

# A General Guide Recruitment of Foreign Nationals

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## Overview:

This general guide outlines regulations governing the recruitment of foreign nationals by Nepalese enterprises. It covers the basic, regulatory, procedural and other aspects of recruitment of foreign nationals providing a step-by-step guide for the enterprises willing to recruit foreigners.

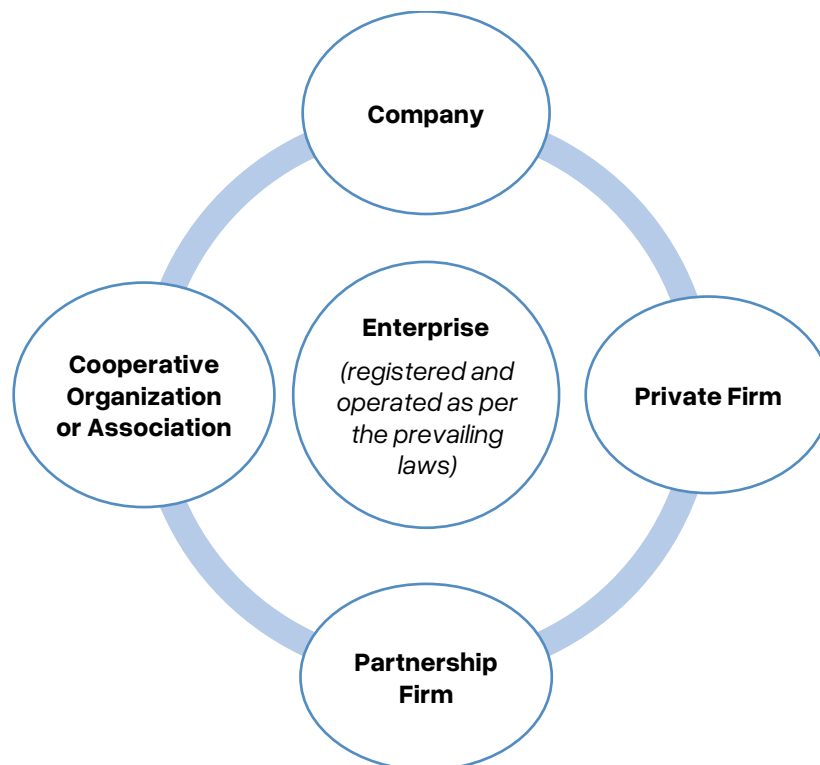
Overall, this guide has been divided into following Sections:

- A. Introduction
- B. Regulatory Framework
- C. Procedural Framework
- D. Other Aspects

## Introduction

### 1. What is an Enterprise?

An Enterprise, as per the Labor laws, means any company, private firm, partnership firm, cooperative organization or association or other organization with an objective to carry on any industry, business or service regardless of its motive to yearn profit or not.



*Fig: Scope of the term 'Enterprise'*

**2. Can an Enterprise recruit foreign nationals or not?**

Generally, an enterprise cannot recruit foreign nationals. However, foreign nationals can be recruited upon fulfilling certain specific conditions and following legal processes.

**3. When can an Enterprise recruit foreign nationals?**

An Enterprise can recruit foreign nationals upon obtaining 'work permit' from the Department of Labor and Occupational Safety.

**4. What is a work permit?**

A work permit is the permission obtained by the Enterprises in Nepal to recruit foreign national(s) in their workforce.

**5. What is a work approval?**

A work approval is the permission obtained by foreign national(s) to work in an Enterprise of Nepal.

**6. Can a foreign national individually obtain permission to work in a Nepalese Enterprise?**

Yes, a foreign national can obtain 'work approval' from the DOL individually to work in a Nepalese Enterprise.

**7. Can every organization in Nepal recruit foreign national?**

No, not every organization can recruit foreign national. Only those Enterprises which fall under the purview of the Labor Act can recruit foreign nationals. For instance, the employees working under the government agencies do not come under the scope of Labor Act.

**8. What type of laborers can be recruited as foreign nationals in Nepal?**

The Labor regime in Nepal permits the recruitment of 'skilled' foreign nationals only.

