

# **BUSINESS INFRASTRUCTURE POLICY**

2014

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## ACRONYMS

CEO	Chief Executive Officer
CSI	Cottage & Small Industries
FDI	Foreign Direct Investment
FOREX	Foreign Exchange
FYP	Five Year Plan
GNHC	Gross National Happiness Commission
GZ	General Zone
ICT	Information Communication Technology
NLC	National Land Commission
MoEA	Ministry of Economic Affairs
MSME	Micro, Small and Medium Enterprise
PPP	Public-Private Partnership
RGoB	Royal Government of Bhutan
RMA	Royal Monetary Authority of Bhutan
SEZ	Special Economic Zone
BIDA	Business Infrastructure Development Authority
WTO	World Trade Organisation

## 1. INTRODUCTION

One of the primary development objectives of Bhutan is poverty reduction as clearly articulated in the development plans and policies. . The key strategy identified to achieve this objective is through vitalizing industrial development.

The Royal Government has been taking the lead role in providing business infrastructure primarily the industrial estates and service centres to facilitate establishment of manufacturing industries and service activities. However, this approach faces limitations on account of fund availability and implementation capacity. The Royal Government desires to foster private sector participation in business infrastructure development and management. Among others, one of the approaches that will be adopted in the development of business infrastructure will be through the Public-Private Partnership (PPP) model that provides for sharing of resources, risks and efficiency optimization.

## 2. MISSION

To enhance availability of business infrastructure through development and management of such facilities with higher private sector participation.

## 3. PURPOSE

This policy shall be an apex policy for the development and management of business infrastructure in the country.

## 4. COVERAGE

This Policy provides a framework for different types of business infrastructure. These include, but are not limited to:

- Export Processing Zones
- Industrial Parks/Estates
- Dry Ports
- Special Economic Zones
- Education Parks
- Information Technology (IT) Parks
- Agricultural Free Zones
- Tourism Development Zones
- Technology Parks and
- Similar other facilities

Business areas can be either a General Zone or Special Economic Zone or combination of both based on the nature of infrastructure facilities to be provided and type of activities proposed by the Developers.

- (i) **General Zone:** These are areas developed according to a comprehensive plan with provisions for basic infrastructure and utilities with or without pre-built factory buildings such as industrial estate, dry port, etc. Enterprise established in a GZ shall

enjoy fiscal incentives as determined by the Royal Government and pay applicable taxes and duties at the time of import of goods and services. The enterprises shall be eligible for sale of their products/services in the domestic tariff area as well as export.

- (ii) **Special Economic Zone (SEZ):** A SEZ is an area where any goods imported are regarded, insofar as import duty and taxes are concerned, as being outside the customs territory. The enterprises in the SEZ shall be export oriented. Sale of products/services in the domestic tariff area by enterprises established in SEZ shall be subject to payment of applicable taxes and duties. SEZs can be an Export Processing Zone, Free Trade Zone, IT Park, Technology Park, Education Park, Agricultural Free Zone, Tourism Development Zone etc, subject, however, to the potential and commitment to fulfil the specific requirements prescribed for the type of SEZ.

## **5. REGULATORY FRAMEWORK**

The Royal Government shall establish an independent and autonomous Business Infrastructure Development Authority (BIDA) under the Ministry. The Authority shall formulate, adopt and implement rules and regulations which shall govern the development and operation of business infrastructure in accordance with this Policy.

## **6. STRATEGIC POLICY CONSIDERATIONS**

These include

- Land and Infrastructure
- Incentive Framework
- Labour Regime
- Development of CSIs
- Gender Perspective
- Environmental Standards

### **6.1 LAND AND INFRASTRUCTURE**

#### **6.1.1 Location**

The location of the business infrastructure shall be based on developmental need and economic parameters such as the availability of land, infrastructure, utilities, raw materials, skilled labour, and product market in order to maximize the comparative and competitive advantages. These shall be based on Development Plans and/or on the business potential.

In general, Southern Region shall be promoted as the main economic hub for manufacturing and associated activities whereas in the interior, focus shall be on creation of business infrastructure that promotes services, cultural and high value products.

#### **6.1.2 Development Strategy and Prioritization**

The strategy and priority for development of business infrastructure shall be formulated by the Authority, in coordination with the Ministry and GNHC to ensure that such

development strategy is consistent with the priorities of the Royal Government as outlined in the Five Year Plans. It shall be the policy of the Royal Government and the Authority to encourage and facilitate private sector participation in the construction and operation of these facilities.

