITTA provides space to make national economy competitive, strong and employment-oriented through mobilization to the maximum extent of the available means and resources for economic prosperity of the country, and to achieve sustainable economic growth through industrialization while creating investment friendly environment to attract foreign capital, technology and investment in the sectors of import substitution, export promotion, through increase in productivity, and of infrastructure development and production of goods or services<sup>17</sup>

Thus, FITTA 2019 has expanded the definition of foreign investment then it was defined in the FITTA 1992. The FITTA 1992 had limited nature of investment modes which has included the direct form of investment in equity, re-investment of earning and loan investment. The FITTA 2019 extended various categories of where foreign investors can make investment such as, investment in equity by foreign currency,<sup>18</sup> re-investment in of dividends derived from foreign currency or shares,<sup>19</sup> investment in terms of lease and finance,<sup>20</sup> investment made in

<sup>15</sup> World Investment Report 2025. (n.d.-d). [https://unctad.org/system/files/official-document/wir2025\\_overview\\_en.pdf](https://unctad.org/system/files/official-document/wir2025_overview_en.pdf)

<sup>16</sup> उद्योग विभाग, त्रिपुरेश्वर, काठमाडौं. उद्योग विभाग. (n.d.). <https://www.doind.gov.np/>

<sup>17</sup> Foreign Investment and Technology Transfer Act, 2019, Preamble

<sup>18</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2, (j(1))

<sup>19</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2 (j(2))

<sup>20</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2 (j(3))

venture capital fund,<sup>21</sup> investment made in listed securities through secondary securities market,<sup>22</sup> investment made by purchasing shares or assets of a company incorporated in Nepal,<sup>23</sup> investment received through the banking channel after issuing securities in a foreign capital market by an industry or company incorporated in Nepal,<sup>24</sup> investment made through technology transfer,<sup>25</sup> or investment maintained by establishing and expanding an industry in Nepal.<sup>26</sup> The FITTA 2019 has made possible for foreign investors to make investment in almost all sectors with 100% equity investment except to the areas of aviation, telecom, banking and insurance and consultancy. Likewise, the Public Private Partnership Act, 2019 has provisioned for the investment in mega projects having the cost estimate of six billion Nepali currency<sup>27</sup> in the infrastructure project that includes road, tunnel way, bridge, canal, airport, wind, solar, atomic thermal information technology infrastructures likewise having investment in the mode of public private partnerships. The FITTA 2019 has listed the areas where foreign investment are restricted which includes, poultry farming, fisheries, bee keeping, fruits, vegetables, oilseeds, pulse seeds and dairy industry. However, on 4 January 2021, the Government altered the FITTA 2019's provision opening the previously restricted agriculture to FDI<sup>28</sup> in the Negative list of FITTA 2019.<sup>29</sup> To ensure Nepal is abided by the constitutional provision of rule of law and ensure laws are adequately framed and addresses to the investment concern, in addition to the FITTA 2019 the parliament has enacted various laws relating to foreign investment such as Industrial Enterprises Act, 2020, Companies Act, 2006, Public Private Partnership and Investment Act, 2019, The Patent, Design and Trademark Act, 1965, Labor Act, 2017, Foreign Exchange Regulation Act, 1992, Income Tax Act, 2002 and various Rules and polices made thereunder.

## Defining Foreign Investment

The FITTA 2019 has defined the term “foreign investment” to include wider modes of investment and has defined foreign investors to mean any foreign individual, firm, company, Non-resident Nepali or foreign government or international agency or other corporate body of similar nature that makes foreign investment, and also includes, in the case of a foreign investor that is an institutional foreign investor, the ultimate beneficiary of such an institution.<sup>30</sup> Additionally, the FITTA 2019 has provisioned about the technology transfer as another means

<sup>21</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2 (j(4))

<sup>22</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2 (j(5))

<sup>23</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2 (j (6))

<sup>24</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2 (j(7))

<sup>25</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2(j(8))

<sup>26</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2(j(9))

<sup>27</sup> Public Private Partnership and Investment Act 2019, Section 3

<sup>28</sup> Pant, D.P., Acharya, B., & Kattel, M.R. (2022). Foreign Direct Investment in Nepal: Perspectives of Primary Agricultural Stakeholders. [PRI Publication No. 041]. Kathmandu: Policy Research Institute.

