

**FOREIGN DIRECT INVESTMENT POLICY  
2002**

**MINISTRY OF TRADE AND INDUSTRY**

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## INTRODUCTION

The development of a formal private sector in the country has a comparatively recent history. It dates back some 15 years, when, at the beginning of the Sixth Five Year Plan in 1987, the Royal Government accorded priority to the growth of the private sector through their participation in the national development. The private sector traditionally focused on trading and informal activities. By the Sixth Five Year Plan, the Royal Government began to look at the private sector as a potential partner in nation building, a theme that was subsequently developed through the Eighth Plan, whereby the Government now features the sector as a major vehicle for economic growth, employment and revenue generation.

With the recognition of the private sector's importance in economic development, the Royal Government is laying emphasis on transforming its role as the provider of services and main source of economic growth in the country, to that of an enabler or facilitator. It is committed to maintaining a small, compact and efficient civil service and facilitating the transition of the mantle of growth to the private sector.

The past growth of the private sector has been modest, although there has been considerable variation between sectors. With the Royal Government's strong national concern to preserve its environmental and cultural heritage, there have been a number of restraints to the growth of the private sector. However, with the designation of the sector as the engine of economic growth and the single most important source of future employment, the current challenge is to promote growth that is consistent with national concerns.

The Royal Government has embarked on a programme to gradually liberalise trade, industries and financial policies to encourage and facilitate the development of the private sector. In 1996, it introduced customs tariff schedule, representing a significant reduction of customs duty on a range of imports from third countries. To support trade liberalisation, the Royal Government introduced Foreign Exchange Regulations in 1997, removing several restrictions on foreign exchange transactions. An important element of the liberalisation process has been the development of legislations and transparent rules and procedures. Several legislations have been enacted and adopted to strengthen the legal framework. These, among others, include the Bankruptcy Act, 1999; Movable and Immovable Properties Act, 1999; Companies Act, 2000; Environmental Assessment Act, 2000; Sales Tax, Customs and Excise Act, 2000; Income Tax Act, 2001; Industrial Property Act, 2001; and the Copyright Act, 2001. Policy rationalisation in different sectors continues and the Foreign Direct Investment (FDI) Policy is one of the components of on going policy reforms.

## **OBJECTIVES**

The opening of national economy to foreign direct investment is envisaged as providing a beneficial boost to private sector development and industrialisation, through easier access to capital, technology and markets. Increased levels of foreign investment are expected to contribute to the attainment of the objective of Gross National Happiness, through creation of additional economic benefits, in ways, which are consistent with the Kingdom's goal of preserving its environmental and cultural heritage.

The broad objectives of encouraging foreign direct investment in the country are to:

- Support private sector development;
- Generate employment;
- Facilitate skills development;
- Promote capital inflow;
- Foster transfer of technology;
- Expand market access and international trade;
- Enhance convertible foreign exchange earnings; and
- Broaden revenue base.

## **GUIDELINES FOR FOREIGN DIRECT INVESTMENT (FDI)**

### **1. Rationale**

The Royal Government acknowledges the beneficial role of FDI on the economy of the country—through employment creation, provision of capital and technology, introduction of new management skills, greater access to international market, earning of convertible foreign exchange and the provision of broader opportunities and choices to the Bhutanese people. Recognizing these benefits, the Royal Government of Bhutan has decided to permit FDI in the economy as follows:

### **2. Definition of Foreign Direct Investment**

Foreign Direct Investment shall be defined as investment made in convertible foreign exchange and in which *a minimum of 20% of the equity* in the investment is owned or beneficially held by either:

- i) a person who is not a citizen of Bhutan; or
- ii) an entity which is incorporated/registered outside Bhutan.

### **3. Entry conditions**

The Royal Government believes that there are significant opportunities for profitable investment in different sectors and will encourage foreign investors to participate. The Government's intention is, starting initially with sectors determined to hold potential opportunities, to open up additional sectors or activities once the Royal Government is confident that the impact of FDI is positive to the economy. The entry of FDI into the country will be regulated using a simple and transparent registration system.

In general terms, conditions governing FDI relate to a desire to:

- i) minimize competition for citizen investors at cottage and small enterprise level; and
- ii) exploit the country's potential comparative advantages

These will be administered by:

- i) imposing on foreign investors a minimum investment size, so ensuring that there is no foreign competition for cottage and small enterprises;
- ii) integrating respective sectoral policies and priorities; and
- iii) adopting a comprehensive FDI rules and regulations

### **4. Sectors for Foreign Direct Investment**

#### **(a) Manufacturing**

In the manufacturing sector as listed below, the minimum size of investment (total project cost) shall be US\$ 1 million, of which the foreign investor can hold up to 70% of the equity. These investments shall be governed by sector specific policies and procedures.

1. Mineral Processing
2. Agriculture and Agro-processing
3. Forestry and Wood-based industries
4. Livestock-based industries
5. Light industries including electronic industries
6. Engineering and power intensive industries

#### **(b) Services**

The minimum size of investment (total project cost) for activities in the Services sector shall be US\$ 500,000, of which foreign investor can hold up to 70% of the equity. These investments shall be governed by sector specific policies and procedures. FDI in Services sector is encouraged in the following areas:

1. Tourism including Hotels
2. Transport Services
3. Roads and Bridges
4. Education
5. Business infrastructure
6. Information Technology
7. Financial Services
8. Housing

**(c) Others**

Collaboration in different forms like technical, marketing and franchise for use of trade names, patents and trademarks will be allowed with prior written permission of the Ministry of Trade & Industry.

**5. Registration of Foreign Direct Investment**

FDI Registration (FDIR) Certificate will be issued by the Ministry of Trade & Industry, MTI, within two working week of submission of a completed application form. The certificate will clearly state conditions that must be fulfilled by investors.

