



Foreign Direct Investment Policy 2019

Ministry of Economic Affairs
Royal Government of Bhutan



དཔལ་ལྷན་འབྲུག་གཞུང་ བསྟན་ཀྲིས་ལྷན་ཁག།
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MINISTER

FOREWORD

The Royal Government opened up the economy to Foreign Direct Investment (FDI) with the adoption of FDI Policy 2002. The Policy was revised in 2010 with a major shift from a “positive list approach” to a “negative list approach”. Further in 2014, another round of revision was carried out primarily to liberalize the investment regime. Since then, the Policy has been in implementation for almost five years and warranted review to update and ensure Policy coordination within Government agencies and address the changing needs of the era.

With the adoption of FDI Policy 2019, the Royal Government is optimistic that the inflow of FDI will increase thereby accelerating and meaningfully contributing to the expansion of the economic base, employment generation, foreign exchange earnings and revenue generation.

The Ministry of Economic Affairs, as an implementing agency is pleased to announce the FDI Policy 2019 of the Royal Government.


(Loknath Sharma)

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1. Policy Statement

The nation's long-term development is guided by the concept of maximizing Gross National Happiness (GNH). The spirit and intent is to "maximize 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 nine domains of GNH namely living standards, health, education, good governance, ecological diversity and resilience, time use, psychological wellbeing, cultural diversity and resilience, and community vitality.

In pursuance of the above, the Royal Government first adopted the Foreign Direct Investment (FDI) Policy in 2002. Taking cognizance of the changes in the economic and business environment, the Policy was periodically revised. Towards making the Policy more relevant and investor-friendly, the Royal Government hereby adopts the FDI Policy, 2019.

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 friendly industries;
- iii) Promotion of culturally and spiritually sensitive industries;
- iv) Promotion of Brand Bhutan;
- v) Creation of a knowledge society; and
- vi) Diversification of economy for exports and import substitution.

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 except for those as listed in the Negative List. These shall be governed by sector specific laws, policies, standards and procedures.

The priority sector activities are listed in Schedules I & II. The minimum project cost and the maximum foreign investors' shareholding shall be as provided in the schedules. 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.

Notwithstanding the above, the Royal Government shall allow FDI in select small-scale production and manufacturing activities to foster induction of new technology and skills and enhance market access. The minimum project cost of these projects shall be Nu 5 million and the maximum foreign investors' shareholding shall be 49%.

The Ministry shall revise the schedules as and when necessary.

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 domestic entity

FDI in an existing domestic entity shall be allowed subject to the same terms and conditions as applicable to new entities with maximum foreign investor's shareholding of 74 %.

3.4 FDI Company

An FDI company shall be 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 by foreign investors. An individual foreign investor shall own a minimum of 10 % of the equity.

Notwithstanding the above, in case of foreign institutional investors, a FDI company shall be one in which 10% or more of the equity is owned by foreign institutional investor.

3.5 Currency of investment

FDI shall be made in convertible currency. However, investors from India may be allowed to invest in Indian currency except for the small-scale activities listed in schedule III. The convertible currency requirement and Indian Rupee requirement for the establishment and operation of the business must be met from the company's own sources.

3.6 Company Incorporation

All FDI businesses shall incorporate under the Companies Act of Bhutan, 2016 and amendments thereto upon issuance of Foreign Direct Investment Registration Certificate (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. Downstream project of the FDI companies shall be treated as a new project and shall be governed by terms and conditions similar to a new FDI business.

3.8 Lock-in period

The FDI Company shall retain 100% of the foreign equity invested in the company for a minimum of three years from the date of start of commercial operations of the FDI Business.

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:

- i. 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;

- ii. 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
- iii. 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 dividend

Foreign investors shall have the right to repatriate dividend in the currency of earnings on the basis of self-sufficiency, namely that the cumulative net currency earnings of the company are sufficient to cover the amount of these transactions. Net currency earnings shall be accumulated for preceding three successive years for this purpose.

Notwithstanding the above, the following shall be permitted:

- i. For service activities in the priority list, where the investment in the project was made in convertible currency and the earnings are in currencies other than convertible currencies, the FDI company shall be allowed to purchase from Royal Monetary Authority (RMA) convertible currency up to US \$ 5 million per annum for repatriation of dividend by the foreign investors.
- ii. In case of FDI businesses where the investment in the project was made in convertible currency and earnings are in Indian Rupee, the foreign investor shall be permitted to repatriate dividend in convertible currency with prior approval from the RMA.

Other entitlements for these transactions shall be as per the relevant provisions of the Foreign Exchange Rules & Regulations, 2018 and amendments thereto.

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 in line with the provisions of the Companies Act of Bhutan, 2016 and Insolvency law and amendments thereto.