### **6.1.3 Designation of Business Areas**

The Royal Government shall identify and designate Business areas based on the Development Plans, as per the provisions of the Land Act, 2007 and amendments thereto. In addition to areas identified in Development Plans, proposals from interested private developers shall be encouraged. Among others, the criteria for designating private land as business area shall be, but not limited to, the following:

- (i) Availability of suitable private land in terms of size, type and location
- (ii) Proof of land ownership
- (iii) Clearance of the Local Community and Administration
- (iv) Proximity to main infrastructure
- (v) Expansion potential
- (vi) Business potential
- (vii) Social and Environmental Impact

The Authority shall review the proposals and submit its views/ recommendations to the Ministry for designation of the business area. The Ministry shall, upon approval of the same by the Royal Government, issue the order designating it as business area and notify through its publication in the Official Gazette together with the precise boundaries of the area.

### **6.1.4 Land Acquisition**

The Authority shall be the authorized agency of the Ministry for assessment, processing the lease of GRF land/Government land and where necessary the acquisition of private land for business infrastructure.

As far as possible, land for development of Business areas shall be in the form of lease of State Reserved Forests or State Land under the terms and conditions of a Development Lease. In cases where it is absolutely necessary to acquire private land, the Authority may procure private land by providing fair compensation including ownership options such as equity participation or lease of land from owners.

### **6.1.5 Infrastructure**

Infrastructure in the Business areas shall be developed according to international standards. The Developer shall adopt international configurations relevant to the types of facilities.

A comprehensive business and engineering plan, detailing the type and quality of infrastructure to be developed, shall be submitted by the project proponent to the Authority. The Authority shall appraise and grant approval based on a clear and transparent criteria.

The Royal Government shall facilitate provision of basic infrastructure facilities, i.e. roads, power, water, and telecommunication facilities upto the boundary of the business

area. However, the Developer shall be responsible for providing the required infrastructure facilities inside the facility and to the enterprises therein. .

#### **6.1.6 Development Model**

The Developers shall have the option to select the appropriate type of infrastructure that could include the following:

- a) **Multi-purpose Zones:** These are integrated large zones covering large numbers and varieties of activities, including manufacturing, warehousing and distribution activities, tourism, ICT, and creation of townships with commercial and utility services within the business area. This could include GZ as well as Special Economic Zone in a single location.
- b) **Specific SEZ or GZ:** Development of an area as GZ or Special Economic Zone.

#### **6.1.7 Business Model**

Development of business infrastructure shall be through any of the appropriate business models organized and incorporated as companies. These could include the following:

- a) Public Private Partnership as per PPI Framework (Policy)
- b) Fully private owned
- c) Fully Government owned
- d) Joint venture between Government and private sector
- e) FDI as per FDI Policy

### **6.2 INCENTIVE S**

The Developers as well as enterprises in the business areas shall enjoy incentives as outlined in the Fiscal Incentives 2010. Additionally, the following incentives shall apply to business entities that fall under specific categories.

#### **6.2.1 Additional Fiscal Incentives for Developers**

- (i) Exemption from customs duty and sales tax on imports of capital goods, raw materials, consumables, spares, etc. used for the construction of business infrastructure;
- (ii) Exemption from excise duty and sales tax on procurement of capital goods, raw materials, consumables, spares etc. from domestic market used for the construction of business infrastructure ;
- (iii) Tax holiday for 20 years from the date of commercial operations. Business infrastructure established in less developed regions will enjoy an additional 5 years corporate income tax holiday.

#### **6.2.2 Additional Fiscal Incentives for Enterprises in Special Economic Zones**

- (i) Exemption from customs duty and sales tax on imports of capital goods, raw materials, consumables, spares, etc. used in the production processes of the business;
- (ii) Exemption from excise duty and sales tax on procurement of capital goods, raw materials, consumables, spares etc. from domestic market used in the production processes of the business;

- (iii) Corporate income tax holiday for a period upto 10 years;
- (iv) Exemption from foreign exchange controls on payments for:
  - (a) profits, dividends, loans, royalties, fees and charges relating to activities registered in the zones;
  - (b) raw materials, intermediate goods, tools and spares, supplies, construction equipment and building materials; and,
  - (c) capital transactions.

### **6.2.3 Non-fiscal Incentives for the Developers**

- (i) One operation license issued by regulatory agency to set up operations of Business Infrastructure ;
- (ii) Fast track project approval and licensing or rejection thereof within 45 days;
- (iii) Liberalized foreign exchange regime for easy repatriation of capital & profits, access to foreign currency accounts, domestic and external borrowing;
- (iv) On site customs documentation and inspection by Customs. Resident Customs office for on-site customs documentation and clearance in the SEZs.;
- (v) Investment conditions by foreigners as per FDI policy, 2010;
- (vi) One Stop Facilitation service for facilitation and aftercare.