**9. Is it mandatory for Indian nationals to obtain work permit?**

**Yes**, it is obligatory for Indian nationals to obtain work permit.

**10. Can foreign nationals be recruited as ‘regular employee’ under the Labor Act?**

**No**, foreign nationals cannot be recruited as a ‘regular employee’. They can only be recruited either as ‘time-bound’ or ‘work-based’ employees under the Labor Act. The initial term of employment shall be for 3 years unless otherwise mentioned in the employment agreement and shall be dependent upon the validity of the work permit.

**11. Is the process of obtaining work approval mandatory for everyone?**

**No**, the mandate of work approval is not applicable in following circumstances:

- a. For foreign nationals enjoying diplomatic immunity,
- b. Foreign nationals who need not obtain work approval under any treaty or agreement concluded by the respective nation with Nepal Government.

## Regulatory Framework

**12. Which primary laws and regulations govern the process of recruiting foreign nationals in Nepal?**

The process of recruiting foreign nationals in Nepal is governed by the following laws and regulations:

- Labor Act 2017 (2074 B.S.) (“**Labor Act**”);
- Labor Rules 2018 (2075 B.S.) (“**Labor Rules**”);
- Guidelines Relating to the Work Permit of Foreign Nationals, 2019 (2075 B.S.) (“**Guidelines**”);
- Industrial Enterprise Act 2076 (2020) (“**IEA**”);

**13. What are the competent authorities governing work permits in Nepal?**

Work Permit in Nepal is provided by the Department of Labor and Occupational Safety. Additionally, the following competent authorities are involved in providing work permits in Nepal:

S.N.	Authority	Details
1.	Relevant Regulatory Bodies	Provides <b>Letter of Recommendation</b> . <i>For example: Department of Industries for entities registered as industry.</i>
2.	Ministry of Home Affairs (“ <b>MOHA</b> ”)	Provides a <b>Work Authorization</b> after obtaining Letter of Recommendation.

3.	Department of Labor and Occupational Safety (“DOL”)	Provides <b>Work Permit/Approval.</b>
4.	Department of Immigration (“DoIM”)	Provides <b>Non-Tourist Visa</b> based on work permit approval.

## Procedural Framework

### 14. What are the prescribed routes for recruiting foreign nationals in Nepal?

Foreign nationals could be employed through following three routes:

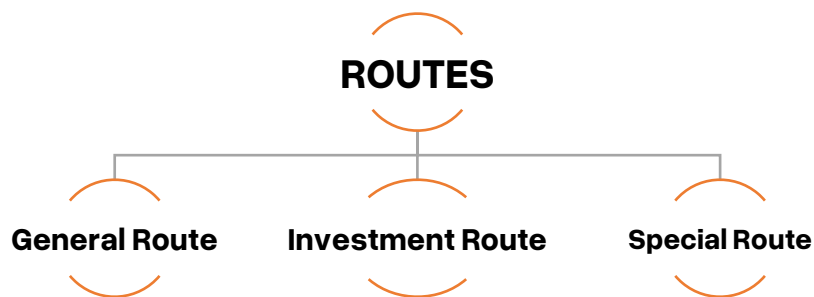


Fig: Different routes of recruiting foreign nationals

### Route One: General Route

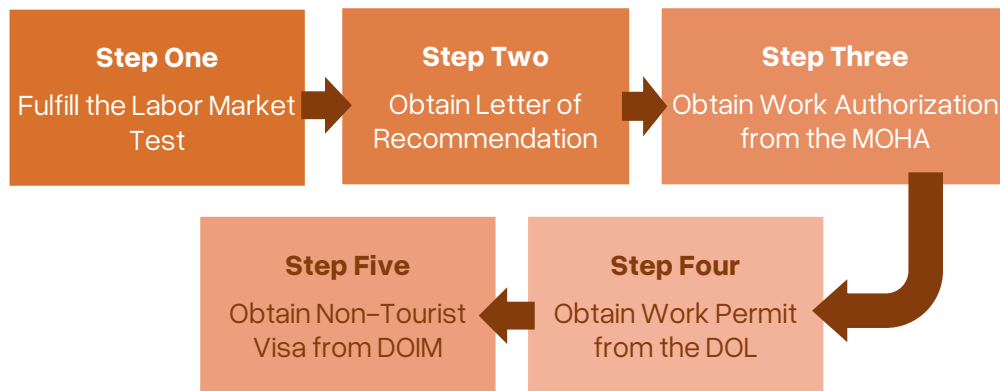
#### 15. What conditions are applied to obtain work permit through the General Route?

