

HOW NON-RESIDENT NEPALI (NRN) CAN BUY PROPERTY IN NEPAL JUNE 2020

#### 1. Who is NRN?

Non-Resident Nepali (NRN) is a foreign citizen of Nepalese origin or a Nepalese citizen residing abroad. "Foreign citizen of Nepalese origin" means a person who him/herself or whose father, mother,

grandfather or grandmother was a citizen of Nepal at any time and has subsequently acquired the citizenship of any other foreign country other than a member country of the South Asian Association for Regional Co-operation (SAARC). Likewise, "Nepali citizen residing abroad" means a Nepali citizen who has been residing in any foreign

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country for at least two years by doing any profession, occupation, business and employment except a Nepalese citizen residing in a member country of SAARC or Serving in a diplomatic mission or consulate situated in a foreign country under the assignment of the government of Nepal or doing study in an academic institution situated in a foreign country.

## 2. How to get registered as NRN?

A person or his/her family desirous to obtain the status of NRN should apply before the Secretary of Ministry of Foreign Affairs in Nepal or to the Chief of Mission if applying Abroad for the registration of status as NRN. Then he/she shall be provided with NRN ID Card upon making necessary inquiry.

# 3. What is the criteria for NRN to purchase land in Nepal?

A foreign citizen of Nepali origin registered as NRN may purchase any land in any one of the region and not exceeding the area ceiling, in order to reside within Nepal for him/herself or his/her own family.

NRN may purchase any

a) Maximum 2 Ropani, in Kathmandu Valley,

b) Maximum 8 Kattha, in Metropolitan Cities of the terai

- c) Maximum 4 Ropani, in other Metropolitan Cities other than mentioned in (a) and (b),
- d) Maximum One Bigaha, in village development committees of the terai districts other than mentioned in part (b) above; or
- e) Maximum 10 Ropani, in areas other than mentioned in (a), (b), (c) and (d) above

The application has to be submitted to Secretary of Ministry of Foreign Affairs (MoFA). It is to be noted that if any NRN or his family members have previously purchased any land and the same is not disclosed at the time of new purchase, such undisclosed land shall be rescinded from their name and transferred to Government of Nepal.

## 4. What is the Procedure of Buying Land by NRN in Nepal?

NRN can purchase land pursuant to the rights provided by the NRN Act and Rules to the extent of ceiling. NRN Card is a mandatory requirement for such purchase. Any foreign citizen of Nepali origin,

if intends to purchase the land or the other property, should submit an application mentioning the location, area and the price that has been fixed for the purpose of purchase of the land which he/she intends to purchase in his/her own or his/her family's name. Upon such application

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the Secretary of Ministry of Foreign Affairs shall give the permission to purchase, the land and other immovable property within Nepal, in the name of the applicant or his/her own family after making inquiry and ensuring that nothing has been against the Act or the Rules.

After receiving the permission, the concerned office responsible for the registration of transfer deed of the land shall make the registration of the land in the name of the foreign citizen of Nepali origin who has intended to purchase the land and other property or his/her family's name. The concerned land revenue office shall issue the blue colored certificate while issuing a land ownership certificate of immovable property.

# 5. Can the money from selling of land be repatriated by NRN?

NRN can sell land in the status similar to a Nepali Citizen, but the NRN Department of MOFA do not grant approval for repatriation of money obtained by such sale of land in Nepal. Nepal Rastra Bank (NRB) also do not grant approval for repatriation of money obtained by selling such land in Nepal. However, such income can be used or utilized in Nepal rather than sending abroad.

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#### 6. NRN and Inheritance

If the inheritance of a foreign citizen of Nepalese origin takes place due to his/her death and he/she has any property in Nepal, such property shall be devolved to his/her legal heir/s who is/are foreign citizen of Nepalese origin having NRN identity card, and in the absence of such heir it shall be decided as provided by the prevailing law.

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# 7. What are the provisions for transfer of ancestral Property or Inheritance to Foreigner in Nepal?

Any immovable property in Nepal can be transferred to a foreigner only upon pre-approval of the Government of Nepal. If any foreigner obtains a partition share in or succeeds to any immovable property in Nepal, the property shall not be eligible to be transferred to or registered in his/ her name nor shall he/she be entitled to enjoy the income of that property, except where so permitted by the Government of Nepal.

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While determining the successor to a foreigner residing in Nepal when his/ her property is open for succession, the successor shall be determined according to the law of the country of his/ her nationality, if such country cannot be determined, according to the law of the country of his her habitual residence, and if even such residence cannot be ascertained, according to the law of the country where he/she is residing for the time being.