<sup>29</sup> Foreign Investment and Technology Transfer Act, 2019 (2075), Schedule (Relating to sub-section (2) of Section 3),

<sup>30</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2(k)

of foreign investment by the investor. In the technology transfer, the foreign technology transferor transfers the technology to the transferee in Nepal by entering into the Technology Transfer Agreement. The FITTA confirms that even in the area where foreign investment is not allowed, technology transfer is possible. The FITTA recognizes various forms of technology transfer such as use of Patent, design, trademark, goodwill, technological specificity, formula, process<sup>31</sup>, User's license, technological know-how sharing or use of technological knowledge (franchise),<sup>32</sup> Provision of foreign technical adviser, management and marketing service or other technological skill or knowledge.<sup>33</sup>

The FITTA permits foreign investors in equity participation up to 100 percent in almost all sectors except telecom, aviation, banking and insurance, and consultancy services relating to accounting, engineering and management etc., where local equity participation is a must. The foreign investment ratio in the airlines industry is Eighty percent, in telecom its Eighty percent, in consultancy service Fifty One percent is the highest ceiling of share capital investment.<sup>34</sup> The minimum threshold amount of foreign investment in Nepal is NPR 2 million (approximately US\$ 20,000) which a foreign investor must meet to get an investment approval from the Department of Industry, however there is no upper cap for foreign investment.

### **Modes of Foreign Investment and Condition of Approval**

A foreign investor has various investment options in the industry. A foreign Investor may make equity Investment in a new industry in foreign currency, investment through purchase of shares of an existing industry, reinvestment of dividend earned from foreign investment, investment through capital investment fund. The FITTA does not allow an investment to be made in all sectors of industry. There are certain sectors where foreign investment is not allowed. These industries includes industries, except the large Industries exporting at least seventy five percent of their own products, in the sectors of animal husbandry, fisheries, bee-keeping, fruits, vegetables, oilseeds, pulses, dairy business and other industries or business related to primary products of agriculture, cottage and small industries, personal service business (hair cutting, tailoring, driving etc.), industries manufacturing arms, ammunition, bullets and shell, gunpowder or explosives, and nuclear, biological and chemical (N.B.C.) weapons; industries producing atomic energy and radio-active materials, real estate business (excluding construction industries), retail business, internal courier service, local catering service, moneychanger, remittance service, travel agency, guide involved in tourism, trekking and mountaineering guide, rural tourism including homestay, business of mass communication media (newspaper, radio, television and online news) and motion picture of national language,

<sup>31</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2(F(1))

<sup>32</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2(F(2))

<sup>33</sup> Foreign Investment and Technology Transfer Act, 2019, Section 2(F(3))

<sup>34</sup> Department of Industry, *Procedural Manual Of Foreign Investment In Nepal* 2012, P. 4. Also available at: [http://www.doind.gov.np/documents/pdf/procedural\\_manual\\_2012.pdf](http://www.doind.gov.np/documents/pdf/procedural_manual_2012.pdf) and <http://www.doind.gov.np/index.php/investors/foreign-investment#faq>

management, account, engineering, legal consultancy service and language training, music training, computer training and consultancy services having foreign investment of more than fifty-one percent.<sup>35</sup> In addition, it is to be noted that all foreign Investors may not be granted approvals, even in the sectors where foreign investments are permitted by the FITTA. 100% (percent) foreign investment is not open for some sectors like casino, telecommunication and aviation.

It is apparent that foreign investors shall apply for approval before they incorporate a company and conduct business activities in Nepal. In addition to the approval, for a special types of industrial nature, foreign investor need to obtain approval or licenses from concerned authority. For example, for investment in aviation prior approval from Civil Aviation Authority, for investment in banks and financial sectors approval from Nepal Rastra Bank, for the investment in insurance business approval from the Insurance Board, for investment in pharmaceuticals approval from Department of Drug Management, for the investment in telecom approval from Nepal Telecom Authority, for the investment in mines and minerals approval from Department of Mines and Geology, for the investment in education sectors approval from Ministry of Education, for the investment in hydro-electricity or other power projects approval from Department of Electricity Development is mandatory.<sup>36</sup>

There are various factors that are taken into consideration by the relevant government authority, before granting such investment approval. Major factors of consideration for foreign investment are based on financial and technical viability of the investment project. Apart from this, other major factors of consideration for evaluation and approval of foreign investment and technology transfer projects include foreign investor's potential contribution to employment generation, foreign exchange earnings, availability of raw materials, requirement of foreign currency for the purchase of raw materials, manufacturing process (in case of production industry), project inputs requirement (power, water etc.), the impact of industry on the environment, the pollution control measures proposed to be set up under the project, market aspects and national benefits including value addition etc.

