

FOREIGN DIRECT INVESTMENT RULES AND REGULATIONS 2012 (AMENDED
DECEMBER 30, 2014)

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PART ONE

1. Short title and commencement

- i. These Rules & Regulations shall be called the Foreign Direct Investment Rules and Regulations 2012 (Amended December 30, 2014) and shall come into force on January 1, 2015;
- ii. From the date of coming into force of these Rules and Regulations, the FDI Rules and Regulations 2012 shall stand repealed;
- iii. Any action taken or process initiated under the FDI Rules and Regulations 2012 shall be governed by these Rules and Regulations.

2. Definitions

Unless otherwise repugnant to any other laws:

‘Business’ means FDI business registered under these Rules and Regulations.

‘Certificate’ means FDI Registration Certificate issued by the Department.

‘Chairperson’ means the Chairperson of the FDI Facilitation Committee.

‘Competent authority’ means an agency authorised by law to issue sector license.

‘Companies Act’ means Companies Act of the Kingdom of Bhutan and amendments thereto.

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

‘Department’ means the Department of Industry in the Ministry of Economic Affairs.

‘Director’ means the Head of the Department of Industry.

‘Existing entity’ means a business entity already established and operating in the country and in the sector not listed under Schedule III.

‘Foreign Direct Investment (FDI)’ means the act of making an investment, through a FDI Company, in a business activity in Bhutan.

‘FDI Business’ means any business activity which is owned by an FDI Company.

‘FDI Company’ means a business entity incorporated under the Companies Act of the Kingdom of Bhutan, for the purpose of undertaking commercial activity, in which 20% or more of the equity in that company is owned or beneficially held by foreign investors.

‘FDI Register’ means the register of FDI businesses maintained by the Department.

‘Foreign Investor’ means

- (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 investment companies that pool together funds on behalf of others and invest those funds in a variety of different financial instruments and asset classes.

‘Indian companies’ means company registered as per the Companies Act of India.

‘License’ means a business license issued by the Ministry or a competent authority as authorized by laws (i.e., sector license).

‘Local administration’ means Dzongkhag, Dungkag or a Municipality overseeing administration of the locality where the business is proposed or established.

‘Minister’ means the Minister of Economic Affairs.

‘Ministry’ means the Ministry of Economic Affairs.

‘Other Activities’ means any business activity not listed in the Priority and Negative lists (Schedule I, II and III).

‘Priority Sector Activities’ means the activities listed in Schedules I and II of the FDI Policy 2010 and amendments thereto..

‘Project cost’ means the total cost of the project excluding the working capital.

‘Sectoral clearance’ means approvals/permits/clearances from relevant agencies as required.
‘Sick industry’, unless otherwise defined in any other law, only for the purposes of these Rules and Regulations, means an existing entity in operation for more than 3 years and whose total accumulated debts and losses are equal to or exceed its entire net worth on the date of presenting application for FDI registration.

‘Strategic alliance’ for the purpose of these regulations, means investment by foreign investor(s) to enable access to its core competencies or resources in management, technology, and marketing of the same product/services for enhancing productive capacity, quality or competitiveness of the existing Bhutanese business activity.

3. General

- i. The Ministry shall be responsible for the overall implementation of the FDI Policy 2010.
- ii. The Department under the Ministry shall be the implementing agency.

4. Sectors and Size of investment

- i. All activities are open for FDI except for those activities listed in the Negative and Prohibited lists under Schedule III. The activities open for FDI are grouped into two, namely Priority Activities and Other Activities.
 - (a) The priority sector activities in the manufacturing and service sectors are listed in Schedule I & Schedule II respectively.
 - (b) Other Activities comprise of those activities not listed in the Priority, Negative and Prohibited Lists.
- ii. The minimum project cost, equity and specific conditions for activities falling in the priority sector shall be as specified in Schedule I and II of the FDI Policy 2010.
- iii. For Other Activities, the minimum project cost shall be Nu 50 million in the manufacturing sector and Nu 25 million in the service sector. The maximum foreign investor’s shareholding for Other Activities shall be as specified in the FDI Policy 2010.
- iv. FDI in an existing entity
 - (a) FDI in existing entity shall be allowed for expansion of the physical facilities of the core activity through technology, mechanization, environmental upgradation; value addition; capacity enhancement and product diversification, subject to the following conditions, namely, that the investment:
 1. results in an increase in the equity base without the foreign investor acquiring the existing shares ; and
 2. fulfils the eligibility criteria applicable to a new FDI business.
 - (b) The Royal Government may also permit FDI in an existing entity for the purpose of a strategic alliance or for the revival of a sick industry.

5. Currency of Investment

- i. FDI shall be made in convertible currency. However, Indian investors choosing to invest in Indian currency shall be subject to the conditions specified below:
 - (a) Priority Activities: Similar provision as applicable to convertible currency investors; and
 - (b) Other Activities: By Indian companies operating successfully for the last three years or more.
- ii. The foreign exchange requirement for the establishment and operation of the FDI Business shall be from the company’s own sources of foreign exchange.