### **6.3 APPROVAL CRITERIA FOR DEVELOPERS**

The Authority shall ensure that appropriate criteria for approval of Developers are in place. This shall be based on predetermined, transparent and clearly defined criteria which could include:

- the amount of targeted investment to be brought;
- geographical location of the Business area and investment;
- target industry, sector and product;
- target export volumes and values and their markets;
- investor's compatibility with the industry/sector cluster;
- maximum time allowed between approval of project and commencement of operations to minimise land hoarding;
- mechanisms for penalising or removing investors who fail to meet the set criteria;
- expected benefits from the investment in terms of production and exports;
- value addition;
- employment creation; and
- direct and indirect government tax revenues.

### **6.4 LABOUR AND EMPLOYMENT**

Businesses that are established in the Business areas shall provide work environment and conditions that are in accordance with Labour Laws of the Kingdom of Bhutan.

The Developers as well as the business entities operating in the Business areas shall be entitled to work permits as provided for FDIs in the FDI Policy, 2010. This expatriate work permit arrangement shall also apply for domestic businesses that are established in the Business areas.

### **6.5 COTTAGE AND SMALL ENTERPRISES**

To promote the development of the CSIs and to ensure their participation, the Developers shall allocate locations/floor space dedicated to CSIs. The Authority shall, during the review of the proposal, specify the area and manner of allocation of space for CSIs in a specific Business area. Alternatively, the Authority shall issue a guideline for allocation of certain percentage of developed space to CSIs in all Business areas.

### **6.6 GENDER PERSPECTIVE**

In line with the comprehensive strategy of gender mainstreaming and to ensure that women are provided with equal opportunities to participate in the economic development, a gender perspective in the planning and implementation of the business infrastructure programme shall be adopted. This shall be done through the inclusion of facilities like crèches and day-care services within the Business areas.

To provide greater opportunities for women in the rural areas/small towns/villages, the strategy shall set aside a percentage of zone facilities developed in these areas, especially for women. The Authority shall, during the review of the proposal, specify the area and manner of allocation of space for women entrepreneurs in a specific Business area. Alternatively, the Authority shall issue a guideline for allocation of certain percentage of developed space to women entrepreneurs in all Business areas.

### **6.7 ENVIRONMENTAL STANDARDS**

The Authority, in coordination with the appropriate agencies, shall take concrete and appropriate steps to ensure full compliance, by the Developers and entities, with environmental standards and laws.

## **7. INSTITUTIONAL ARRANGEMENTS**

### **7.1 BUSINESS INFRASTRUCTURE DEVELOPMENT AUTHORITY OF BHUTAN**

The Royal Government shall establish Business Infrastructure Development Authority that will have the following objectives:

- i. to facilitate, promote and supervise the development and operation of Business area by Developers;
- ii. to monitor and regulate the operations of Business area ;
- iii. to promote investment in Business area, by attracting local and foreign investors
- iv. to identify, carry out studies and recommend to the Royal Government areas for development as Business area.

### **7.2 POWERS AND FUNCTIONS OF THE AUTHORITY**

The Authority shall have the powers:

- i. to formulate rules and regulations relating to the establishment of Business area, their development and management
- ii. to coordinate with Government agencies and exercise general supervision over the development plans, activities and operations of Business areas
- iii. to regulate operation of enterprises in the Business areas and ensure compliance with the rules, regulations and laws; and
- iv. to review and approve private sector applications for the development of Business area in accordance with the rules and regulations.

### **7.3 BOARD AND ITS POWERS**

A Board comprising of a Chairperson and not more than 6 other Directors which includes the CEO as the Member Secretary shall be constituted to oversee the operations of the Authority. The Board shall have at least one Director from the private sector.

The Minister shall appoint the Chairperson and Directors. The Chairperson and Directors shall hold office for a term of three years. The Chairperson or Directors who vacate the office upon successful completion of a term, may be reappointed.

The Board shall have the powers to lay down policy on, and to generally supervise over, business of the Authority, including the powers to issue rules and regulations for compliance with and implementation of the provisions of the Policy;

The Board shall appoint a CEO based on competitive selection process for a term of 4 years with the approval of the Minister. The CEO shall have the duty to administer the business of the Authority in accordance with the law, rule, regulation and policy as laid down and shall have the power to control and supervise all officials and employees of the Authority.

## 7.4 FINANCIAL STRUCTURE

The Authority shall cover its financial requirements from any one or all of the following sources:

- (i) budget allocations from the Government;
- (ii) grants, fees and service charges as decided by the Authority;
- (iii) application fees, payable upon submission of an application by a Business Entity to the Authority;
- (iv) annual contributions from Developers.