## **Investment Protection and Facilities**

Nepal has always realized the importance of foreign investment due to its immense potential as a stimulant for the economic development and thus several commitments for protection of foreign investment and creation of an investor friendly environment has been assured. Constitution of Nepal, 2015 has also realized the importance of foreign capital for the economic development of the country. The Constitution of Nepal 2015 under its Part 4 relating to Directive Principles, Policies and Obligations of the State has recognized the importance of

<sup>35</sup> Foreign Investment & Technology Transfer Schedule Relating to sub-section (2) of Section 3)

<sup>36</sup> Nepal Investment Guide. (n.d.). <https://ibn.gov.np/uploads/documents/nepal-investment-guidepdf-1483-845-1657610856.pdf>

foreign capital and has given the commitment of attracting foreign investment and technology<sup>37</sup> by framing various policies, directives and undertaking as states responsibilities.<sup>38</sup> Likewise, the Constitution of Nepal has guaranteed freedom of trade and business.<sup>39</sup> The law of the land also ensures rule of law<sup>40</sup> and stipulates that taxation shall be levied or raised in accordance with law.<sup>41</sup>

As a statutory protection, The Industrial Enterprises Act 2020 ("IEA 2020") confirms non-nationalization of industries under any circumstances.<sup>42</sup> Apart there are various forms of protection guaranteed under legislative frameworks by FITTA 2019 such as:

## Equal Treatment

Equal treatment is fundamental part of the FITTA, 2019. The FITTA, 2019 states that national treatment to be accorded to the foreign investor. The Act articulates that equal treatment is secured in respect of the terms applicable to the management, maintenance, use, transfer and sale of any foreign investment made in Nepal by a foreigner, subject to this Act and other prevailing law, after the commencement of this Act, such foreign investment shall, after the investment is brought into, and until it remains in Nepal, be accorded national treatment no less favorable than that accorded to any investment made by a Nepali person, in respect of the terms applicable to the management, maintenance, use, transfer and sale of such investment.<sup>43</sup> In addition, FITTA confirms that the industry, enterprise with foreign investment shall be accorded the same treatment as accorded to any industry of the same nature with investment made by a Nepali citizen.<sup>44</sup> The industry, enterprise with foreign investment shall be free to determine the price of goods and services, subject to the prevailing law.<sup>45</sup> It further states no industry, enterprise with foreign investment shall be prevented from doing trade, as prescribed, being limited to that industry<sup>46</sup> And no industry, enterprise with foreign investment shall be restricted to repatriate profit, investment, pay interest of, and repay the principal of, a loan.<sup>47</sup> The FITTA has also provisioned that national treatment shall not be afforded in the matters relating to the creation of such intellectual property rights, limits thereof, transfer of title thereto or provisions requiring compulsory licensing for the use thereof as specified in any agreement made under the World Trade Organization,<sup>48</sup> matters relating to the exemption or facility, if any, granted to any

<sup>37</sup> Constitution of Nepal 2015, Article 51 d (9)

<sup>38</sup> Constitution of Nepal 2015, Article 52

<sup>39</sup> Constitution of Nepal 2015, Article 17(2)(f)

<sup>40</sup> Constitution of Nepal 2015, Preamble of the Constitution 2015

<sup>41</sup> Constitution of Nepal 2015 Article 115 A

<sup>42</sup> Industrial Enterprises Act 2020

<sup>43</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32

<sup>44</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(3(a))

<sup>45</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(3(b))

<sup>46</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(3(c))

<sup>47</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(3(d))

