

Licencing Policy 2015

Preamble:

One of the pillars of the guiding development philosophy of GNH of the country is the promotion of socio-economic development and accordingly the Policy seeks to promote development through the management of the licencing framework in the country to ensure that regulatory objectives are met with the minimum possible burden on businesses. Regulations are important to protect public safety, health and environment and promote the development agenda of the country. However, regulations need to be smart and over regulating could be counterproductive for the growth of the economy and achievement of happiness for citizens. The Licensing Policy is firmly anchored among related regulatory reform initiatives in Bhutan, including the Economic Development Policy and e-Government initiatives.

The principles, and the functional definition of “license”, are presented to ensure that the “spirit” of the Policy is adhered to, not simply the “letter”.

1. Objectives

- 1.1. The objectives of the Licensing Policy are to establish a modern business licensing policy for Bhutan that reduces burdens on businesses while ensuring compliance with Bhutan’s regulatory requirements, by:
 - 1.1.1. Defining the main principles and criteria for the licensing of business activities;
 - 1.1.2. Listing licenses and requirements that can validly be imposed by government institutions (Licensing Authorities) and publicizing up-to-date information through channels like the electronic portal of licenses and business information charters;
 - 1.1.3. Providing and endorsing methodologies to review current and proposed licenses to ensure regulatory quality.

2. Definitions

- 2.1. In this Policy unless the context otherwise requires:
 - 2.1.1. “**Applicant**” means the legal or natural person that is seeking to undertake commercial activity regulated by a license. The term “applicant” shall have the same meaning as “proponent.”

- 2.1.2. “**Ex ante assessment**” means a review of documents and other supporting information before licensed business activity may commence.
- 2.1.3. “**Ex post compliance monitoring**” means a review after licensed business activity has commenced to ensure that the business is following all requirements that were the basis for the issuance of the license.
- 2.1.4. “**License**” means an ex-ante authorization required for any applicant or license holder to commence commercial activities and operate and includes all licenses, clearances, permits, approvals, certificates, recommendations, authorizations, accreditations issued by any regulatory authority or body with delegated authority to issue licenses in Bhutan. This single, functional definition covers all authorizations that fall under this function. The Licensing Policy does not use or apply other terms for licenses. In this Policy unless otherwise specified, the term “license” is understood to refer to the type of license for a particular activity in general, not an individual license issued to an individual license holder.
- 2.1.5. “**License holder**” means the legal or natural person that has received a license and is operating in accordance with the terms and conditions of that license.
- 2.1.6. “**Licensing authorities**” shall include the government bodies (national or local government) responsible for the issuance and administration of licenses. It shall also include any other body that is authorized by the Royal Government to issue licenses.
- 2.1.7. “**Positive legal security**” means the guarantee that information contained in the “Register of Licenses” is valid and enforceable. (This is a positive list; information on licenses contained anywhere else is invalid and unenforceable.)
- 2.1.8. “**Proponent**” (see “applicant”).
- 2.1.9. “**Register of Licenses**” means the comprehensive and exhaustive list of licensing authorities, licenses, and their terms, conditions and requirements contained in the Licensing Policy and the electronic portal of licenses (G2B). The Register of Licenses has positive legal security.
- 2.1.10. “**Registration**” means the official authorization of the business as a legal entity, as distinguished from licensing.

3. Scope

- 3.1. The Licensing Policy applies to licenses and licensing authorities, and persons intending to engage in commercial activities regulated by licenses.
 - 3.1.1. First, the Policy defines the terms, conditions and requirements for all licenses issued by government authorities in Bhutan.

- 3.1.2. Second, all licensing authorities are required to adhere to the quality requirements for designing, implementing and monitoring compliance with licenses. In cases of divergence from such quality requirements, the burden of proof is on the licensing authority to justify the divergence.