The conditions involved are:

- a. *Labor Market Test*: The Enterprise must ascertain that the required position could not be fulfilled through Nepalese workforce by publishing a vacancy advertisement in a National Daily Newspaper,
- b. *Nature of job*: Foreign nationals can be recruited for skilled set of works only,
- c. *Threshold*: Only up to 5% of the total labors required by the Enterprise can be recruited under this Route.

**16. What steps are involved in obtaining work permit through this route?**

The following steps are involved:



*Fig: Steps involved in obtaining work permit through general route.*

**17. What is the process of obtaining work permit from the DOL?**

An application along with the following documents must be submitted to the DOL for obtaining the work permit. The updated format of the application can be accessed here. (<https://dol.gov.np/en/legaltext/index?page=2>)

S.N.	Documents Required
1.	A copy of the advertisement published in the national daily newspaper mentioning: <ol style="list-style-type: none"> <li>Vacant post, number and primary work to be done by the employee in the enterprise,</li> <li>Academic qualification, experience and training, as required,</li> <li>Process of selection,</li> <li>Deadline and place where the job is to be applied for, and</li> <li>Other information, if any.</li> </ol> <p><i>[Note: Advertisement should also be posted in the online portal of the Ministry of Labor, Employment and Social Security.]</i></p>
2.	Notarized Copy of the Passport with at least <b>six (6)</b> months of time-limit.
3.	Bio-Data of the Foreign National.
4.	Tax Clearance Certificate of the Enterprise.

<b>5.</b>	If any application had been filed to fill in the vacancy as advertised, then the information about the qualification of the candidate and the selection process.
<b>6.</b>	Work Plan to make Nepalese citizens skilled to consequently replace the foreign employee.
<b>7.</b>	A copy of Work Authorization obtained from the Home Ministry, if necessary.

**18. How long does the DOL take to provide the work permit?**

Upon examination of the documents and application submitted, the DOL shall provide the work permit within **30 days** of the submission.

**19. What is the applicable fee to obtain the work permit?**

The applicable fee to obtain work permit is:

<b>Duration</b>	<b>Fee (NPR)</b>
For less than six months	NPR 15,000/- per individual
For more than six months	NPR 20,000/- per individual

**20. What is the validity period of a work permit?**

The validity of the work period is dependent upon the work authorization obtained from the MOHA by the foreign national. The maximum period of validity is as mentioned in the table below, however, the work permit is not granted for more than 1 year at one time.

<b>Type of Foreign National</b>	<b>Validity Period</b>
For highly skilled technical foreign nationals	Maximum of 5 years
For other foreign nationals	Maximum of 3 years

**21. How can the validity period of the work permit be renewed?**

The validity period of the work permit can be renewed upon submitting an application at the DOL prior to 30 days of its expiry. The following documents shall have to be submitted along with the application for renewal:

S.N.	Documents Required
1.	Passport of the foreign national (with validity of at least 6 months).
2.	Bio-data of the foreign national.
3.	Tax Clearance Certificate of the Enterprise.
4.	Work performance of the foreign national.
5.	Copy of the Work Authorization obtained from the MOHA.
6.	Action Plan to upgrade the skill of Nepalese citizen for the position filled by the foreign national.
7.	The voucher of payment of applicable fees.
8.	Any other documents deemed important by the DOL.

**22. Can the work permit once provided be revoked by the DOL?**

Yes, the work permit may be revoked by the DOL under following circumstances:

S.N.	Circumstances
1.	End of the term of the work authorization obtained from the MOHA.
2.	Non-payment of tax, fees or any other liabilities towards the government.
3.	Conviction of the foreign national by the court for any criminal charges.
4.	If the grant of work permit does not seem appropriate for national security.
5.	If the foreign national is found to be infringing the duties as per the prevailing laws, ethical standards, morality and norms.

**Route Two: Investment Route**

**23. Is it mandatory for an Enterprise with foreign investment to obtain work permit to recruit foreign nationals?**

Yes, even Enterprises with foreign investment or foreign assistance shall have to obtain work permit to recruit foreign nationals.

**24. How can an Enterprise with foreign investment recruit foreign nationals?**

An Enterprise with foreign investment or operating with foreign assistance can recruit foreign nationals upon merely maintaining a record at the DOL. Such Enterprises are not required to fulfill the *Labor-Market-Test* as mandated for Route One.