6. Collaboration and Franchise

- i. Collaboration in forms such as technical, marketing and/or franchising for the use of trade names, copyrights, patents and trademarks, etc shall be allowed, subject to prior approval of the Ministry.
- ii. An application for approval of any collaboration or franchising arrangement as per rule 6(i) shall be submitted to the Ministry together with a copy of the draft agreement between the contracting parties.

7. Company Incorporation

All foreign investors intending to establish FDI businesses shall incorporate under the Companies Act of the Kingdom of Bhutan 2000 and amendments thereto upon issuance of FDI Registration Certificate.

8. Subscription

- i. The investors in the business shall fully subscribe the equity as stated in the subscription clause of the Article of Incorporation.
- ii. The equity shall be fully paid up and the amount deposited in the company's local bank account.

9. Debt

The initial debt of the proposed FDI Business, except in the case of financial services, shall not exceed 70% of the project cost. In the case of financial services, it shall be as per the provisions of the Royal Monetary Authority (RMA)'s Prudential Regulations.

10. 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.

11. Foreign Exchange and Borrowing

The following provisions shall apply till amendments, and /or coverage of these provisions, in the Foreign Exchange Regulations of Bhutan, 2013 are effected:

- i. All convertible currency requirements of the business shall be:
 - (a) arranged by the company from its own sources within the policy framework of the Royal Monetary Authority and the Foreign Exchange Regulations of the Royal Government, and national legislations, rules and regulations and by-laws; or
 - (b) met from the foreign exchange receipts of the business;
- ii. Notwithstanding 11(i) above, the Royal Government shall allow the FDI Business to purchase foreign exchange from the Royal Monetary Authority in the following situations:
 - (a) up to two months' import requirement of raw materials as a start-up support with the convertible currency used being replaced by the business within six months of the date of purchase.
 - (b) for the purchase of capital goods in cases where the foreign investor's equity in the project is insufficient to meet the total requirement. However, the foreign exchange amount shall not in any manner exceed the equity obligations of the local investor. When this provision is exercised, no change in shareholding shall be permitted for five years from the date of start of commercial operations of the business
 - (c) for remittance of remuneration in accordance with the Foreign Exchange Regulation 2013 and amendments thereto.

- iii. FDI Businesses shall be allowed to borrow from abroad as per the External Commercial Borrowing laws of the Royal Government. Repayments shall be based on the net-balancing principle.
- iv. FDI Businesses shall open a foreign currency account with a bank in Bhutan and all business transactions shall be routed through this account.
- v. FDI Businesses shall be permitted to raise loans and borrow from financial institutions in the country.

12. Repatriation of Dividends and Invested Capital

- i. Repatriation of dividends and invested capital shall be governed by the relevant laws and amendments thereto. The foreign investor shall have the right to repatriate the invested capital and any capital gains in the currency of investment.
- ii. Repatriation of dividends shall be in the currency of earning of the business. For investments in Priority Activities in the service sector, where the investment in the project was made in convertible currency and the earnings are in local currency or Indian Rupee, the Royal Government shall allow the purchase of convertible currency for the purpose of repatriation of dividends. Such purchases can be up to US\$ 5 million per annum.
- iii. 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.
- iv. Subject to the laws of the country and the manner so provided therein, the foreign investor shall be allowed to dispose the investments made in a FDI company.
- v. FDI Business shall be entitled to repatriation of the compensation paid on account of nationalization or expropriations of the business. Such compensation shall be in the currency of investment or a mutually agreed convertible currency.
- vi. Currencies for the payment of royalties, technical services fees and management fees shall be based on the approval of the royalty or collaboration agreement, technical service/management agreements.
- vii. Payment of royalty/fees for collaboration or franchise agreements (in areas such as technical or marketing agreements or for the use of trade names, copyrights, patents and trademarks etc) shall be permitted without restriction for the duration of the agreement, in annual amounts not exceeding 10% of net sales.

13. Expatriate Employment, Work Permits, Visas and Dependent Cards

- i. All FDI businesses shall be granted an entitlement to work permits, with the number of such permits varying according to the development phase of the project, as below:
 - (a) upon issuance of a FDI Registration Certificate, the business shall be entitled to a minimum of five work permits for professional, managerial and technical expatriates during the business establishment phase.
 - (b) during the construction phase, there shall be no restrictions on the recruitment of unskilled and semi-skilled expatriate workers required for establishment of the business.
 - (c) during the business operation phase, the business shall be entitled to work permits for as many professional, managerial and technical expatriates as are required for the business, provided that qualified and experienced Bhutanese personnel are not available.
- ii. FDI Business shall be required to employ Bhutanese personnel and train them to gradually replace the expatriate personnel. By the 5th year of commercial operations, the business shall attain the ratio of 5 Bhutanese regular employees for each expatriate employee.