### 8. Can NRN conduct business activity in Nepal?

Previously, NRN could invest in business activity, without any limitation of amount, after having approval from MoFA. Since, they only get approval of MoFA, they could easily bring the amount through proper banking channel without prior approval of Nepal Rastra Bank (NRB). Because of which it was difficult to repatriate the returns on investment.

NRNs are entitled to conduct a business or run an industry as like a Nepali citizen in Nepal

However, nowadays NRNs are entitled to conduct a business or run an industry as like a Nepali citizen in Nepal, which is contradictory to the provisions of Foreign Investment and Technology Transfer Act (FITTA) 2019. FITTA states that "Foreign investor" means any foreign individual, firm, company, nonresident 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. So, in essence FITTA has categorized both the NRNs as well as the foreign nationals as "Foreign Investor".

Similarly NRNs or foreign company having NRNs holding over 50% of the stock of the company are eligible to make investments in Nepal for such business or industry, provided that, the total sum of

investment has to be brought through proper banking channel and a source of such investment has to be disclosed. Such NRN investors if desirous of obtaining a certificate of capital investment can obtain the same from the concerned bank through which the investment

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was made in a prescribed format. The NRNs are obliged to disclose the information regarding such investments to the Ministry of Foreign Affairs (MoFA).

However, FITTA 2019 has considered NRN as foreign investor. So, there is no sense that only company having NRN holding over 50% of stock of the company are eligible to make investments in Nepal for such business or industry as per the provision of the NRN Act.

#### 9. How FITTA defines NRN?

As per FITTA 2019 "Non-resident Nepali" means a person holding the non-resident Nepali identity card in accordance with the prevailing law relating to non-resident Nepalese.

#### 10. What are the forms of investment that a NRN can invest?

Since, FITTA considers NRN as foreign investor, they can invest in the industry in following forms.

- i. Share investment in foreign currency
- ii. Re-investment in an industry of dividends derived from foreign currency or shares
- iii. Lease finance
- iv. Investment made in venture capital fund
- v. Investment made in listed securities through secondary securities market
- vi. Investment made by purchasing shares or assets of a company incorporated in Nepal
- vii. Investment received through the banking channel after issuing securities in a foreign capital market by an industry or company incorporated in Nepal,
- viii. Investment made through technology transfer
- ix. Investment maintained by establishing and expanding an industry in Nepal.

# 11. Are NRNs restricted from any kind of investment in Nepal?

As like the foreign nationals, the NRNs are barred from making investment in the restricted list of investment pursuant to Schedule-1 of the FITTA which consists of following industry.

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- i. Poultry farming, fisheries, bee-keeping, fruits, vegetables, oil seeds, pulse seeds, milk industry and other sectors of primary agro-production
- ii. Cottage and small industries
- iii. Personal service business (e.g. hair cutting, tailoring, driving etc.)
- iv. 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
- v. Real estate business (excluding construction industries), retail business, internal courier service, local catering service, moneychanger, remittance service
- vi. Travel agency, guide involved in tourism, trekking and mountaineering guide, rural tourism including homestay
- vii. Business of mass communication media (newspaper, radio, television and online news) and motion picture of national language
- viii. Management, accounting, engineering, legal consultancy service and language training, music training, computer training
- ix. Consultancy services having foreign investment of more than fifty-one percent

## 12. Can NRN make loan investment in Nepal?

As per FITTA 2019, any public company incorporated in Nepal or a body corporate authorized to issue securities under the prevailing law may, with the approval of Nepal Rastra Bank (NRB) and Securities Board of Nepal (SEBON), borrow a loan or acquire foreign currency by issuing Bond, Debenture or other securities in the capital market of foreign country.

NRN can lent USD one million or INR one hundred million as the case may be as a loan

However, there is no provision for loan investment by individual NRN or foreign investor under the FITTA 2019, but they can have loan investment based on the circular of the NRB. After amendment in Forex Unified Circular 2076 of NRB, the provision regarding approval of loan to a Nepali citizen, firm and organizations to conduct a new business or for the existing business from relatives residing abroad, other persons, NRN or organizations/institutions has introduced a new dimension of investment for NRN in Nepal. This provision has been of paramount significance as it doesn't necessitate loan to be issued against securities and can be lent to an individual as well. This provision allows a total of USD one million or INR one hundred million as the case may be as a loan amount that could be lent on following terms:

- a) The plan of using the loan and nature/type of business that the applicant is conducting or is about to conduct must be submitted to the NRB,
- b) The loan should be either interest free or at an interest rate of maximum up to One year LIBOR+0.5%,
- c) The duration for repayment of such loan should be a minimum of 3 years,
- The loan should be transmitted through proper banking channel,
- The borrower should submit an application stating the grounds that how the loan will be repaid within the given time period,
- The loan can be used only in the sectors not explicitly prohibited by the prevailing laws,
- g) The Loan cannot be used in Real Estate business or for transaction of Securities.