<sup>48</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(4(a))



domestic industry or goods in accordance with the prevailing Nepal law relating to public procurement,<sup>49</sup> matter relating to any grant or concession to be made or provided by the Government of Nepal,<sup>50</sup> matter of non-commercial services to be provided by the Government of Nepal,<sup>51</sup> such measures relating to financial services as may be adopted or managed by the Government of Nepal upon considering appropriate on matters such as matters relating to the protection of investors, participants in the securities market, insurance policy holders or insurance policy claimants, or relating to financial institutions having liability to safeguard the financial interests of any persons or relating to maintaining soundness, morality or financial responsibility of financial institutions,<sup>52</sup> matters involving liability or provision to accord special treatment by the Government of Nepal because of being a party to any regional or multilateral economic, monetary organization or organization of similar nature to which the Government of Nepal is or will be a party,<sup>53</sup> matters relating to the terms that may be specified by the regulatory body in accordance with the prevailing law in respect of repatriation of investment to a foreign country, repayment of loan (including principal, interest and fees), payment of service fees,<sup>54</sup> and matters relating to the protection of human, animal and plant health or the environment.<sup>55</sup>

## **Protection against Nationalization of Foreign Investment**

Apart to IEA 2020, one of the protection to the foreign investor is about nationalization and expropriation. Realizing the protection of foreign investment against nationalization and expropriation, FITTA, 2019 states that no industry with foreign investment shall be nationalized.<sup>56</sup> No industry shall, except for a public purpose, be expropriated directly or indirectly. If it is required to expropriate it for the public purpose, due process referred to in the prevailing law shall be fulfilled. Though the FITTA, 2019 mentions about no nationalization and expropriation, nevertheless the said Act has left the ground for the same in case of public purposes. The PPIA, 2019 also states that no project operated shall be nationalized during the period of license. Though the Act is silence about the compensation but nationalization and expropriation is not privilege in general situation.

## **Repatriation Facility**

The FITTA, 2019 confirms that a foreign investors may repatriate their investment from Nepal by selling wholly or partly of the shares or industry having its investment after paying all such taxes as may be levied. The FITTA, 2019 clarifies that foreign investor may repatriate the

<sup>49</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(4(b))

<sup>50</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(4(c))

<sup>51</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(4(d))

<sup>52</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(4(e))

<sup>53</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(4(f))

<sup>54</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(4(g))

<sup>55</sup> Foreign Investment and Technology Transfer Act, 2019, Section 32(4(h))

<sup>56</sup> Foreign Investment and Technology Transfer Act, 2019, Section 33

amount in the same foreign currency in which the investment has been made or other convertible foreign currency with the approval of the Nepal Rastra Bank<sup>57</sup> by paying applicable tax. The Act has also categorized the repatriation of the amount received from the sale of shares with foreign investment,<sup>58</sup> amount of profit or dividend received from foreign investment.<sup>59</sup> In the case of liquidation or winding up of the industry or company, amount remaining after paying all liabilities following the liquidation or winding up,<sup>60</sup> and amount of royalty received under the technology transfer agreement,<sup>61</sup> amount of lease rent under the lease investment.<sup>62</sup> Amount received as damages or compensation, if any, received from the final settlement of a lawsuit, arbitration or any other legal process in Nepal.<sup>63</sup>

## **Arbitrations As a Means to Settle Investment Dispute**

The FITTA, 2019 has confirmed that before adopting arbitration procedure, the Department of Industry may facilitate disputing parties of foreign investment by means of mediation. In case mediation could not be reached, the FITTA, 2019 allows the parties to settle the dispute by adopting UNCITRAL model.<sup>64</sup> FITTA, 2019 has therefore intends to facilitate the settlement of investment disputes amicably and in the failure of the same, the dispute may be settled by arbitration in accordance with the prevailing arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Investors are free to mention the dispute settlement mechanism in their contracts with the local parties. In addition, Arbitration Act, 1999 ensures that foreign arbitral awards are recognized and enforced in Nepal, provided that such awards are in conformity with Nepalese laws.<sup>65</sup>