- iii. FDI business engaged in R&D, health, education, head office services and similar other operations shall be allowed additional permits for expatriate personnel at professional, managerial and technical levels. Such businesses shall not be allowed to employ expatriate staff in support positions.
- iv. Notwithstanding the above, all FDI businesses shall be entitled to apply for additional expatriate work permits where these are considered necessary. Applications shall be assessed in accordance with the rules and regulations of the country as applicable from time to time.
- v. All work permits shall be issued in the name of the FDI Business and for a specific period and shall be renewable annually.
- vi. The Royal Government shall issue multiple entry visa and route permits, on payment of applicable fees, and exempt international tourist tariff to:
 - (a) Foreign investors and their immediate family members;
 - (b) Members of the Board of Directors of a FDI company and their immediate family members;
 - (c) Professional, managerial and technical expatriate employees holding valid work permits and their immediate family members;
 - (d) Foreign students enrolled in Bhutanese schools and institutions and their immediate family members;
 - (e) Patients, their escorts, and immediate family members, who are visiting Bhutan for treatment in hospitals and clinics.
- vii. Dependent cards
The Royal Government shall issue dependent cards to the immediate family members of the expatriate professional, managerial and technical personnel employed in the business.

14. Taxation

FDI Businesses shall be governed by the taxation laws of Bhutan, including the Sales Tax, the Customs and Excise Act, 2000 and the Income Tax Act 2001 as amended from time to time.

15. Land for FDI Business

Land for FDI Businesses shall be either leased or owned as per the provisions of the Land Act of Bhutan 2007, as amended from time to time.

16. Incentives and Exemptions

FDI Businesses shall be entitled to the same incentives and exemptions as are made available to similar domestic investments by the Royal Government, except in cases where it is otherwise specified in the FDI Policy 2010.

17. Protection of Intellectual Property Rights

FDI businesses shall enjoy the protection of intellectual property rights under the Intellectual Property laws of the country and international conventions ratified by the country as follows:

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

PART TWO

REGISTRATION OF FDI

18. Eligibility for Registration as FDI Business

A proposed FDI Business must:

- (a) be in a sector not included in the Negative and Prohibited Lists (Schedule III) of the FDI Policy 2010;
- (b) fulfil the minimum investment requirement as prescribed in the FDI Policy 2010;
- (c) fulfil the shareholding pattern between the Bhutanese and the foreign investors
 - for priority activities: as per Schedule I & II of the FDI Policy 2010
 - for other activities: a maximum of 74% and a minimum of 20% shareholding by the foreign investor(s), with an exception of minimum of 10 % shareholding where the foreign investor is an institutional investor.
- (d) agree to comply with all applicable conditions/requirements

19. FDI Registration Application

- i. The application for registration shall be submitted complete in all respects including the listed annexure, attachments and endorsements as per Schedule IV to these Rules and Regulations.
- ii. The application must be signed by the promoters or authorized representative of the proposed FDI Business.
- iii. A separate application shall be submitted for each business activity.

20. FDI Registration Certificate (FDIRC)

- i. The Department shall issue the FDIRC within two working weeks of receiving a completed registration application.
- ii. The intent of issuing a FDIRC is to establish a foreign investor at par with a domestic investor and to facilitate the processing of the investment proposal with different agencies. A FDIRC does not construe approval of the proposed business.
- iii. The prospective investor shall bear any expenses incurred in seeking formal project approval. In cases where a proposed FDI Business is rejected, the Royal Government shall not be held liable for compensation of any expenses incurred by the investor.
- iv. The issue of a FDIRC may be delayed:
 - (a) if the Department, when considering an application for a FDIRC, requires clarification from the concerned sectors;
 - (b) if the application submitted is incomplete or unclear.
- v. Refusal of FDIRC
When an application for a FDIRC is not approved, the Department shall inform the applicant in writing, giving the grounds for not issuing the Certificate.
- vi. Validity of FDIRC
The FDIRC shall be valid for a period of one year from the date of issue. During this period, the proponent is required to submit documents for project approval. In case the proponent is unable to submit required documents within this period for genuine reasons, the Department may renew the FDIRC upon request of the proponent. The validity of a FDIRC shall cease on:
 - (a) Surrender of the same by the investor; or
 - (b) Expiry of the period of FDIRC; or
 - (c) Rejection of the proposed business; or
 - (d) Issuance of formal project approval; or
 - (e) Cancellation by the Department.

- vii. Amendment of FDIRC
A FDI Business shall apply to the Department for change or amendment to the Certificate. The Department shall assess the reasons for change/amendment. Upon satisfaction and subject to the business surrendering the old certificate, the Department shall issue a fresh FDIRC.
- viii. Following receipt of a FDIRC, the proponent investor shall incorporate the proposed business under the Companies Act.

