

Foreign Direct Investment (FDI) Policy, 2010

Ministry of Economic Affairs
Royal Government of Bhutan

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1. Policy Statement

The nation's long term development is guided by the concept of maximizing Gross National Happiness. The spirit and intent of this concept as articulated in the Bhutan Vision 2020 document is to "maximise the happiness of all Bhutanese and to enable them to achieve their full and innate potential as human beings." This is envisaged through the adoption of policies and programs that operationalizes the four pillars of GNH namely sustainable socio-economic development, conservation of natural environment, preservation of culture and good governance.

In pursuance of the above, the Royal Government adopts the FDI Policy 2010 to achieve the objectives as set out in the Economic Development Policy 2010.

2. FDI Focus Areas

The FDI shall be encouraged in areas that contribute to the following;

- i) Development of green and sustainable economy
- ii) Promotion of socially responsible and ecologically sound industries
- iii) Promotion of culturally and spiritually sensitive industries
- iv) Investments in services that promote Brand Bhutan
- v) Creation of a knowledge society

3. General Conditions

Notwithstanding the specific provisions of this Policy, the following general conditions shall apply to FDI.

3.1 Sectors Open for FDI

The Royal Government shall allow FDI in both manufacturing and service sectors. These shall be governed by project specific agreements (if any) and sector specific policies, standards and procedures.

The priority sector activities are listed in Schedules I & II. These shall be fast tracked for approval and clearances.

In addition, the Royal Government shall allow FDI in other activities with maximum foreign investors' equity of 74 % and minimum project cost of Nu 50 million and Nu 25 million for manufacturing and services respectively.

FDI in activities as listed under Schedule III shall not be permitted.

3.2 Others

Collaboration in different forms like technical, marketing and franchise for use of industrial designs, patents and trademarks will be allowed with prior written permission of the Ministry.

3.3 FDI in an existing entity

FDI in an existing entity shall be allowed for expansion subject to the same terms and conditions as applicable to new entities provided that there is an increase in equity base of the existing entity without the acquisition of existing shares by foreign investors. Notwithstanding the above, the Royal Government may permit FDI in an existing entity without expansion for strategic alliance or revival of a sick industry.

3.4 FDI Company

A FDI company is defined as a business incorporated or registered in the country for the purpose of undertaking commercial activity in which 20% or more of the equity in the business is owned or beneficially held by foreign investors. Foreign equity of less than 20 % shall not be permitted.

3.5 Currency of investment

FDI shall be made in convertible currency, unless provided otherwise by bilateral arrangement. In cases where such exceptions are granted by bilateral arrangement, the foreign exchange requirement for the establishment and operation of the business must be met from the company's own sources of foreign exchange.

3.6 Company Registration

All FDI businesses shall incorporate under the Companies Act of the Kingdom of Bhutan 2000 and amendments thereto upon issuance of FDIRC.

3.7 Licensing

FDI businesses shall obtain approval for the proposed business activity and a business license, prior to commencing project establishment and operations.

4. Guarantees

The Royal Government shall provide the following guarantees to the foreign investors:

4.1 Equal treatment

Except for the specified provisions in this Policy, in the application of relevant laws, rules and regulations in the country, foreign investment will be accorded the same treatment as accorded to similar domestic investment.

4.2 Nationalisation and expropriation

In those cases where nationalisation, expropriation or any other measure taken which has the effect of nationalisation and expropriation or otherwise curtailing the rights of the foreign investor, is considered to be in the national interest, the Royal Government guarantees that such nationalisation or expropriation will be carried out in a non-discriminatory manner and the compensation paid will be prompt, adequate, effective and fair, namely:

- a) payment shall be made by the Royal Government promptly after the asset is nationalized or expropriated and a commercial rate of interest will be paid for the period between nationalisation or expropriation and payment;
- b) the amount paid shall reflect the market value of the investment nationalized or expropriated immediately prior to knowledge of the nationalisation or expropriation being publicly available; and

- c) the compensation paid shall be in either the currency in which the investment was made or another mutually agreed convertible currency and, in either case, will be freely transferable.

4.3 Repatriation of dividends

Foreign investors shall have the right to repatriate dividends in the currency of earnings on the basis of self-sufficiency, namely that the net currency earnings of the company are sufficient to cover the amount of these transactions. Other entitlements for these transactions shall be determined by way of the Income Tax Act 2001 and the Foreign Exchange Regulations 1997 and amendments thereto.

For service activities in the priority list, where the investment in the project was made in convertible currency and the earnings are in local currency, the Royal Government shall allow the FDI company to purchase from Royal Monetary Authority (RMA) convertible currency up to US\$ 5 million per annum for repatriation of dividends by the foreign investors for the first ten years of the project's commercial operation.