## **Protection of IPR**

Nepal has Patent, Design and Trademark Act, 1965 ("PDTA 1965") for the protection of intellectual property. The PDTA, 1965 protects patent, design, trademark and other related industrial property subject to their registration at the Department of Industry.<sup>66</sup> The PDTA, 1965 ensures the title of patent to the patentee for a period of seven years from the date of registration, unless it is not renewed thereafter.<sup>67</sup> Likewise for design, the term of protection is five years from the date of registration<sup>68</sup> and for the trademark, the PDTA, 1965 protects for a

<sup>57</sup> Foreign Investment and Technology Transfer Act, 2019, Section 20(2)

<sup>58</sup> Foreign Investment and Technology Transfer Act, 2019, Section 20.(a)

<sup>59</sup> Foreign Investment and Technology Transfer Act, 2019, Section 20(b)

<sup>60</sup> Foreign Investment and Technology Transfer Act, 2019, Section 20(c)

<sup>61</sup> Foreign Investment and Technology Transfer Act, 2019, Section 20(d)

<sup>62</sup> Foreign Investment and Technology Transfer Act, 2019, Section 20(e)

<sup>63</sup> Foreign Investment and Technology Transfer Act, 2019, Section 20(f)

<sup>64</sup> Foreign Investment and Technology Transfer Act, 2019, , Section 7

<sup>65</sup> Arbitration Act 1999 Section 34 (1) (2)

<sup>66</sup> Patent, Design and Trademark Act,1965 Section21(B)

<sup>67</sup> Patent, Design and Trademark Act,Section 8

<sup>68</sup> Patent, Design and Trademark Act,Section14 (A)



period of seven years from the date of registration.<sup>69</sup> The PDTA, 1965 also stipulates punishment for the violation of registered patent, design and trademark beside the provision of compensation for the loss sustained by the title holder <sup>70</sup> and have made possible to transfer the ownership of the Intellectual property<sup>71</sup> subject to the approval of Department of Industry.

## Protection Confirmed Under International Instruments

Nepal is party to various international instruments namely, Multilateral Investment Guarantee Agency (MIGA), World Trade Organization (WTO), Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), South Asian Free Trade Area (SAFTA), Double Taxation Avoidance Agreement (DTAA), Paris Convention for the Protection of Intellectual Property Rights and The New York Convention on Recognition and Enforcement of Foreign Arbitral Award and has committed to be abided by these ratified Treaties, Agreements and conventions.<sup>72</sup> Nepal has also entered into Reciprocal Encouragement and Protection of Investment Agreements (which commonly known as BIPPA) with India, Finland, France, Germany, the UK and Mauritius which aims to ensure protection of the foreign investments by guaranteeing equitable and non-discriminatory treatment for use, enjoyment or disposal of investments, compensation for losses and expropriation, free transfer of capital, loans and profits and access to legal remedies.

The applicability of these instruments has been further recognized by the Treaty Act of Nepal. Hence, the international commitment by Nepal via several instruments ensures the protection mechanism of foreign investment in the country. Being part of these international instruments and its commitment of creating favourable investment environment in various international forums and also in Investment Summit, it can be inferred that the investment environment is being kept in the Centre to attract investment.

## Other forms of Protection

Apart from these major protections, the FITTA, 2019 has ensured that the changes in law will have no impact over the investment made prior to the FITTA, and the FITTA has provisioned that if any provision made in a manner to change the terms of foreign investments and any exemption, facility or concession receivable by foreign investors is to the disadvantage of any foreign investor having obtained approval prior to the making of such provision, such a change shall not apply to such an investor.<sup>73</sup> The FITTA, 2019, in reference to Visa facilities, states that those who would like to visit Nepal for making study, research or survey are granted

<sup>69</sup> Patent, Design and Trademark Act, Section 18(D)

<sup>70</sup> Patent, Design and Trademark Act, Section 25

<sup>71</sup> Patent, Design and Trademark Act, Section 21(D)