21. Business Approval

- i. Priority Sector Activities
All FDI priority sector activities shall be approved by the Department upon submission of required sectoral and environment clearances where required.
- ii. Other Activities
Other Activities shall be assessed against the criteria which are adopted for these projects and are listed in Schedule V of these Rules & Regulations. The Project Approval Committee shall deliberate and decide on these proposals.
 - (a) Upon approval, the Department shall issue the letter of approval within five working days, which shall entitle the investor to obtain a Business Licence from the respective RTIO.
 - (b) The approval shall clearly state the conditions and requirements to be fulfilled during the operation of the business and such other conditions as have been determined by the Project Approval Committee.
 - (c) The investor shall obtain a Business Licence from the respective RTIOs within three months from the date of issue of approval.
 - (d) If the proposal is rejected by the Project Approval Committee, the Department shall convey this decision to the investor/authorized representative of the proposed business and provide reason(s) for the rejection.
- iii. Sector Licenses
Notwithstanding the above, the sector license issued by the relevant authority as authorised by law to a FDI Company, shall be construed as a Business License. When a sector license is required, the proponents shall directly process the proposal with the concerned sectoral agency and submit a copy of the sector license to the Department for information.

22. Rejection of Proposed Business

An application for a FDI Business Approval shall be rejected in the following events:

- (a) sectoral clearance has been refused; or
- (b) the proposed project does not
 - meet the approval criteria; or
 - conform to or comply with the provision of these Rules and Regulations and other laws of the country.

23. FDI Register

The Department shall compile, maintain and update a Register that shall contain relevant information on FDI Businesses.

24. Amendment, Suspension and Cancellation of a Business License

- i. Amendment
A FDI Business may apply for an amendment or change of any information of the approved project. The application shall be made to the Department/competent authority. The Department/competent authority shall assess the reasons for

change/amendment in accordance with these Rules & Regulations and approve or reject the application.

ii. Suspension of Business

- (a) A Business License may be suspended or a penalty imposed on the business if:
 - 1. the business engages in activities other than those specified in the approval; or
 - 2. any conditions specified in the approval are breached; or
 - 3. the business fails to comply with any part of these Rules and Regulations; or
 - 4. the business does not comply with or breaches any provisions/conditions of any other legislations and by-laws of the country.
- (b) A FDI Business shall immediately cease to operate when its business license is suspended. The suspension shall apply until the breach has been rectified and any penalty imposed has been paid.

iii. Cancellation of a FDI Business

- (a) A FDI Business License held by a FDI Business may be cancelled in any of the following circumstances:
 - 1. upon suspension of the FDI Business, the business refuses to comply with the penalties and/or fails to rectify the default;
 - 2. information provided in the application form or in any other documents is found to have been incorrect and designed to create a false impression of the owners or ownership of the business or the nature of its activities;
 - 3. A foreign investor or an expatriate employee of the FDI Business engages in activities that interfere with or undermine the authority of the Royal Government or are considered a threat to the security of the country;
 - 4. The provisions/conditions of any other applicable legislation, by-laws or the conditions laid down in a sector clearance is breached or contravened.
- (b) When a Business License for the FDI Business is cancelled, the business shall immediately cease to operate and commence winding up except when appeal has been preferred with a prayer for interim relief and is not disposed off.
- (c) Upon cancellation, a copy of the cancellation notice shall be sent to the Registrar of Companies.

PART THREE

MISCELLANEOUS

25. FDI Facilitation Committee

- i. The multi-sectoral FDI Facilitation Committee shall comprise of the following members:
 - (a) Minister, Ministry of Economic Affairs – Chairperson;
 - (b) Governor, Royal Monetary Authority – Member;
 - (c) Secretary, Gross National Happiness Commission – Member;
 - (d) Secretary, Ministry of Finance – Member;
 - (e) Secretary, Ministry of Economic Affairs – Member;
 - (f) Joint Secretary, Ministry of Economic Affairs – Member;
 - (g) Secretary General, Bhutan Chamber of Commerce & Industry – Member; and
 - (h) Director, Department of Industry - Member Secretary.
- ii. The Committee shall meet as and when required.
- iii. The quorum for the Committee meeting shall be by simple majority.
- iv. The Department shall act as the Secretariat of the Committee.
- v. The primary purpose of the Committee shall be to facilitate and promote FDI. In carrying out this role, the Committee may:
 - (a) discuss problems and other issues arising in relation to FDI, FDI businesses and foreign investors and facilitate the resolution of such problems;
 - (b) initiate and supervise investment promotion activities;
 - (c) review and amend criteria for approval of proposals;
 - (d) establish and monitor annual FDI target;
 - (e) review performance of FDI companies; and
 - (f) recommend policy and procedural changes to the Royal Government for consideration.

26. Project Approval Committee

- i. The Project Approval Committee shall be constituted within the Ministry comprising of the following members:
 - (a) Joint Secretary – Chairperson;
 - (b) Head, Department of Geology and Mines– Member;
 - (c) Head, Department of Trade - Member;
 - (d) Head, Department of Cottage & Small Industry – Member;
 - (e) Head, Policy & Planning Division – Member;
 - (f) Registrar of Companies – Member; and
 - (g) Head, Department of Industry - Member Secretary.
- ii. The Committee shall appraise and decide on the applications for approval of projects involving Other Activities
- iii. In addition, sector specific representatives shall be called upon, as and when required, to attend the proceedings and shall be members of the Committee for the purpose of that meeting. However, the proceedings of the Committee shall not be called in question for the reason of absence of any member in the meeting.
- iv. The Committee shall meet as and when necessary.
- v. The quorum for the Committee meeting shall be by simple majority of the permanent members.
- vi. The Department shall act as the Secretariat of the Committee.