4.4 Repatriation of capital

Foreign investors shall have the right to repatriate their invested capital and any capital gains secured, in the currency of investment.

4.5 Freedom of disposal

Foreign investors shall be allowed to dispose off their investments subject to the relevant laws of the country.

4.6 Dispute settlement

The investors shall have the option of dispute settlement using good office, mediation, conciliation and arbitration or as per the mutually agreed framework between the parties.

The disputing parties shall also have the option to adjudicate the dispute before the Royal Court of Justice of Bhutan.

4.7 Intellectual Property Rights

The Industrial Property Act 2001 and the Copyright Act 2001 provides the legal framework for the protection of property rights in the country. Bhutan is a signatory to the WIPO (World Intellectual Property Organisation) Convention and a signatory to the following international conventions and protocols:

- a) Paris Convention;
- b) Madrid Agreement; and
- c) Protocol to the Madrid Agreement; and
- d) Berne Convention.

5. Operating Environment

5.1 Access to foreign exchange

Any convertible currency requirement for import of capital goods must be met out of the FDI business. However, the Royal Government shall provide local joint venture investor with the opportunity to purchase foreign exchange from RMA to meet the initial capital investment requirements in cases where the foreign investor's equity in the project is insufficient to meet foreign exchange requirement for purchase of capital goods. The provision shall not exceed the equity obligation of the local investor.

Any convertible currency required for operational expenses shall be met through the foreign currency earnings of the FDI business. However, as a start up support, the Royal Government shall allow a FDI business to purchase foreign exchange from RMA upto two months' import requirement of raw materials. The convertible currency used shall be replaced within a period of 6 months.

Upon registration of the project, FDI companies shall be required to open foreign currency accounts with local banks. Funds shall be first deposited in the foreign currency account in the local banks and all transactions routed through this account.

5.2 Incentives and exemptions

The FDI companies shall be entitled to the incentives and exemptions as provided by the Royal Government to similar domestic investments, unless specified otherwise in this Policy.

5.3 Taxation

The Sales Tax, Customs and Excise Act, 2000 and the Income Tax Act, 2001 and amendments thereto shall apply to all FDI businesses.

5.4 Local borrowing

FDI company may borrow from financial institutions in the country and the debt-equity ratio shall be as per the provisions of the Royal Monetary Authority (RMA)'s prudential regulations. However, the investors may put in higher equity if they so desire.

5.5 Expatriate Employment

Recognizing the need of various skills in the different businesses, the Royal Government shall address the requirements at different phases of the project so as to ensure that the project does not suffer on account of lack of human resources.

5.5.1 Business Establishment Phase

The FDI businesses shall be entitled to work permits for professional, managerial and technical expatriates. The company shall be entitled to a minimum of five work permits as soon as the business has been granted FDIR certificate. Any additional requirements shall be permitted with due approval of the Ministry of Labour and Human Resources so long as the requirements cannot be met from the domestic market. The work permits shall be allocated to the business rather than to the individuals concerned and shall be issued with validity depending upon the terms of their assignment in the country, renewable on an annual basis, till such time the business is established.

There shall be no restrictions on the recruitment of unskilled and semi-skilled expatriate workers required for establishment of the industry.

5.5.2 Business Operation Phase

The FDI businesses shall be entitled to the required number of work permits for professional, managerial and technical expatriates, if Bhutanese with requisite qualifications and experience are not available, during the initial phase of project operations.

The FDI businesses, however, shall be required to train and employ Bhutanese and progressively phase out expatriates to attain a ratio of 1:5 (i.e. 1 expatriate permit for every 5 Bhutanese employed in the business) by the 5th year of commercial operation. The ratio shall be based on the number of regular Bhutanese employees the business has employed and the same shall be monitored and enforced by the Ministry of Labour and Human Resources.

5.5.3 Education, Health, Head Office and R&D services

Notwithstanding the above, FDI businesses engaged in the provision of R&D services, operating head offices, health, education and other similar services shall be entitled to additional permits for professional, managerial and technical expatriates based on the requirement of the business. However, they shall not be allowed to employ expatriate staff in support positions.

5.5.4 Unskilled and semi skilled

In addition to the entitlements of expatriate work permits in 5.5.2 and 5.5.3 above, additional work permits for semi skilled and unskilled manpower will be made available where necessary, based on an application by the business within the rules and procedure of the country.

5.6 Employment and training of Bhutanese nationals

It is the Royal Government's policy that Bhutanese nationals be trained and eventually employed at all levels within the business. The FDI businesses shall phase out expatriate workers replacing them with Bhutanese nationals.

Notwithstanding any of the provisions above, the Royal Government shall assess and determine whether suitable Bhutanese personnel are available for any posts and if available, expatriate work permit may be denied, based on assessment of the Ministry of Labour and Human Resources.