**25. What are the conditions to be fulfilled to obtain work permit through this route?**

The conditions that are to be met are:

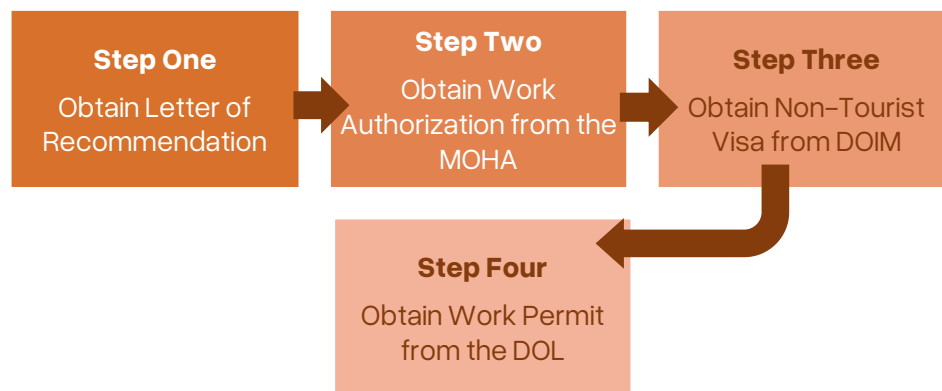
- a. The Enterprise shall maintain a record at the DOL,
- b. *Threshold:* Excluding the foreign national hired in the position of Chief Executive Officer, only 3 foreign nationals can be recruited through this Route.

**26. Can an Enterprise with foreign investment and foreign assistance be recruited under the General Route?**

Yes, an Enterprise with foreign investment and foreign assistance can recruit foreign national under the General Route as well. However, the total number of foreign nationals cannot exceed the threshold as mentioned in the General Route, i.e., 5% of the total required employees.

**27. What steps are involved in obtaining work permit through this route?**

The following steps are involved:



*Fig: Steps involved in obtaining work permit through investment route.*

**28. How long does the DOL take to provide the work permit?**

The law does not specify the timeline, however, in practice, the timeline is the same as General Route.

**29. What is the applicable fee to obtain the work permit?**

The applicable fee to obtain work permit is the same as mentioned under the General Route (FAQ no. 19).

**30. What is the validity period of a work permit?**

The validity of the work period is the same as mentioned in the General Route (FAQ no. 20).

**31. How can the validity period of the work permit be renewed?**

The validity period of the work permit can be renewed upon submitting an application at the DOL prior to 30 days of its expiry as mentioned in FAQ no. 21 of the General Route.

**32. Can the work permit once provided be revoked by the DOL?**

Yes, the work permit may be revoked by the DOL under the circumstances as mentioned under FAQ no. 22 of the General Route.

**Route Three: Special Route**

**33. How can an Enterprise recruit foreign nationals under this Route?**

The Special Route comprises of the following two circumstances to recruit foreign national, namely:



**I. Recruitment under Government Agreement**

**34. What are the applicable conditions to recruit foreign nationals under this Route?**

The applicable conditions are:

S.N.	Conditions
1.	The entity shall be any organization, institution or any other authorized bodies having partial or full ownership of any Ministry, Department, Investment Body and Nepal Government (GoN).
2.	Prior approval shall be taken from the GoN or the respective Ministry.

<b>3.</b>	The Enterprise need not fulfill the <i>Labor Market Test</i> , i.e., it is not mandatory to publish a vacancy advertisement in a National Daily Newspaper to fill the position.
<b>4.</b>	The foreign national should be hired either as technician or an expert.
<b>5.</b>	The foreign nationals shall be recruited as per the terms and conditions specified in the 'Agreement' executed for the project.
<b>6.</b>	The number of foreign national is determined by the Government Agreement itself.

**35. What steps are involved in obtaining work permit through this route?**

The steps involved in this process shall be the same as in the Investment Route (*FAQ no. 27*).

**36. What is the process of obtaining work permit from the DOL under this Route?**

An application along with the documents mentioned under *FAQ no. 17* shall have to be submitted to the DOL to obtain the work permit under this Route.