27. Department

i. Powers of the Department

The Department shall have powers to:

- (a) Issue or refuse to issue a FDIR Certificate;
- (b) Approve/refuse priority sector applications;
- (c) Cancel or suspend a FDIR Certificate;
- (d) Enter business premises to monitor compliance with the conditions of certificates or with the provisions of these Rules & Regulations and the FDI Policy 2010;
- (e) Impose penalties within the provisions of these Rules & Regulations.

ii. Immunity of the Department

- (a) No action shall lie against the Department or any officers working for the Department in respect of any act done or omitted to be done in good faith in the execution of the functions under these Rules and Regulations.
- (b) The Department or any of its officers involved in the furnishing or supply of information, electronically or otherwise, relating to a person registered under these Rules & Regulations to any other person shall not be liable for any loss or damage suffered by any person, including for the expenses incurred relating to FDI proposal and application, by reason of any error or omission, of whatever nature and however caused, if the error or omission is made in good faith and in the ordinary course of the discharge of the duties of the Department or its officers or has occurred or arisen as a result of any defect or breakdown in the service or in any of the equipment used for the service.

28. Disposal of Investment

i. Transfer of shares

- (a) Subject to the fulfilment of the Lock-in-period, transfer of shares may be permitted within the permissible range of minimum and maximum shareholdings, as stated in the FDI Policy and subject to the approval by the Department and upon fulfilment of the relevant provisions of these Rules & Regulations and the Companies Act.
- (b) In case of a public listed company, in addition to seeking approval from the Department, the transfer of shares shall be processed through the stock exchanges.

ii. Disposal by winding up/liquidation

Winding up of the FDI company shall be permitted as per relevant provisions of the Companies Act.

29. Dispute Settlement

- i. All disputes arising between the parties (joint venture participants or a FDI Company and the Government) shall be resolved amicably or by reference to mediation, conciliation and arbitration, as may be agreed between the parties; or by adjudication before the Royal Court of Justice as per the procedure; or in manner as may be provided by special procedure under the laws of the land.
- ii. Any order or decree passed under the (29.i) shall be final and binding between the parties, save and except when the order or decree is on contest before the Royal Court of Justice.

30. Appeals

- i. An appeal on any decision or order by the Project Approval Committee and/or the Department under these Rules & Regulations shall lie with the Minister. An appeal shall be submitted within 15 days of the receipt of the order by the aggrieved party. The Minister may entertain an appeal, lodged beyond 15 days, if satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the stipulated time.
- ii. The memorandum of appeal shall specifically and succinctly disclose the grounds of appeal.
- iii. The Minister shall, after making such further inquiry as may be necessary, and according a hearing to the aggrieved party, pass such order in writing, as he thinks just and proper which confirms, modifies or annuls the decision or order appealed against.

31. Monitoring

The Ministry/competent authority shall be responsible for the monitoring of FDI Businesses which receive a Business License. In addition, the relevant sectors shall monitor the FDI businesses within the framework of their respective legislations, policies and rules and regulations and the MoUs or agreements signed (if any). Among others,

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

32. Reporting

All FDI Companies shall submit completed annual FDI Survey Form to the Department as prescribed.

33. Penalties

- i. The FDI business shall be liable to penalties for any violations and shall be dealt as per the relevant provisions of the sector specific laws and rules and regulations.
- ii. In cases where the penalties for violation of the provisions of these Rules & Regulations are not adequately covered in other laws, the FDI business shall be levied a penalty of up to Nu 25,000/- and, where the contravention is a continuing one, a further fine of Nu 500/- per day shall be levied till the contravention is rectified.
- iii. Non rectification of the contravention, non payment of the penalty imposed or repeat violations shall lead to cancellation of the license.

34. Residual Authority of Royal Government

Notwithstanding anything to the contrary, the Royal Government reserves the right to permit FDI under terms and conditions different from those specified herein and equally to withhold such permission as deemed necessary. However, when such exceptions are made, the nature of the exceptions and the rationale for making them shall be made public.

35. Delegation of Authority

The Minister may delegate, by written notice, any or all the powers, except the power under Rule 30(i), (ii) and (iii) of appeal, under these Rules & Regulations to agencies/officials of the Ministry and/or committees established for the purpose.

36. Interpretation

In case of interpretation of these Rules & Regulations, the matter shall be referred to the Ministry whose decision in interpreting the provision shall be final and binding.