4. Main principles of licensing

- 4.1. The underlying principles governing the licensing system which are the basis for all requirements in the Policy are as follows:
 - 4.1.1. Licensing is one part of the **overall regulatory system**, which includes registration as a legal entity, inspections and other methods to monitor compliance with the regulatory terms, conditions and requirements, and reporting requirements.
 - 4.1.2. The principles and rules of the Licensing Policy will be binding for all government bodies and licensing authorities involved in the licensing system
 - 4.1.3. The principles of the Licensing Policy **are in accordance with the Economic Development Policy.**
 - 4.1.4. **Information on licenses and licensing requirements** is available to anyone who needs it.
 - 4.1.5. Licenses are designed to achieve regulatory objectives by imposing the **minimum necessary requirements** on commercial activity.
 - 4.1.6. Licenses are designed to **reduce opportunities for non-transparent and arbitrary decision-making** and corruption.
 - 4.1.7. Licenses are issued to businesses by licensing authorities in a **fair, transparent and standardized manner.**
 - 4.1.8. Licenses shall be issued in a reasonable timeframe. In accordance with the Economic Development Policy, approval or denial of the project shall be communicated within a maximum of 45 days from the date of submission of required documents. The different government agencies responsible for providing sector clearances shall agree among themselves on a maximum time limit for providing the clearances to the applicant, not to exceed 45 days total. Thereafter, if the licensing authority does not receive consent/denial within the stipulated time from concerned agencies, the principle of “silence is consent” shall be applied for final approval by the licensing authority. In extraordinary cases where it is not possible to review and issue an individual license application requested by an individual applicant within the set deadline, the licensing authority will send a communication to the applicant, to the Ministry of Economic Affairs, and to the Gross National Happiness Commission Secretariat explaining the reasons for the delay, what measures are being taken to resolve the problem, and how long it will take to issue the individual license. In reference to setting the deadlines for a type of license for a particular activity, only for unusually complex types of licenses will the licensing authority be permitted to have a deadline that is longer than 45

days. In accordance with the Transition Provisions of this Policy, the Licensing Authority will present its reasons for review.

- 4.1.9. Services are to be provided to applicants and license holders in an **integrated and coordinated manner**, such as through one-stop shops, inter-agency coordination, data-sharing among agencies. In accordance with the Economic Development Policy, a one-stop shop shall be introduced through the use of IT among government agencies responsible for providing clearances. The Ministry/Agency (licensing authority) that is responsible for issuing the final approval/licence shall be the only point of contact for the applicant.
- 4.1.10. To ensure high quality and effective licenses, both **sectoral expertise** and cross-cutting regulatory governance principles will be included in the review, design, and use of licenses.
- 4.1.11. A **risk-based approach and risk assessment** will be applied for designing, processing and monitoring compliance with all licenses.
- 4.1.12. Wherever possible, **alternatives to regulation/licensing, self-regulation mechanisms and codes of practice** will be preferred over strict licensing norms, in line with GNH principles and the Economic Development Policy.
- 4.1.13. Increased emphasis will be placed on **ex post compliance monitoring** with license requirements, rather than ex ante assessments.
- 4.1.14. The **adoption of proposed new licenses** is well-managed and systematic and adheres to the quality standards contained in the Licensing Policy.
- 4.1.15. All businesses **once registered as a company** or enterprise may immediately carry out any legal commercial activity without further authorization, unless they require a license.

5. Criteria and operational standards of licensing

- 5.1. The **main criterion** for whether or not a license (as defined) should be applied as a regulatory tool is whether the activity may create a risk for public health and safety, the environment, or national security, or is needed to preserve natural monopolies or allocate scarce and depletable resources.
- 5.2. In addition to the main criterion presented above, all licenses should be subjected to the following **quality criteria**:
 - 5.2.1. Any license imposed on business has a **legal basis**;
 - 5.2.2. Any license imposed on business is **necessary** to realize the regulatory objectives; and
 - 5.2.3. Any license imposed on business is **business-friendly** and is streamlined to the maximum extent possible to reduce the burden on businesses and government.

6. Reviewing the stock of existing licenses

- 6.1. All existing licenses shall be reviewed in accordance with the principles, criteria and operational standards of this Licensing Policy.
- 6.2. The responsible Royal Government authorities shall conduct a comprehensive review of the stock of all existing licenses imposed every three years. The licenses that do not meet the principles, criteria and operational standards shall be abolished, streamlined or amalgamated with other related licenses.

7. Controlling the flow of proposed licenses

- 7.1. All proposed licenses shall be reviewed in accordance with the principles, criteria and operational standards of this Licensing Policy.
- 7.2. All licenses proposed by a licensing authority or other Royal Government institution shall be subject to an impact assessment. The process of review for proposed licenses shall be coordinated with the process of review for regulatory impact assessments. This will include an opportunity for stakeholders to present comments on proposed licenses.
- 7.3. All licenses duly adopted are to be included in the Register of Licenses and the electronic business license portal (G2B) within a period of 30 days after adoption of such license.