Registration of a FDI will convey no special privileges to the investment or investors, other than the right to be treated equally to a similar citizen-owned investment seeking to invest in the sector or activity. That is, the issuance of a FDIR Certificate will not construe approval of the project proposed by the foreign investor. Registered foreign investors will still 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 investor may be required to produce the FDIR Certificate.

**6. Guarantees and protections**

**(a) Equal treatment**

In the application of relevant laws, rules and regulations in the country, foreign investors will be accorded the same treatment, including investment incentives and exemptions, as accorded to local investors.

**(b) Guarantees on nationalisation and expropriation**

The interest of a foreign investor shall not be nationalised. In those cases where expropriation is considered to be in the national interest or in the event of any measures being taken which have the effect of expropriation or of otherwise curtailing the rights of the foreign investor, prompt

and full compensation, at market rates, shall be paid by the Royal Government to the foreign investor.

**(c) Remittance of dividends and repatriation of capital**

Remittance of dividends and repatriation of capital shall be governed by the Income Tax Act of the Kingdom of Bhutan, 2001, the Foreign Exchange Regulations of Bhutan, 1997, and the provisions contained in 7(a) herein and amendments thereto.

**(d) Protection schemes for intellectual property**

The Industrial Property Act of the Kingdom of Bhutan, 2001 and the Copyright Act of the Kingdom of Bhutan, 2001 provide the legal framework for protection of intellectual property rights in Bhutan.

Bhutan is also a member of the WIPO (World Intellectual Property Organisation) Convention and a signatory to the following international Conventions and Protocols:

- Paris Convention
- Madrid Agreement and
- Protocol to the Madrid Agreement

**7. Operating environment**

**(a) Foreign exchange regulations**

As the present Foreign Exchange Regulations of Bhutan (1997) apply only to transactions covering the utilisation of specific foreign exchange allowances and to schemes available to nationals of the country, the following foreign exchange control provisions will apply to FDI related transactions till revision of the regulation:

- Any convertible currency requirement for import of capital goods must be met out of the foreign equity;
- repatriation of profits/dividends must be balanced by *net foreign exchange* earnings;
- repayment of foreign currency loans shall be permitted subject to prior approval of the loan by the Royal Government of Bhutan;
- repatriation of capital on sale or liquidation along with capital gain is permitted in foreign currency; and
- royalties, technical services fees and management fees may be allowed in foreign exchange as appropriate on evaluation of the royalty agreement, technical service/management agreements.

All foreign exchange transactions must be routed through the normal banking channels.

**(b) Taxation**

The legislations such as the Sales Tax, Customs and Excise Act of the Kingdom of Bhutan, 2000 and Income Tax Act of the Kingdom of Bhutan, 2001 and amendments thereto shall apply to FDI.

**(c) Local borrowing**

There are no restrictions on local borrowing by foreign investors in Bhutan.

**(d) Employment/Labour**

It is the Royal Government's policy that Bhutanese nationals should be trained and eventually employed at all levels within all enterprises. Thus, all companies are encouraged to train and employ Bhutanese nationals to meet the requirements of their industry.

Companies will have to phase out expatriate personnel in the skilled, semi-skilled and un-skilled categories through training and/or recruitment of Bhutanese nationals. Expenses incurred in training of such personnel shall be allowed as deductions for tax purposes.

Rules and Regulations governing the employment of Bhutanese nationals in force from time to time shall be applicable.

**(e) Expatriate employment and work permits**

Notwithstanding the objective of employment of nationals, foreign companies will be allowed to bring in expatriate personnel in areas where there are shortages of Bhutanese with requisite skills. In addition, and in recognition of the need for highly trained staff at senior levels, foreign investments will receive an automatic entitlement to work permits, according to the size of the investment as follows:

- where the investment exceeds US\$ 5 million: five expatriate posts;
- within the investment range of US\$ 1 to 5 million: three expatriate posts; and
- investment below US\$ 1 million: two expatriate posts.

Irrespective of project size, additional expatriate posts will be considered where necessary, as per the policies and procedures on recruitment of expatriate personnel.

**(f) Land**

Land or space for establishing business premises by foreign investors will be made available on lease by the Royal Government or private sector promoters.

**(g) Licensing**

For reasons of public health and safety, maintenance of environmental standards and statistical purposes, the Royal Government has a licensing system wherein all industrial and commercial

activities operating in the country are registered and issued licenses. All commercial undertakings are, therefore, required to obtain a license from the Ministry of Trade & Industry. The rules and regulations that apply to licensing are contained in the General Guidelines for Industrial and Commercial Ventures in Bhutan, 1997.

**(h) Company Registration**

The Companies Act of the Kingdom of Bhutan, 2000 is the principal legislation governing companies in the country. All foreign investments must register with the Registrar of Companies (ROC).

**Foreign Investment Facilitation**

The Ministry of Trade and Industry will constitute a FDI Facilitation Committee to promote FDI in the country. The Committee will, facilitate FDI by providing information on investment opportunities and helping foreign investors obtain necessary clearances, approvals and permits. The Committee will be chaired by the Secretary of the Ministry of Trade & Industry and will have the following membership:

- Managing Director, Royal Monetary Authority of Bhutan,
- Head of Department, Department of Immigration & Census
- Head of Department, Department of Revenue & Customs, Ministry of Finance
- General Secretary, Bhutan Chamber of Commerce & Industry
- Head, EIA Division, NEC Secretariat
- Member Secretary, Director, Department of Industry, Ministry of Trade & Industry

In addition, sector specific representatives shall be called upon as and when required.

The Ministry of Trade & Industry will be responsible for the overall implementation of this policy.

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