5.7 Visa and permits

The Royal Government shall issue multiple entry visas and route permits and exempt international tourist tariff to the following:

- i) Foreign Investor
- ii) Board of Directors of FDI company
- iii) Expatriate workers (professional, managerial & technical level)
- iv) Foreign students enrolled in Bhutanese schools
- v) Patients and escorts visiting Bhutan for treatment in hospitals and clinics

International tourist tariff shall also be exempted to the immediate family members of the above. However, applicable fees and charges shall be levied for the permits, dependent cards and visas.

5.8 Dependent cards for expatriate staff and their family members

Immediate family members of the expatriate professional, managerial and technical personnel shall be provided dependent cards subject to the rules and procedures of the Royal Government.

5.9 Short term permits for professionals, technicians, consultants, etc.

FDI businesses shall be provided short term work permits for professionals, technicians, consultants, etc., on request.

5.10 Access to land

Land or space for establishing FDI business shall be available either on lease or ownership based on the provisions of the Land Act of Bhutan, 2007 and amendments thereto. Local partners shall be allowed to capitalize land as their equity contribution.

6. FDI Approval

6.1 FDI Registration

FDI Registration Certificate (FDIRC) will be issued by the Ministry within two working weeks of submission of completed FDI Registration Application Form. Registration of a FDI will convey the right to be treated equally to a similar citizen-owned investment seeking to invest in the sector or activity. The issuance of a FDIR Certificate will not construe approval of the project proposed by the foreign investor. Registered foreign investors will be required to seek and gain all appropriate and necessary approvals, permits, licenses or registrations that any investor, foreign or citizen, wishing to commence operations in Bhutan, must acquire. In seeking these approvals, permits, licenses or registrations, the foreign investors shall be required to produce the FDIR Certificate.

6.2 FDI Business Approval

A multi-sectoral FDI Committee chaired by the Ministry with representatives from relevant agencies shall appraise and approve FDI proposals. The Committee shall develop criteria for approval of FDI proposals. The Committee shall have the authority to approve and/or deny proposals based on the criteria approved and adopted. Representatives from the agencies that are not represented in the Committee shall be invited as and when deemed necessary.

The decision on the FDI proposals shall be conveyed within 45 days from the date of submission of completed documents.

The criteria for approval/denial may be based, inter alia, on the envisaged contribution of the proposed activity to the following:

- a) GNH Principles including FDI focus areas as in 2 above
- b) Generation of employment for Bhutanese
- c) Revenue contribution
- d) Foreign exchange earnings
- e) Value addition
- f) Invention/Innovation

Notwithstanding the above provisions, the Royal Government reserves the right to reject any investment proposal without assigning any reasons.

7. Investment Promotion Authority

The Royal Government shall assess the need for Investment Promotion Authority (IPA) as a statutory body. In the meanwhile, the Royal Government shall establish a Division in the Department of Industry to provide focused support to FDI.

8. Coordination

The Royal Government shall designate “FDI Focal Offices/Officers” within each public sector agency which has a role to play within the overall FDI regime. Through this initiative, the Royal Government expects to introduce a “whole of government” approach to FDI promotion and implementation.

9. Power to make rule

The Ministry shall formulate necessary rules and regulations for the implementation of this Policy.

10. Implementation

This Policy shall come into effect upon approval of the Royal Government and its notification. The Ministry shall be responsible for the implementation of this Policy.

11. Monitoring

While the Ministry shall have the responsibility for overall monitoring, relevant sectors shall monitor the FDI businesses within the framework of the MoUs or agreements signed and their respective legislations, policies and rules and regulations. Among others,

- The Royal Monetary Authority shall monitor and maintain information on foreign exchange related issues,
- The Ministry of Labour and Human Resources shall monitor and maintain FDI specific information on labour and employment issues,
- The Ministry of Home & Cultural Affairs shall monitor and maintain information on visas, permits and other immigration issues and
- The National Environment Commission Secretariat shall monitor the compliance of the business to environmental legislations.

12. Exceptions

The Royal Government reserves the right to permit FDI under terms and conditions that may be different from those specified herein. When such exceptions are made, the nature of the exceptions and the rationale for making them will be made public at the time they are granted.

13. Repeal

This Policy shall repeal the FDI Policy 2002.

14. Review and Amendments

This Policy shall be reviewed and amended as and when deemed necessary.

15. Enactment of FDI Legislation

The Royal Government may enact Foreign Investment Promotion Act based on this Policy.

16. Definitions

‘Convertible currency’ means foreign currencies which the RMA deems to be convertible and as defined in the Foreign Exchange Regulations.

‘Currency of investment’ means either the Indian rupee or convertible currency in which the investment was made by the foreign investor

‘Dependent card’ is a residency approval/permit issued to the immediate family members of expatriates working in the country by the Department of Immigration.