# 13. Can NRN repatriate the return on investment?

NRNs as a foreign investor can repatriate the amount of investment as well as the dividends received therefrom in convertible foreign currency.

A NRN who intends to repatriate the investment and the dividends received from such investment should submit an application before the secretary of the MoFA attaching the following details and documents:

NRNs as a foreign investor can repatriate the amount of investment as well as the dividends received therefrom in convertible foreign currency

- Copy of permission taken for investment i.
- Decision of the board of directors of concerned company or institution regarding the repatriation of investment
- iii. Copy of tax clearance certificate
- iv. Audited Financials of the fiscal years, previous to the fiscal year in which application for repatriation has been made,
- v. Copy of evidence of paid off of the liability or loan of any person or agency if such loan or liability has been made,
- vi. The name, branch and address of the Bank which has to be used for repatriation,
- vii. Letter of affidavit, declaring that there is no any dues on any type of government revenue or loan or other liability that has to pay off to anybody in Nepal.

Upon submission of all the aforementioned details, the secretary of MoFA shall grant the permission to repatriate in convertible foreign currency the amount of investment in full or partial basis and in case of dividend the amount equivalent to such dividend at once. The NRN investors are eligible of exploiting facilities similar to those provided to foreign investors investing in convertible foreign currency in Nepal. No tax shall be levied on the capital amount at the time of investment made by a non-resident Nepali. Tax shall be levied at the rate of twenty-five percent on the taxable income of a non-resident natural person in any income year.

## **14. Advisory Notes**

- ✓ Since FITTA has placed NRNs in the same footing as of foreign nationals, NRNs have to meet the minimum investment ceiling of NPR 50,000,000 (Nepali Rupees Fifty Million).
- It is recommended to all NRN investors to follow the FITTA 2019, rather than NRN Act while investing in Nepal
- NRNs like other foreign nationals have to go through the same procedures before and after the investments are made like obtaining prior approval from the Department of Industry (DOI), approval from Nepal Rastra Bank (NRB) before bringing the investment, bringing the investment through proper banking channel, declaration of legitimacy of source of investment, acknowledgement and recording of such investment into NRB. Similarly, they are required to follow the same procedures for repatriation of such investments as well as the profit earned/ dividends received therefrom like obtaining prior approval of NRB.
- ✓ NRN Act and Rules state that NRNs can invest in Nepal as Nepali citizens. Some provisions of FITTA and NRN Act regarding investment by NRN are contradictory to each other and has created uncertainty. However, it is recommended to all NRN investors to follow the FITTA 2019, rather than NRN Act while investing in Nepal.
- ✓ There seems a misconception among few NRNs that they can purchase total land as mentioned in the ceiling in all region. However, it is not clear in law about the mechanism to guide NRNs to purchase land in various regions of Nepal within the total ceiling.

There are some contradictions among FITTA, NRN Act and Civil Code which need to be settled between NRNA and GoN

- ✓ There is no clarity in law that how or what is the procedure for obtaining ancestral property by NRN. Both, NRN Act and Regulations are silent on this matter. However, if we look at FITTA 2019, NRNs are considered as foreign investors or foreign nationals. This issue need to be discussed and clarified further by NRNA with GoN.
- ✓ There are some contradictions among FITTA, NRN Act and Civil Code which need to be settled between NRNA and GoN to increase NRN investments in Nepal.

#### Reference

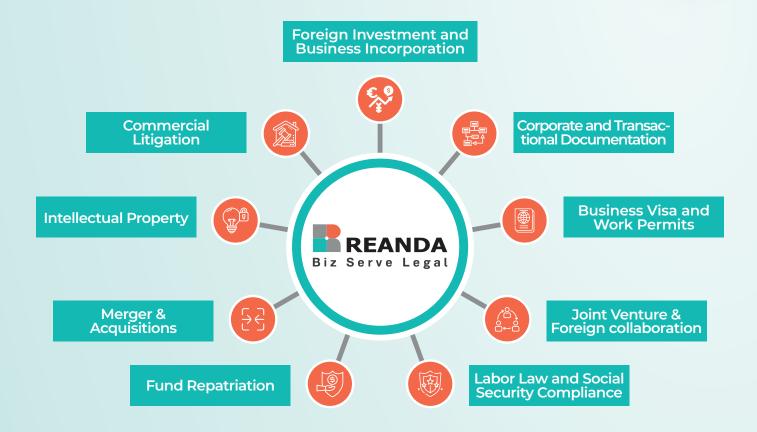
- Non-Resident Nepali Act, 2064
- Non-Resident Nepali Rules, 2066
- National Civil Code, 2074
- Foreign Investment and Technology Transfer Act, 2075
- NRB Forex Unified Circular, 2076
- Income Tax Act, 2058

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