Schedule -I

PRODUCTION & MANUFACTURING
Priority List of Activities

Sl	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	Pharmaceutical products	50	74	None
6	Other manufacturing i. Electronics ii. Electricals iii. Computer hardware iv. Building materials	50	74	None

SERVICES
Priority List of Activities

Sl	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	As per sector policy
2	Health i. All inclusive specialised hospital services ii. Specialized Medical Services iii. Specialized Dental Services iv. Specialized Medical Laboratory Services v. Specialized Diagnostic-imaging Services vi. Specialized Traditional Medical Services	200	100	As per sector policy: "All inclusive specialised hospital services" applies to hospitals providing at least one procedure presently referred outside country and having its own complete set of diagnostic services and laboratory facilities.
3	Hotels/Resorts - Five star & above	200	100	None
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	200	100	PPP Model wherein the facility returns to the Government on expiry of the term.

	xi. Sport cities xii. Health/Wellness centres xiii. Dryport xiv. Land reclamation xv. Other similar activities			
5	Research & Development	10	100	Established firms employing a minimum of 5 experts
6	Head Office Services	5	100	None
7	IT	5	100	None
	ITES: i. inside IT Parks & SEZs	3	100	None
	ii. outside IT Parks & SEZs	5	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.
	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.
	Consultancy Services	10	74	Established firms employing a minimum of 5 experts
	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

Schedule IV

FDI Registration Application Form

Please ensure that the information in the Application Form is provided in print form and that all required information/attachments are included.

1. Name of the proposed business (as approved by the Registrar of Companies):

2. Proposed activity:

3. Project cost (million Nu):

a) Equity (million Nu):

b) Loan (million Nu):

4. Proposed location:

5. Proposed ownership:

Sl	Investors(Company/individuals)	Nationality	Ownership (%)
1			
2			
3			
4			
5			

6. Land requirement (in acres/sq ft):

7. Principal Foreign Investor:

Name: _____

Nationality: _____

Age/Sex: _____

Designation: _____

Company/Organization: _____

Mailing Address: _____

Website (if available): _____

Phone: _____ Fax: _____ E-mail: _____

8. Authorised Representative (Contact person)

Name: _____

Age/Sex: _____

Designation: _____

Company/Organization: _____

Mailing Address: _____

Phone: _____ Fax: _____ E-mail: _____

9. Principal Local Partner (if relevant)

Name: _____

Age/sex: _____

Father/Spouse Name: _____

Citizenship ID No.: _____

Designation: _____
Company/Organization: _____
Website (if available): _____
Geog: _____ Dungkhaag: _____ Dzongkhag: _____
Phone: _____ Fax: _____ E-mail: _____

10. Declaration

I/We, the undersigned, being duly authorized, declare to the best of my/our knowledge and belief that the information contained in this application is correct and complete and I/We authorize the Department to make all necessary inquiries and to conduct all necessary checks in relation to this application. In case the information provided in the application form is found to be false, the Department may withdraw the registration and take action as per the laws of the land.

Promoter/Authorised representative: _____
Signed at: _____ this _____ Day of _____ 20 _____

Signature: _____ Legal Stamp

Documents to be submitted with the application

- i. Name clearance letter from the Registrar of Companies;
- ii. Notarised copy of Company Incorporation Certificate or equivalent/CV of Foreign Investor in case of individual (if not in English – Notarised translated version of the same)
- iii. Notarised copy of passport of foreign investors (if investor is individual);
- iv. Company Profile/CV of local partner(s) including proof of financial capability such as bank & income statement;
- v. Tax return/audited accounts of foreign investor (s) for last 3 years;
- vi. Tax return/audited accounts of the founder(s)/promoter(s) in the case of SPV
- vii. Letter of Authority or Power of Attorney for the authorised representative/contact person;
- viii. Board of Directors'/Shareholders' resolution of the foreign investing company
- ix. Where land is being contributed as local equity, document(s) establishing title and the valuation of land;
- x. If the proposal is for FDI in an existing entity: Audited Final Accounts of the existing entity for the last three years and company valuation report by recognized professional agencies such as Chartered Accountancy firms.

Schedule V

Criteria for approval of Other Activities proposals

Items	Criteria
Value addition	40% or more
Foreign exchange	Positive forex flows
Financial capability	Demonstrated proof of source of funds
Employment generation	Clear long term plan
Benefits of FDI	Demonstrated need for FDI

Application Procedures

5. FDI Registration

- i. The promoter of the proposed FDI business shall apply for name clearance to the Registrar of Companies, directly or through their duly authorised representative, using the name clearance form.
- ii. Upon acceptance, the Registrar of Companies shall issue name clearance. The name of the proposed company so cleared shall be reserved for a period of three months from the date of clearance. Unless an application for FDI registration and company incorporation is submitted within this period, the clearance shall lapse.
- iii. Upon obtaining the name clearance, the promoter shall file an application for FDI Registration to the Director, Department of Industry. The application shall be in the prescribed form (Schedule IV, FDI Rules & Regulations 2012 and amendment thereto).
- iv. Upon receipt of a application for FDI Registration, the FDI Division shall assess the application. In cases where the application is incomplete or unclear, the FDI Division may solicit additional information/clarification from the promoter.
- v. The Department of Industry shall decide on the issuance of and, if appropriate, issue a FDI Registration Certificate (FDIRC) within two working weeks after receipt of the complete application.
- vi. If the application is rejected, the promoter shall be informed in writing within the same timeframe, with the letter stating the reasons for rejection.
- vii. The issuance of FDIRC is only meant to bring the foreign investor at par with the domestic investor and shall not be construed as approval of the proposed FDI business.