## **7.4 ADMINISTRATION AND MANAGEMENT**

### **7.4.1 Approval of Business areas**

Upon designation of an area as an Business area by the National Land Commission (NLC), the Authority may invite proposals from Developers for development of the facility. The Developers shall be required to follow the Standard Operating Procedure in filing the applications and approval process. The Authority shall evaluate the Detailed Feasibility Report submitted by the Developer and submit its recommendation to the Board for consideration.

In case of private sector proposals, it shall review the application based on set criteria and recommend/reject the proposal. If recommended and approved by NLC, the Authority shall seek a detailed proposal and necessary clearances and process for approval.

The approval of proposals for development of Business areas shall vest with the Board of the Authority.

### **7.4.2 Lease of Land to Developer**

The GRF land and/or land acquired for Business area shall be leased to the Developer for a period of 30 years initially with a provision for renewal or as per mutually agreed terms. The Developer in turn shall be permitted to lease out, or to sub-lease appropriate pieces of land after proper development to enterprises under Project Leases.

### **7.4.3 Development Timeframe**

Each Business area shall be developed and operated by a Business Entity that has been designated by the Authority as the Developer for that particular Business area. The Developer shall be required to make Business area operational within two (2) years from the date on which the License is issued. The Licence for Business Area Development shall be cancelled by the Authority should the site fail to become operational by the end of the two-year period, and should the Developer fail to provide a written statement requesting an extension and stating a valid reason for the delay.

In case of PPP, the development and operating terms shall be specified in the Concession Agreement.

### **7.4.4 Management**

There shall be a Management Committee for each Business area to run the administrative and management affairs in accordance with the rules and regulations. Government functionaries working in the Business area shall be under the administrative control of the Management Committee of the Business area.

The composition of the Management Committee shall be determined by regulations, but shall include representatives of the Authority, the Developer, representatives of Enterprises and Government functionaries working in the Business area.

### **7.4.5 One-Stop Facilitation Centre**

The Authority, in cooperation with the other relevant agencies such as local authorities, utility corporations, National Environment Commission, Immigration and Security shall

establish one-stop facilitation centre for receiving all applications and declarations by enterprises and issuing all certificates, permits and approvals at a central location.

All government agencies involved shall assign their respective representatives in the One-Stop Facilitation Centre for this purpose.

## **7.5 CUSTOMS RULES AND PROCEDURES**

Based on classification and size and the need for regulation and control, required offices shall be established within the Business areas.

### **7.5.1 Customs Offices in SEZ**

The Department of Revenue and Customs shall assign Customs Officers responsible for each of the SEZs. A permanent or semi-permanent Customs Zone Office may be established to monitor the flow of articles into and out of the SEZ and to ensure that the physical and security requirements are maintained at all times.

### **7.5.2 Goods Prohibited and Restricted within SEZs**

SEZ entities are forbidden, except on such terms and conditions as may be prescribed or permitted by the Authority, to utilise, store or take into an SEZ prohibited and restricted goods as specified by the Sales Tax, Customs and Excise Act of the Kingdom of Bhutan, 2000. The Department of Revenue and Customs shall be responsible for enforcing the above prohibitions and restrictions.

### **7.5.3 Domestic Sales.**

Goods manufactured by a SEZ enterprise shall be permitted to be sold in the domestic market, subject to payment of corresponding duties and taxes.

However, in order to protect the domestic industry, the Royal Government may draw up a negative list of industries. SEZ enterprises engaged in the industries included in the negative list shall not be allowed to sell their products locally. Said negative list shall be regularly updated.

## **8. LEGAL FRAMEWORK**

### **8.1 ENFORCEMENT, FUNCTIONS, DISPUTES SETTLEMENT AND APPLICABLE LAWS**

The Authority shall be the regulatory body empowered to enforce rules and regulations pertaining to development and management of Business areas.

All entities in the business areas shall comply with the rules, regulations and other applicable legislations.

The Authority may impose fines and/or suspend / revoke the Developer License whose operations are found to have violated laws.

Recourse against the Authority's decisions concerning fines, revocations of Licenses or other disputes shall lie in the courts of competent jurisdiction within Bhutan.

Bankruptcy or liquidation of Developers or Enterprises shall be carried out in accordance with the laws and regulations relating to bankruptcy and liquidations in force.

### **8.2 PROTECTION OF PROPERTY AND OTHER RIGHTS**

All business entities shall have right to control their properties. This right may not be assumed by the Government for any reason, except in accordance with due process of law, in *bona fide* pursuance of a public purpose, without discrimination on the basis of nationality, and against payment of prompt, adequate and effective compensation.