4.6 Dispute settlement

Bhutan is signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). The investors shall have the option of alternate dispute settlement mechanism as per Alternate Dispute Resolution Act of Bhutan, 2013 or the option of using 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 Organization) Convention and a signatory to the following international conventions and protocols:

- i. Paris Convention;
- ii. Madrid Agreement;
- iii. Protocol to the Madrid Agreement; and
- iv. Berne Convention.

5. Operating Environment

5.1 Access to Convertible Currency

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

Upon registration of the project, FDI companies shall be required to open foreign currency accounts with local banks. Funds must be first deposited in the foreign currency account in the local banks and all subsequent transactions routed through banking channel in accordance with the Foreign Exchange Rules & Regulations, 2018 and amendments thereto.

Any convertible currency required for operational expenses shall be met through the convertible currency earnings of the FDI business and sources as approved by the Royal Government.

However, the Royal Government shall grant access to convertible currency for:

- i. Import of raw materials as a startup support; and import of proprietary raw materials as per the Foreign Exchange Rules & Regulations, 2018 and amendments thereto.
- ii. Payment of interest and amortization on convertible currency/ permitted foreign currency loans in accordance with the Guidelines for External Commercial Borrowings.
- iii. Payment of Royalties, technical service or management fees and charges in accordance with the respective agreement for such payments as approved by the Royal Government of Bhutan.
- iv. Remittance of remuneration in accordance with the Foreign Exchange Rules & Regulation, 2018 and amendments thereto.

The above conditions shall apply in accessing both convertible currency and Indian Rupee by all FDI businesses.

5.2 Incentives and exemptions

The FDI companies shall be entitled to the incentives and exemptions as provided to similar domestic investments under the Fiscal Incentives Act of Bhutan, 2017 and amendments thereto unless specified otherwise in this Policy.

5.3 Taxation

The Sales Tax, Customs and Excise Act, 2000, Income Tax Act, 2001, Customs Act of Bhutan, 2017 and amendments thereto shall apply to all FDI businesses.

5.4 Borrowing

FDI company may borrow from financial institutions in the country and the debt-equity ratio shall be as per the provisions of the RMA's prudential regulations. However, the investors may put in higher equity if they so desire. The company shall be also allowed to borrow from abroad as per the External Commercial Borrowing Guidelines.

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 and non-professional expatriates. The company shall be entitled to five work permits as soon as the business has been granted FDIRC. 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.

5.5.2 Business Operation Phase

The FDI businesses shall be entitled to the required number of work permits for professional and non-professional 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 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 and non-professional expatriates based on the requirement of the business. However, they shall not be allowed to employ expatriate staff in support positions.

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.

5.7 Visa and permits

The Royal Government shall issue multiple entry visas and route permits to the following:

- i) Foreign Investor,
- ii) Board of Directors of FDI company, and
- iii) Expatriate workers (professional/non-professional).

Dependents of the professionals employed in the FDI Company shall be provided dependent permits in line with Immigration Rules and Regulations, 2015 and amendments thereto.

5.8 Access to land

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

6. FDI Approval

6.1 FDI Registration

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 FDIRC 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 FDIRC.

6.2 FDI Business Approval

The Department shall approve/reject proposals falling under the Priority Sector Activities and Small-Scale Activities whereas for the Other Activities, the authority shall rest with the Project Approval Committee constituted within the Ministry.

Notwithstanding the above provisions, the Royal Government reserves the right to reject any investment proposal against national interest.

7. Investment Promotion

The Royal Government shall strengthen the FDI Division, Department of Industry to function as an investment promotion agency and to provide single window services to FDI businesses in the country as detailed in the FDI Rules & Regulations.

8. Coordination

An FDI Facilitation Committee chaired by the Minister with representatives from relevant agencies shall be constituted to facilitate and promote FDI.

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 as specified in the FDI Rules & Regulations.

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,

- i. The Royal Monetary Authority shall monitor and maintain information on foreign exchange related issues,
- ii. The Ministry of Labour and Human Resources shall monitor and maintain FDI specific information on labour and employment issues,
- iii. The Ministry of Home & Cultural Affairs shall monitor and maintain information on visas, permits and other immigration issues and
- iv. 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, 2010.

14. Review and Amendments

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

15. Definitions

“Convertible Currency” means foreign currency denominated in Australian Dollar, Canadian Dollar, Danish Kroner, Euros, Hong Kong Dollar, Japanese Yen, Norwegian Kroner, Singapore Dollar, Swedish Kroner, Swiss Franc, United Kingdom Pound Sterling, or United States Dollar as defined in the Foreign Exchange Rules & Regulations, 2018 and amendments thereto.

“Currency of Investment” means the currency in which the investment was made by the foreign investor.