2. Company Incorporation and Opening of FC Account

- i. Upon issuance of an FDIRC, the promoter/authorized representative of the business may incorporate the FDI Company with the Registrar of Companies.
- ii. The promoter/authorized representative shall submit the following documents:
 - (a) Articles of incorporation - Schedule I (Companies Act) duly signed on all pages - 2 copies in original
 - (b) Consent to act as director- Schedule II (Companies Act) - 2 copies in original for each director
 - (c) Declaration of compliance- Schedule III (Companies Act) - 2 copies in Original
 - (d) List of names and address of first director and CEO of the company- 2 copies in original
 - (e) Security (Police) Clearance for domestic promoters along with CID Card – 2 copies each
 - (f) A copy of the FDIRC

Notarized Copies of documents: Documents should be notarized by licensed Public Notary

- (a) Article of Incorporation or equivalent (if the foreign investor is a company)/CV if the foreign investor is an individual
 - (b) Special resolution passed by the parent company with intention of investment in Bhutanese company (if the foreign investor is a company)
- iii. Subject to the above documents being duly completed as required, incorporation shall be completed within a day.
 - iv. The business may then open a foreign currency account with a local bank in the name of the FDI Company, for the purposes of company transactions until completion of company establishment. A new FC account opened for transactions during the business operation shall replace this account.

3. Business Approval

- i. Following company incorporation, the promoter shall submit two copies of the business plan.
- ii. The promoter shall identify the site for the proposed FDI business and obtain location clearance from the local administration/competent authority.
- iii. The promoter shall process for obtaining sector clearance including environmental clearance.
- iv. In issuing clearances, the sectors/agencies may attach their terms and conditions that the business must comply with. These shall form part of the approval conditions.
- v. The approval process for different categories of activities shall be as following:

(c) Priority Activities

- 1. Activities listed under the priority list shall be approved by the Department upon receipt of required clearances.
- 2. Priority activities shall not be subject to assessment based on the criteria.

(d) Other Activities

- 1. Upon receipt of all required clearances from relevant agencies and appraisal of the business plan, the Department shall submit the proposal to the PAC.
- 2. The PAC shall assess the proposal against the criteria in Schedule V of these Rules & Regulations..
- 3. In addition to specific sector conditions imposed by the relevant sectoral agencies, the PAC may specify relevant conditions to be incorporated in the approval.

(e) FDI in existing entity

- 1. FDI in an existing entity with expansion:
The approval for FDI in an existing entity with expansion shall be as per 4.6.1 for priority activities and 4.6.2 for other activities.

2. The approval for FDI in existing entity for strategic alliance and sick industries shall be accorded by the Project Approval Committee.
 - vi. Decisions on the proposals shall be immediately communicated to the applicant company or its representatives, all the relevant sectoral agencies involved and the Registrar of Companies for appropriate action.
 - vii. The promoter shall submit a copy of the Certificate of Incorporation of the FDI Company in whose name the Approval is to be issued.
 - viii. The approval shall specify all terms and conditions that the business must abide with during the establishment and operation of the business.
5. Business License
- i. Upon approval of the business, the FDI Company shall obtain business license from the relevant Regional Trade and Industry Offices.
 - ii. Where the sectors are authorized by law to issue sector license, such license shall be construed as business license, unless otherwise required by law. In such cases, upon FDI registration, the proponents shall directly process the proposal with the concerned sector. The proponents are however required to submit two copies of business plan to the Department. The proponent shall incorporate under the Companies Act and submit a copy of the sector license to the Department for information.
6. Rejection of Proposal
- The Project Approval Committee/Department may reject the FDI proposal if:
- (a) Sectoral clearance has been refused; or
 - (b) The environmental clearance has been refused; or
 - (c) A proposed “Other Activity” does not fulfil the screening criteria; or
 - (d) The proposal is in violation of any laws or regulations of Bhutan or is not in national interest.
7. Applying for Work Permit & Visa
- i. Companies can apply online for approval to recruit and employ foreign workers. Applications shall be forwarded to the Department of Labour (DoL) at www.molhr.gov.bt/dol through the laborNet link.
 - ii. The DoL shall verify the application forms and, if found correct, accord approval online based on existing policies, rules and regulations within a week.
 - iii. Once an application is approved, the employer must:
 - (a) In case of foreign workers from India: Report to the Regional Immigration Office (RIO) concerned to sign agreement with the necessary documents as specified in the approval.
 - (b) In case of foreign workers from other countries:
 1. The employer shall apply for a work visa from the Department of Immigration;