‘Existing entity’ means a business entity already established and operating in the country and in the sector listed under the open list.

‘FDI business’ means a commercial activity promoted by a FDI Company.

‘FDI Registration Certificate (FDIRC)’ means a certificate issued by the Ministry to the authorized person of FDI business based on the FDI Registration Application Form allowing them to process their investment proposal.

‘Foreign investor’ means:

- a. a person who is a citizen of a country other than Bhutan; or
- b. an entity which is incorporated or registered outside Bhutan.

‘Ministry’ means the Ministry of Economic Affairs.

‘Royal Government’ means the Royal Government of Bhutan.

‘International tourist tariff’ means a set price/rate an international tourist pays per person per night for an all-inclusive package tour to visit the country as notified by the Tourism Council of Bhutan.

‘Work permit’ means a pass approved by the Department of Labour and issued by Department of Immigration to a foreigner permitting him/her to work in the country.

PRODUCTION & MANUFACTURING
Priority List of Activities

SI	Sector	Minimum Project Cost (Nu m)	Maximum Foreign Investor's Equity (%)	Conditions/Requirements
1	Agro based Production: i. Organic farming ii. Agro processing iii. Bio-technology iv. Poultry v. Fisheries vi. Floriculture vii. Health Food viii. Animal Feed ix. Apiculture x. Horticulture xi. Dairy	20	74	None
2	Forest based Production	50	74	None
3	Energy i. Hydro Power ii. Solar and wind energy iii. Other renewable energy			
				Based on Sustainable Hydro Power Policy
		20		Based on Renewable Energy Policy
4	Water based products	50	74	None
5	Other manufacturing i. Electronics ii. Electricals iii. Computer hardware iv. Building materials	50	74	None

SERVICES
Priority List of Activities

SI	Sector	Minimum Project Cost (Nu m)	Maximum Foreign Investor's Equity (%)	Conditions/Requirements
1	Education i. Primary Education ii. General Secondary Education iii. Higher Education	200	100	High end
2	Health i. Specialized Medical Services ii. Specialized Dental Services iii. Specialized Medical Laboratory Services iv. Specialized Diagnostic-imaging Services v. Specialized Traditional Medical Services	200	100	High end
3	Hotels/Resorts - Five star & above	200	100	International reputed hotel chains
4	Infrastructure Facilities i. Multi-dwelling residential buildings ii. Non-residential buildings iii. Outdoor sports and recreation facilities such as golf courses, botanical garden and others iv. Highways, bridges, tunnels and roads v. Airfield runways/ airports vi. Industrial estates, Industrial Parks, vii. SEZ, AEZ viii. IT Parks ix. Economic Cities x. Knowledge cities xi. Sport cities xii. Health/Wellness centres xiii. Dryport xiv. Land reclamation xv. Other similar activities	200	100	PPP Model wherein the facility returns to the Government on expiry of the term.
5	Research & Development	10	100	Established firms employing a minimum of 5 experts
6	Head Office Services	5	100	None
7	IT/ITES i. IT/ITES inside IT Parks & SEZs	5	100	None
	ii. IT/ITES outside IT Parks & SEZs	25	74	None
8	Construction Services	100	74	None

9	Waste management i. Recycling of domestic waste ii. Waste management services	25	74	PPP Model wherein the facility returns to the Government on expiry of the term.
10	Water supply and management Urban water treatment and supply	25	74	PPP Model wherein the facility returns to the Government on expiry of the term.
11	4 Star Hotels	25	74	None
12	Technical and Vocational Education	25	74	None
13	Transportation & related services i. Green & non-fossil fuel based transportation ii. Mass transportation iii. Railways, ropeways & cable cars	25	74	PPP Model wherein the facility returns to the Government on expiry of the term.
14	Consultancy Services	10	74	Established firms employing a minimum of 5 experts
15	Financial Services	25	51	As per Financial Services Act

NEGATIVE LIST

Sl	Activity
1.	Media and Broadcasting
2.	Distribution services including wholesale, retail and micro trade
3.	Mining for sale of minerals in primary or raw form
4.	Hotel 3 star and below
5.	General Health Services
6.	Industries that do not meet the Certificate of Origin requirements
7.	Activities in the Prohibited List

PROHIBITED LIST

Sl	Activity
1	Activities that violate any relevant laws of the Kingdom of Bhutan
2	Activities that threaten national security and public order
3	Activities that has harmful effects on public health, environment and Bhutanese morals and culture
4	Arms, ammunitions and explosives
5	Production of hazardous chemicals (as per the restricted list of NEC)
6	Activities based on imported waste
7	Production, display and sale of Pornographic materials
8	Gambling and Betting
9	Tobacco and tobacco based products