### **8.3 MISCELLANEOUS PROVISIONS**

As necessary, the Authority may issue notifications and circulars to notify interested parties regarding clarification, updating, or other changes in procedures, rules, regulations and fines, or other matters pertinent to the operation of the regime.

## **9. EXISTING BUSINESS INFRASTRUCTURE**

The Royal Government may corporatize or outsource the management of existing business infrastructure for efficient delivery of services and creation of level playing field for operators of similar facilities.

## **10. NON-APPLICABILITY**

Any provision of this Policy which provides benefits or privileges less than those granted or imposes obligations or burdens more onerous to Business areas created or to be created under special laws shall not apply to them.

## **11. INTERPRETATION OF THE POLICY**

In the event of conflict of interpretation, the Ministry shall be the Apex body to interpret the provisions of this policy which shall be final and binding.

## **12. ENACTMENT OF LEGISLATION**

The Royal Government may enact Business Infrastructure Development Act based on this Policy.

## **13. 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.

## 14. DEFINITIONS

In this policy document, unless there is anything repugnant in the subject or context:-

- (i) "Agricultural Free Zone" means designated land for agricultural purposes to foster the preservation and development of farming activities and farm enterprises including holding and fattening grounds for cattle
- (ii) "Application" shall mean the application submitted by a Developer for an SEZ Developer License;
- (iii) "Authority" shall mean the Business Infrastructure Development Authority;
- (iv) "Business Entity" shall mean any entity satisfying the requisite incorporation and legal status requirements permitting it to be designated as a Developer or Enterprise, respectively;
- (v) "CEO" or "Chief Executive Officer" shall mean the IIDA Chief Executive Officer;
- (vi) "Customs" shall mean the Customs & Excise Division of Bhutan, functioning under Department of Revenue and Customs;
- (vii) "Customs Director" shall mean the Director, Department of Revenue and Customs or any official to whom the Customs Director may delegate functions granted to him by these rules;
- (viii) "Development Lease" shall mean a lease granted by the Authority to an approved Developer;
- (ix) "Domestic Tariff Area" shall mean any area in Bhutan which does not have duty-free status;
- (x) "Developer" shall mean any Business entity entitled, by virtue of holding a valid Developer License issued by the Authority, to promote, develop and operate a Business area;
- (xi) "Developer License" shall mean a license issued by the Authority to a promoter to promote, develop and operate a Business area;
- (xii) "Dry Port" means an inland intermodal terminal connected by road or rail to a seaport and operating as a centre for the trans-shipment of sea cargo to inland destinations. In addition to their role in cargo trans-shipment, dry ports may also include facilities for storage and consolidation of goods, maintenance for road or rail cargo carriers and customs clearance services.
- (xiii) "Education Park" means infrastructure facilities for the establishment and development of education centre as the key development focus
- (xiv) "Enterprise" shall mean any Business entity operating a business within a Business area;
- (xv) "Export Processing Zone" means a designated area located physically and or administratively outside customs territory with incentives predominantly oriented to export production.



- (xvi) "IT Parks" means areas with facilities where IT-related knowledge and service industries are attracted and facilitated through provision of buildings, general and industry specific infrastructure and business support services.
- (xvii) "Industrial Estate" shall mean tract of land subdivided and developed according to a comprehensive plan with provisions for basic infrastructure and utilities with or with out pre-built factory buildings
- (xviii) "Royal Government" shall mean the Royal Government of Bhutan;
- (xix) "Management Committee" shall mean the Committee constituted for administration and management of the Business area;
- (xx) "Ministry" shall mean the Ministry of Economic Affairs;
- (xxi) "Project Lease" shall mean a lease or sub-lease granted by the Developer under the powers set out in the Development Lease;
- (xxii) "SEZ" or "Special Economic Zone" means a part of the territory of the State where any goods introduced are generally regarded, insofar as import duty and taxes are concerned, as being outside the customs territory and are not subject to the usual customs control;
- (xxiii) "Technology park" means an area with very high quality infrastructure dedicated to scientific and technological research on a commercial basis. Other terms that are used synonymously include research parks and technopolis.
- (xxiv) "Tourism Development Zone" means designated land with defined boundaries, suitable for development into an integrated resort complex, such as, but not limited to, sports and recreation centres, accommodation, convention and cultural facilities, food and beverage outlets, commercial establishments and other special interest and attraction activities / establishments, and provided with roads, water supply facilities, power distribution facilities, drainage and sewage systems and other necessary infrastructure and public utilities.