



Case Brief

Central Bank Byelaws and Foreign Loan in Nepal

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Overview:

Within the rights conferred by *Section 110* of Nepal Rastra Bank Act, 2058 and *Section 12* of Foreign Exchange (Regulation) Act, 2019 (the “FERA”), Nepal Rastra Bank, the Central Bank of Nepal (NRB) has issued Foreign Investment and Foreign Loan Management By-Law, 2021 (the “By-Laws”) on June 8, 2021. The By-Laws is considered a special legislation issued by NRB after enactment of Foreign Investment and Technology Transfer Act 2075 (2019) (the “FITTA”) to set terms and conditions on foreign loans. Thus, this Guide which has been structured in the form of frequency asked questions focuses on the regulations set forth by the By-Laws in terms of Foreign Loan in Nepal. This Guide does not cover the regulations relating to approval of foreign loans which are subject to approval from DOI or Investment Board of Nepal under the Foreign Investment and Technology Transfer Act, 2019 (2075) or Public Private Partnership and Investment Act, 2019 (2075).

A. Basic Framework

1. What is Foreign Loan?

A foreign loan refers to a financial arrangement where a borrower based in Nepal obtains funds from a lender located in a foreign jurisdiction for various purposes such as project financing, to cover budget deficits, for economic development and so on.

2. What are the relevant laws and legislations governing Foreign Loan in Nepal?

The relevant laws and legislations governing foreign loan in Nepal are:

- a. Foreign Investment and Technology Transfer Act, 2019 (2075) (the “FITTA”),
- b. Foreign Investment and Technology Transfer Rules, 2021 (2077) (the “FITTR”),
- c. Foreign Exchange (Regulation) Act, 1962 (2019) (the “FERA”),
- d. NRB; Foreign Investment and Foreign Loan By-Laws, 2022 (2078) (the “By-Laws”),
- e. Public Private Partnership and Investment Act, 2019 (2075) (the “aa”)

3. How is Foreign Loan defined

The essence of foreign loan is defined and dealt as the following under different laws and legislations in Nepal:

Reference	Definition
FITTA; <i>Section 12</i>	- Not defined under ‘ <i>Foreign Investment</i> ’. - Defined as a <u>Project Loan</u> borrowed from <u>foreign financial institution</u> by any <u>industry having foreign investment</u> ,
FERA; <i>Section 2(g1)</i>	- Defined as one of the forms of ‘ <i>Foreign Investment</i> ’.

PPPIA; Section 2(p)	- Defined as one of the forms of ' <i>Foreign Investment</i> '.
Bylaws	- No explicit definition, - Outlines regulatory, procedural aspects of borrowing foreign loan in Nepal.

4. Are there any restrictions in obtaining foreign loan in Nepal?

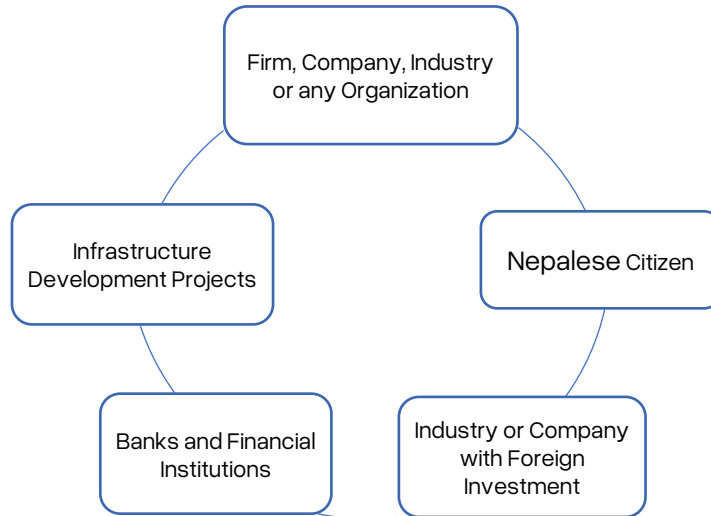
Yes. Foreign loan cannot be borrowed for the following industries or businesses:

S.N.	<i>Negative List for Foreign Loan</i>
1.	Poultry farming, fisheries, bee-keeping, fruits, vegetables, oil seeds, pulse seeds, milk industry and other sectors of primary agro-production.
2.	Cottage and small industries.
3.	Personal service business (hair cutting, tailoring, driving and so on).
4.	Industries manufacturing arms, ammunition, bullets and shell, gunpowder or explosives, and nuclear, biological and chemical weapons; industries producing atomic energy and radio-active materials.
5.	Real estate business (excluding construction industries), retail business, internal courier service, local catering service, moneychanger, remittance service.
6.	Travel agency, guide involved in tourism, trekking and mountaineering guide, rural tourism including homestay.
7.	Business of mass communication media (newspaper, radio, television and online news) and motion picture of national language.
8.	Management, account, engineering, legal consultancy service and language training, music training, computer training.
9.	Consultancy services having foreign investment of more than fifty-one percent.
10.	Housing.
11.	Stock Market.