**37. How long does the DOL take to provide the work permit?**

Upon examination of the documents and application submitted, the DOL shall provide the work permit within **30 days** of the submission.

**38. What is the applicable fee to obtain the work permit?**

The applicable fee to obtain work permit is as mentioned under *FAQ no. 19* of the General Route.

**39. What is the validity period of a work permit?**

The validity of the work period shall be as provided under *FAQ no. 20* of the General Route.

**40. How can the validity period of the work permit be renewed?**

The validity period of the work permit can be renewed upon submitting an application and documents mentioned under *FAQ no. 21* of the General Route, at the DOL prior to 30 days of its expiry.

**41. Can the work permit/approval once provided be revoked by the DOL?**

Yes, the work permit/approval may be revoked by the DOL under circumstances provided in *FAQ no. 22* of the General Route.

**II. Recruitment for Shorter Duration**

**42. What are the applicable conditions to recruit foreign nationals under this Route?**

The applicable conditions are:

S.N.	Conditions
1.	The foreign national shall be hired for a duration of 3 months or less.
2.	The foreign national is hired for either repairing or maintaining machinery object or to install any new technology or to do similar works.
3.	The foreign national shall be recruited as a 'casual employee'.
4.	A <b>record shall be maintained</b> at the DOL to obtain work permit.

**43. What steps are involved in obtaining work permit through this route?**

The steps involved are similar to that of the Investment Route. (*FAQ no. 27*)

**44. How long does the DOL take to provide the work permit?**

The law does not specify the timeline, however, in practice, the timeline is the same as General Route.

**45. What is the applicable fee to obtain work permit under this Route?**

The applicable fee to obtain work permit is as mentioned under *FAQ no. 19* of the General Route.

**46. What is the validity period of a work permit?**

The validity of the work period shall be as provided under *FAQ no. 20* of the General Route.

**47. How can the validity period of the work permit be renewed?**

The validity period of the work permit can be renewed upon submitting an application and documents mentioned under *FAQ no. 21* of the General Route, at the DOL prior to 30 days of its expiry.

**48. Can the work permit/approval once provided be revoked by the DOL?**

Yes, the work permit/approval may be revoked by the DOL under circumstances provided in *FAQ no. 22* of the General Route.

**Other Aspects**

**49. What is the process of obtaining work approval from the DOL by a foreign national?**

An application along with the following documents must be submitted to the DOL for obtaining the work approval.

S.N.	Documents Required
1.	Notarized Copy of the Passport with at least <b>six (6)</b> months of time-limit.
2.	Notarized Copy of the qualifications, certificates, required for the job.
3.	Bio-Data of the Foreign National.
4.	Acceptance Letter of the Enterprise to provide the job.
5.	A copy of Work Authorization obtained from the Home Ministry, if necessary.

**50. Are the provisions on minimum remuneration, facilities, benefits and others applicable to the foreign nationals?**

Yes, the foreign nationals so recruited shall be treated equally as any other Nepalese employee under prevailing labor laws.

**51. Should a foreign national recruited by the Enterprise be enrolled in the Social Security Fund (SSF)?**

Yes, foreign nationals working in the Enterprise are also mandated to get enrolled in the SSF.

**52. Can remuneration earned by the foreign national be repatriated to their home country?**

Yes, the foreign nationals can repatriate their remuneration to their home country.

**53. How can the income earned by a foreign national be repatriated to their home country?**

Income earned by a foreign nationals may be repatriated to foreign countries as per the provision of Unified Foreign Exchange Directive 2079 issued by from the Nepal

Rastra Bank – the central bank of Nepal. An application along with the documents prescribed shall be submitted to the commercial bank in Nepal for obtaining an exchange facility for such income.

**54. Can entire amount of the earning be repatriated to the foreign country?**

No, the Industrial Enterprise Act permits a foreign national to repatriate only **seventy (70)** percent of the remuneration received by him or her in convertible foreign currency from Nepal.

**55. Are the provisions of recruiting foreign nationals applicable to foreigners working in Special Economic Zone (SEZ)?**

Yes, all the above conditions and requirements are equally applicable for foreign nationals working in SEZ.

**56. Do Non-Resident Nepalese (NRN) need to obtain work permit to work in Nepalese Enterprise?**

Yes, even NRN(s) are required to obtain work permit to work in a Nepalese Enterprise.

**Disclaimer**

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