2. The work visa and a valid passport shall be produced at the Immigration Counter at the port of entry at the time of entry;
 3. On presentation of the work visa, the Immigration Officer at the airport shall endorse the work visa for 15 days.
 4. The employer or the foreign worker shall report to the RIO to commence the process for the issuance of a work permit within seven days of the worker's arrival.
- iv. Documents to be submitted at the RIO besides those specified in the work permit approval:
- (a) Form 'B (II)' issued by Department of Immigration;
 - (b) Medical Fitness Certificate;
 - (c) Identification document, Valid Passport.
- In case of Indian nationals, the identification documents shall be one of the following:
- (a) Valid Passport;
 - (b) Election/Voters Card;
 - (c) Identity card issued by Central Government and State Government.
- v. A work permit card shall be issued to the employer upon submission of all completed documents and payment of the work permit fees and a security deposit.
8. Transfer of Shares
- i. Sale and transfer of shares shall be allowed within the permissible range of minimum and maximum shareholdings as stated in the FDI Policy and in share transfer provisions in the Companies Act.
 - ii. The proponents shall submit an application to the Department along with the following documents;
 - (a) Consent letter from transferor and transferee clearly indicating the number of shares, face value of share and the price at which the transfer is proposed to be effected;
 - (b) Fair Valuation Certificate from the stock exchange (for public listed companies) or Chartered Accountant (for other companies) indicating the current value of shares.
 - iii. Types of transfer allowed:
 - (a) Transfer of shares from a foreign investor to a domestic investor and between domestic investors in an FDI company.
 - (b) Transfer of shares from one foreign investor to another foreign investor. In such cases, if the transferee is a new partner, the transferor shall furnish to the Department all such documents as required by a foreign investor at the time of obtaining a FDI approval.
 - (c) Transfer of shares from a domestic investor to an existing foreign investor in the FDI Company. However, such transfers shall not be allowed where the company has availed the facility of purchasing convertible currency for capital expenditure.
 - iv. In case of a publicly listed company, the transfer of shares shall be through stock exchanges.

- v. Upon approval of a transfer of share, the FDI Company shall inform the Registrar of Companies of the changes.
- vi. The FDI Company shall submit the following documents relating to the transfer of shares to the Registrar of Companies:
 - (a) Schedule VIII (Companies Act) - Form of Transfer with legal stamp affixed;
 - (b) A copy of the relevant special resolution passed by the board;
 - (c) No objection certificates from all financial institutions;
 - (d) the old share certificate/s - which shall be surrendered;
 - (e) A copy of the new share certificate reflecting the proposed changes.

Annexure I

Guidelines for Preparation of Business Plan

The business plan must include information not limiting to the following:

1. Project outline/proposed activity
 2. Project cost excluding working capital
 3. Installed capacity
 4. Location
 - Details on the site and location of the proposed project (Geog, Dungkhag, Dzongkhag)
 5. Land requirement
 - Details including type of current land use, requirement in acres or sq ft., land to be owned or on lease, etc.
 6. Power requirement
 - Requirement in MW/KW
 7. Foreign exchange requirement:
 - a) Capital
 - b) Recurrent
 8. Project Financing:
 - Loan
 - Equity (Provide supporting documents on the sources of funds)
 9. Promoters & Shareholding
 - List of promoters (foreign and local investors) and their proposed shareholding percentages
 10. Profile of foreign investor(s)
 - Background of investors including total net worth
 11. Profile of local partner(s)
 - Background of the local partner(s) including proof of financial capability
 12. Raw materials:
 - Include details such as HS Code, annual quantity, unit of measure, unit price and source of each item for both domestic and imported raw materials.
 13. Final Product(s)
 - Include details such as HS Code, annual production, unit of measure, selling price for product(s).
 14. Market
 - Target market including share percentages amongst domestic, India and other countries
 15. Manpower (during operation):
 - Include for all categories such as managerial, technical, professional, skilled, unskilled and semi-skilled
 - a) National
 - b) Non-National
 - HR plan including training of nationals and phasing out of non-nationals
 16. Value addition
 - Cost of production – Raw materials cost
 - X 100
 - Cost of production
 17. Rational for investing in Bhutan and benefits of investment
-

18. If the FDI is in an existing entity, the following additional information shall be required:
 - i. Reasons and justifications for FDI.
 - ii. If the FDI is for expansion, provide areas of expansion and supporting documents proving value/worth of the existing project.
 - iii. If the FDI is for revival of a sick industry, provide supporting documents proving that the existing entity is a sick industry.
 - iii. If the FDI is for strategic alliance, provide details of strategic alliance.
19. Strategies for transfer of knowledge and Technology
20. Strategies to generate employment opportunity in the project/company
21. Joint Venture Agreement/Memorandum of Understanding between the foreign investor(s) and Domestic Investor(s)