B. Regulatory Framework

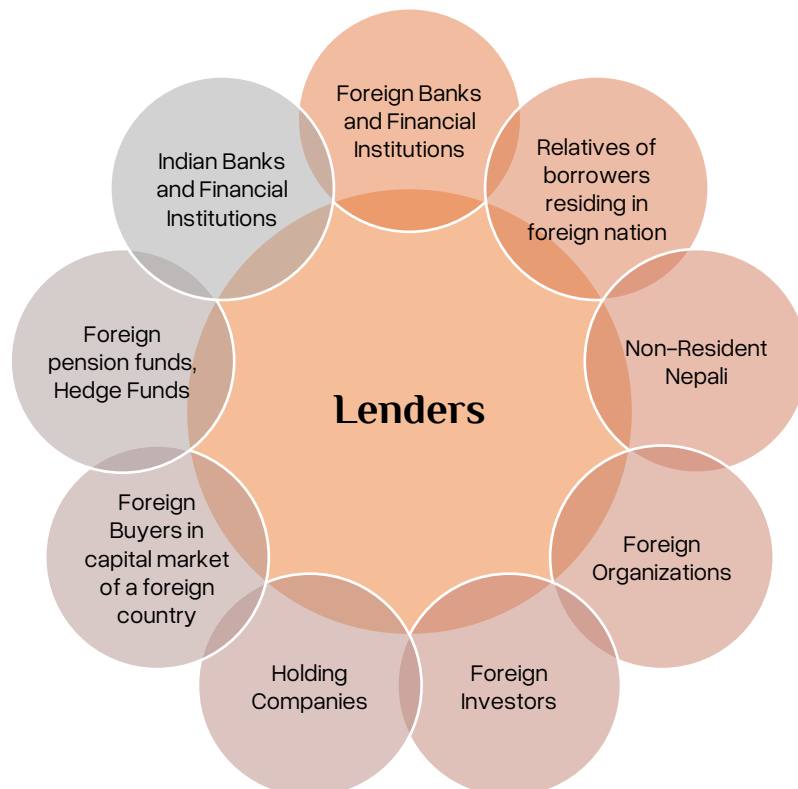
5. Who can borrow foreign loans in Nepal?

The following are the eligible borrowers of foreign loans in Nepal:



6. Who can lend foreign loan in Nepal?

The following are eligible lenders of foreign loan in Nepal:



7. Can every borrower borrow foreign loan from all the lenders?

No, borrowers can only borrow foreign loans from respective lenders as provided below:

Eligible Borrower	Eligible Lender
Firm, Company, Industry or Organization (apart from licensed bank and financial institutions)	<ul style="list-style-type: none"> • Foreign Banks and Financial Institutions. • Development Finance Institutions under Governmental or Intergovernmental Ownership, • Financial institution or Company who have received approval from central bank or other regulatory authority to dispense loan.
Nepali Citizen, Firm, Company or Industry	<ul style="list-style-type: none"> • Relatives of such borrower residing in foreign country or other persons. • Non-resident Nepali Citizen; or • Foreign organization.
Industries or Companies with Foreign Investment (apart from licensed bank and financial institution)	<ul style="list-style-type: none"> • Foreign investor of such industries or companies (including parent company or group companies)
Industries or Companies with Foreign Investment	<ul style="list-style-type: none"> • Foreign financial institutions
Infrastructure Development Projects	<ul style="list-style-type: none"> • Holding Company of the Infrastructure (Parent Company/Group Companies)
Class “A”, “B”, “C” and “D” bank along with financial institution and Infrastructure Development Bank	<ul style="list-style-type: none"> • Indian Banks and Financial Institutions • Foreign banks and financial institutions as well as foreign pension funds, hedge funds and other organizations approved by regulatory authority.
A public limited company incorporated in Nepal, or an organized body authorized to issue securities.	<ul style="list-style-type: none"> • Foreign Buyers in capital market of a foreign country.

8. Is there any ceiling prescribed for borrowing foreign loan?

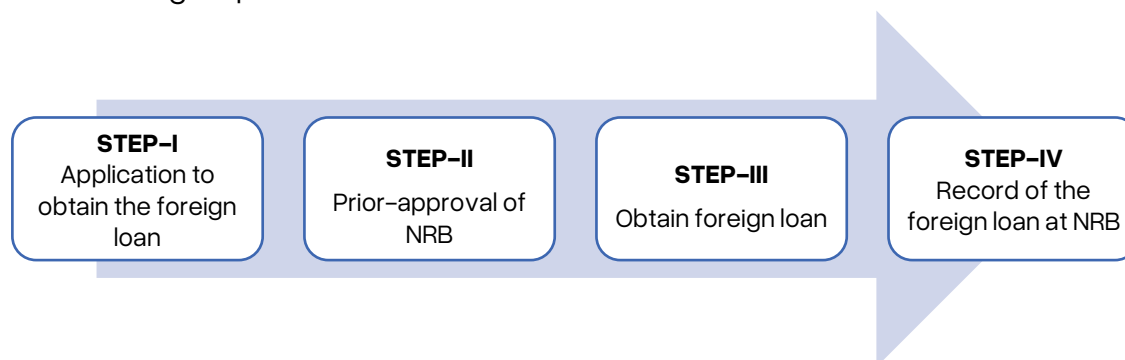
Yes, various ceilings have been prescribed for the following borrowers:

Eligible Borrower	Loan Ceiling
Nepali Citizen, Firm, Company or Industry	One Million USD or One Hundred Million (100,000,000) Indian Rupees.
Industries or Companies with Foreign Investment (apart from licensed bank and financial institution)	Up to twice of the total paid-up capital of the concerned foreign investors in the borrowing industry or company, Up to five times of the total paid-up capital of the concerned foreign investors if there is an outstanding loan(s) previously borrowed from the investor and if the interest of the loan to be borrowed is an average of the previous interest.
Class “A”, “B”, “C” and “D” bank along with financial institution and Infrastructure Development Bank (<i>if the loan is borrowed from Indian Banks or Financial Institutions</i>).	Up to 100% of Lender’s primary capital including convertible foreign currency loans if the loan is borrowed in convertible foreign currency.
Class “A”, “B”, “C” and “D” bank along with financial institution and Infrastructure Development Bank (<i>if the loan is borrowed from foreign pension funds or hedge funds</i>)	Up to 100% of Lender’s primary capital including Indian currency loans if the loan is borrowed in Indian currency.

C. Procedural Framework

9. What steps are involved in obtaining foreign loan in Nepal?

The following steps are involved:



10. What is the procedure of obtaining foreign loan in Nepal?

The eligible borrowers shall obtain prior approval of NRB for the loan not falling under the regulations of the FITTA or PPPIA. An application shall be submitted to NRB along with documents listed below:

S.N.	List of Documents Required	
Document Common to all		
1.	Authorized Copy of the Loan Agreement between the Borrower and the Lender.	
Documents related to the Lender		
	For an Organization	For a Natural Person
2.	Copy of Certificate of Incorporation.	Notarized Copy of Passport.
3.	Notarized Copy of the Documents disclosing the Actual Ownership of the Loan being Borrowed.	Source of the Loan being Borrowed.
4.	Resolution of the Board of Directors to provide the Loan.	
5.	Audit Report of Last Fiscal Year.	
Documents related to the Borrower		
	For an Organization	For a Natural Person
6.	Copy of Certificate of Incorporation.	Copy of Citizenship.
	Business Commence Certificate (if any)	Proof that the individual is not blacklisted by the Credit Information Bureau.
	Copy of PAN Card.	
	Copy of the Charter Documents of the Company.	
	Resolution of the Board of Directors to receive the Loan.	
	Audit Report of Last Fiscal Year.	
	Tax Clearance Certificate of last fiscal year.	
	Proof that the company is not blacklisted by the Credit Information Bureau.	

	Other Documents
	Letter of Commitment from the Bank that would transfer the Approved Loan.
	Documents showing the need of the Loan to be borrowed from a foreign land and an Action Plan to utilize the Loan.
	Document disclosing the plan to pay back the Loan borrowed in consideration of the exchange risks.
	Time Schedule regarding payment of the Loan
	Disclosure that the Loan so borrowed shall not be mis-utilized, the borrower shall abide by the national and international laws on money laundering, terrorism and other prevailing laws.
	Other documents as specified necessary by the NRB.

11. How long does NRB take to provide the approval or disapproval?

Upon receipt of the application, NRB shall provide its written decision on approval/disapproval **within 15 days**. However, in practice, it might take longer time to secure such approval.

12. What does the bank provide upon remitting the Foreign Loan to Nepal?

Once the Loan is transferred to the respective bank in Nepal, it shall provide a certificate to the borrower as specified in the By-Laws.

13. How can the Loan so borrowed be recorded?

Once the amount is remitted to the respective bank in Nepal, an application must be submitted at the NRB within 6 months to record the Loan and also to approve the Time-Schedule of Payment of Loan.

14. How long does NRB take to record the Loan?

The NRB shall record the Loan within 7 working days of receiving the Loan and provide a recorded certificate regarding the same to the Borrower.

15. What are other regulations regarding Foreign Loan in Nepal?

Other regulations aside from the above are:

- a) Exchange: Once the Loan is approved and recorded as stated above, the borrower shall submit an application to a bank or financial institution to exchange the foreign currency. No prior approval of the NRB shall be required for exchange of the currency.
- b) Channels: Foreign Loans should be remitted through proper banking channels.

- c) Auditing: Companies with foreign investment are required to audit the remitted Foreign Loan in NRB within one year from the date of bringing foreign investment.
- d) Purpose: Foreign Loan must be used for the specific area and purpose.
- e) The Lender should not have been restricted to conduct any financial transactions or provide loan to Nepal.

Disclaimer

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