8. Responsibilities of Royal Government bodies

- 8.1. The responsibilities of the Gross National Happiness Commission Secretariat in collaboration with Ministry of Economic Affairs regarding licensing reform shall be:
 - 8.1.1. Jointly monitor implementation, progress and compliance with the Licensing Policy in collaboration with relevant agencies.
 - 8.1.2. As needed, jointly coordinate inter-ministerial issues and support implementation across the government.
 - 8.1.3. Co-ordinate appointment of competent persons to be included in the institutional mechanisms supporting the implementation and mainstreaming of the Licensing Policy.
 - 8.1.4. Support the transition provisions for the coming into force of the Licensing Policy with the relevant agencies.
- 8.2. The responsibilities of the **Ministry of Economic Affairs** regarding licensing reforms shall be:
 - 8.2.1. Prepare and update policies and guidelines on the licensing system.
 - 8.2.2. Promote the application of the principles, quality standards and criteria of the Licensing Policy.

- 8.2.3. Together with the Gross National Happiness Commission, ensure compliance by licensing authorities with the letter and spirit of policy, including use of performance monitoring tools.
- 8.2.4. Prepare regular reports to the Cabinet, Gross National Happiness Commission and the Better Business Council on the implementation of the Licensing Policy and request support as needed for inter-ministerial coordination.
- 8.2.5. Together with the Gross National Happiness Commission, receive and act on complaints from Royal Government institutions and businesses when there is evidence that the principles, standards and criteria of the Licensing Policy are not being followed by the Licensing Authorities.
- 8.2.6. Host and update the Register of Licenses (including the electronic portal of licenses), ensuring that all existing licenses adhere to quality requirements expressed in the Licensing Policy. Ensure updating the list of licenses and their requirements as needed.
- 8.2.7. Establish, convene and support cross-institutional bodies to conduct regular reviews of the stock of existing licenses every three years¹.
- 8.2.8. Cooperate with the institution charged with regulatory impact assessment in Bhutan to integrate the principles, standards and criteria when reviewing new and proposed licenses.
- 8.2.9. Measure the administrative burdens of licenses by applying the standard cost model² (or other equivalent tool).
- 8.2.10. To implement the tasks above, the Ministry of Economic Affairs will appoint officers responsible.

8.3. Licensing Authorities shall:

- 8.3.1. Adhere to the principles and criteria contained in the Licensing Policy when designing and administering licenses. The Licensing Authority will bear the burden of proof in case of any divergences.
- 8.3.2. Within 30 days of due adoption of a new license, provide information for the Register of Licenses and electronic business license portal (G2B), including information on documentary requirements, enterprises and activities eligible for licensing, time taken, costs, duration of validity, contact information and other such information as required for the Register of Licenses.
- 8.3.3. Provide the same information on licenses to the public in non-digital formats (such as brochures) and keep that information up to date.
- 8.3.4. Propose updates to the information contained in the Register of Licenses (electronic portal) when necessary, subject to review by the institution charged with monitoring compliance with the Licensing Policy.
- 8.3.5. MoEA and GNHCS shall be responsible to oversee the implementation and monitoring of the policy respectively as per responsibilities mentioned in section 8.1 and 8.2.

¹See section 3.c. below on “Reforming existing licenses (the stock)”.

²See chapter 4 on “Measuring Licensing Reforms”.

9. Register of Licenses

- 9.1. The Register of Licenses is annexed to the Licensing Policy and is a constituent part of the Licensing Policy.
- 9.2. The Register of Licenses is also published in an electronic portal of business licenses (G2B).
- 9.3. Changes to the Register of Licenses will be conducted in compliance with specific procedures to be determined by the responsible institutions.

10. Appeals and Recourse

- 10.1. Royal Government bodies and businesses can dispute the non-compliance of Licensing Authorities with the principles and criteria of the Licensing Policy.
- 10.2. The Royal Government body to receive and act on complaints is designated in the section on “Responsibilities of Royal Government Bodies.”

11. Transition Provisions

- 11.1. Within a period of one year after adoption of this Licensing Policy, any legal instruments that are not in compliance with the principles, standards and criteria of this Policy are to be brought into compliance, or justification for divergence is to be provided by the licensing authority, or a work plan to bring the relevant law(s) into compliance are to be provided to the Gross National Happiness Commission. This can include those extraordinary types of licenses for a particular activity where it is not feasible to impose a 45-day limit before the “silence is consent” principle comes into effect.