<sup>72</sup> Nepal Treaty Act 1990, Section 9

<sup>73</sup> Foreign Investment and Technology Transfer Act, 2019, Section, 34

6 months non-tourist visa.<sup>74</sup> The foreign investors are entitled to get business visa or one of the authorized representatives of the foreign investor and their family members to reside in Nepal until the foreign investment are retained in Nepal to the minimum amount of investment.<sup>75</sup> Regarding hiring of expatriates, the FITTA, 2019 secures that if an industry with foreign investment cannot fulfil the positions of experts in its top-level management, high-level technical, managerial employees or technical employees from amongst the Nepali citizens and it is necessary to transfer technical knowledge or skill through any technical or expert of another country in such an industry, the industry may employ any foreign citizen. Further, the FITTA has provisioned about the Single Stop Service Centre, for the services such as registration and administration of industries and companies, approval of foreign investment and loans, labour permits, visa facilities, quality control of industrial goods, environmental study approvals, energy and infrastructure coordination, tax exemptions, permanent account number provision, foreign exchange approval, and other necessary industry-related services, with the possibility of adding more services from a single service office.<sup>76</sup>

## Investment Challenges

Despite highest possibility of attracting foreign investment in various sectors from services such as tourism, aviation, telecom to hydropower infrastructure, manufacturing, mines and minerals, constructions and real estates, it appears that Nepal is struggling to retain due to various challenges. Despite global call to the foreign investors, there appears decline due to lack of investment-friendly environment. To mark some, legislative challenges in terms of clarity and conformity, alarming corruption at all levels of government in terms of approval, licensing, renewal, remit, repatriation, administrative laches, are some to cite which requires much attention and reform from both administrative and legislative side.

Despite the overhauling legislative development in Nepal in the foreign investment sector, many issues raised and concerned by foreign investor has not been adequately addressed and remains unresolved. The facilities guaranteed are difficult to retain, areas opened are not approved yet, time consuming in approvals are somenting notable. There still requires framing laws consistent with international commitments and clauses that invites bribery need to be scrutinize in the FITTA, 2019. The judicial competence is another part to ensure investors trust, and expedite in arbitration matters is major concern.

## Conclusion

As evident in the foregoing paragraphs, foreign investment is seen to play a dominant role in the global economy, even more so for developing economies. Despite being sandwiched

<sup>74</sup> Foreign Investment and Technology Transfer Act, 2019, Section ,30(1)

<sup>75</sup> Foreign Investment and Technology Transfer Act, 2019, Section, 30. 3

<sup>76</sup> Foreign Investment and Technology Transfer Act, 2019, Section, 23

between to big economy Who are retaining maximum number of foreign investor, Nepal is still struggling to invite and retain. It is seen that China is not retaining because of its size and resources, its high level of retention is due to wider area, resources and responses China has maintained. China's foreign investment law regime has experienced significant changes in recent years. A milestone came with the passing of the Foreign Investment Law (FIL) in 2019, replacing the laws and regulations that had governed foreign investment in China for four decades. Chinese investment laws have designed to create a liberal, stable, fair, transparent and accountable regime to promote and protect foreign investment.<sup>77</sup> Likewise, India is competing to retain by giving much leverage on administrative support and liberal laws and policies for the foreign investors. Taking into our consideration, despite understanding the importance of foreign investment and foreign capital attracting foreign investment in Nepal has seen to be much challenged. The challenges has been surfaced due to laws, regulations and administrative laches and hectic investment procedures. Apart issues of repatriation, hiring expatriates, behavioral responses from governmental authorities are noted. Corruption has been another paramount which need to be controlled with genuine investigation and prosecution to obtain confidence. Hence, it appears that unless the authority responsible to invite, regulate foreign investment is able to demonstrate responsiveness towards foreign investors by reforming multiple gaps in all sectors related to foreign investment, legal commitments tendered in legislative frameworks shall remain ineffective in achieving the desired goals to the benefit of the country and people at large.

Likewise, time bound decisions, administrative reforms and procedural improvement committed by governmental authorities is not convincing. Foreign investor's decision making depends on the survey and visits before they entangle with the laws. Hence, unless concerned governmental authorities demonstrate their positive attitude and responsible behavior including administrative reform and structural competence along with an investment aptitude, responsiveness and humility towards foreign investors by maintaining ethical and moral character, legal commitment of investment friendly environment and investment protection remains secondary.

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<sup>77</sup> Zhang, S. Protection of Foreign Investment in China: The Foreign Investment Law and the Changing Landscape. *Eur Bus Org Law Rev* 23, 1049–1076 (2022). <https://doi.org/10.1007/s40804-022-00247-1>