“Dependent” means spouse and children below 18 years of age.

“Dependent permit” means a permit issued to the spouse and children of a professional foreign worker by the Department of Immigration.

“Existing domestic entity” means a business entity already established and operating in the country and fully owned by Bhutanese.

“FDI business” means a commercial activity promoted by a FDI Company.

“FDI Registration Certificate (FDIRC)” means a certificate issued by the Department 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.

“Foreign Institutional Investor (FII)” means entities such as pension funds, insurance companies, saving institutions and registered/licensed investment companies that pool together funds on behalf of others and invest those funds in a variety of different financial instruments and asset classes.

“Ministry” means the Ministry of Economic Affairs.

“Royal Government” means the Royal Government of Bhutan.

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

SCHEDULE I: PRODUCTION & MANUFACTURING

Priority List of Activities

Sl.#	Sector	Minimum Project Cost (Nu. Mn)	Maximum Foreign Investor's Equity (%)	Conditions/ Requirements
1	Agro Based Production: <ul style="list-style-type: none"> ➤ Agro processing ➤ Bio-technology ➤ Poultry ➤ Fisheries ➤ Floriculture ➤ Health Food ➤ Animal Feed ➤ Bio-Fertilizer & Bio Pesticides ➤ Meat Processing ➤ Apiculture ➤ Horticulture ➤ Dairy 	20	74	None
2	Forest based Production	50	74	None
3	<ul style="list-style-type: none"> ➤ Solar and wind energy ➤ Other renewable energy 	20	Based on Alternative Renewable Energy Policy, 2013	
4	Water based products	50	74	None
5	Pharmaceutical products	50	74	As per sector Policy
6	Other manufacturing: <ul style="list-style-type: none"> ➤ Electronics ➤ Electricals ➤ Computer hardware ➤ Building materials 	50	74	None

SCHEDULE II: SERVICES

Priority List of Activities

SL. #	Sector	Minimum Project Cost (Nu. Mn)	Maximum Foreign Investor's equity (%)	Condition/Requirements
1	Education: <ul style="list-style-type: none"> ➤ Primary Education ➤ Secondary Education ➤ Higher Education 	300	74	As per sector Policy
2	Health: <ul style="list-style-type: none"> ➤ All-inclusive specialized hospital services ➤ Specialized Medical Services ➤ Specialized Dental Services ➤ Specialized Medical Laboratory Services ➤ Specialized Diagnostic imaging services ➤ Specialized Traditional Medical Services 	200	100	As per sector Policy “All-inclusive specialized hospital services” applies to hospitals providing at least one procedure presently referred outside country and having own complete set of diagnostic services and laboratory facilities.
3	Hotels/Resorts –Five star and above	200	100	None
4	Infrastructure Facilities on PPP model	NA	100	As per the PPP Policy
5	Sports and recreation facilities	25	74	None
6	Wellness Centre	25	74	None
7	IT Park development	200	100	None
8	Research & Development	10	100	Established firms employing a minimum of 5 experts
9	Head Office Services	5	100	None
10	IT/ITES <ul style="list-style-type: none"> ➤ Inside IT Park ➤ Outside IT Park 	NA 3	100 100	As per sector Policy
11	Construction Services	100	74	None
12	Waste Management <ul style="list-style-type: none"> ➤ Recycling of domestic waste ➤ Waste management services 	25	74	None

SL. #	Sector	Minimum Project Cost (Nu. Mn)	Maximum Foreign Investor's equity (%)	Condition/Requirements
13	<ul style="list-style-type: none"> ➤ Water Supply and management ➤ Urban water treatment and supply 	25	74	As per sector Policy
14	4 Star Hotels	25	74	None
15	Technical and Vocational Education	25	74	None
16	Consultancy Services	5	74	Established firms employing a minimum of 5 experts and having presence in more than two countries or experience in international market.
17	Financial Services	As per FSA	51	As per Financial Services Act

SCHEDULE III

SMALL SCALE ACTIVITIES

Sl #	Sector	Minimum Project Cost (Nu. M)	Maximum Foreign Investor's Equity (%)
1	Value added Agro-based products (based on domestic produces): <ul style="list-style-type: none">➤ Fruit and vegetable processing➤ Food Processing➤ Herbal and medicinal products➤ Honey-based products➤ Spices➤ Confectioneries	5	49
2	Forest based Production: <ul style="list-style-type: none">➤ Value added hand-made paper products➤ Waste wood products➤ Bamboo products➤ Cosmetics➤ Essential oil products	5	49
3	Others: <ul style="list-style-type: none">➤ 1. Souvenir➤ 2. Ceramic products	5	49

SCHEDULE IV

NEGATIVE LIST

Sl.#	Activity
1.	News Media
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 of the Royal Government

