FOREIGN DIRECT INVESTMENT RULES AND REGULATIONS 2005

MINISTRY OF TRADE & INDUSTRY
ROYAL GOVERNMENT OF BHUTAN
THIMPHU

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FOREWORD

The Cabinet (Lhengye Zhungtshog) during its 229th session held on 3rd December 2002, approved the Foreign Direct Investment Policy, 2002 and delegated the responsibility for the implementation of the Policy to the Ministry of Trade and Industry vide letter no LZ/02/02/362 dated 3rd December 2002 of the Cabinet Secretary, Royal Government of Bhutan.

In line with the authority vested in the Ministry of Trade & Industry to implement the Foreign Direct Investment Policy, 2002, the Ministry of Trade & Industry is pleased to bring out the Foreign Direct Investment Rules and Regulations, 2005.

The Ministry of Trade & Industry hopes that the Foreign Direct Investment Policy, 2002 together with the Foreign Direct Investment Rules and Regulations, 2005 clearly provides the overall policy framework and procedural requirements for Foreign Direct Investment in Bhutan. These have been kept simple to facilitate the flow of foreign direct investment in industries.

With the opening of the economy to foreign direct investment, the Ministry of Trade & Industry is optimistic that the inflow of foreign direct investment will increase and greatly contribute in accelerating the pace of industrial development in Bhutan. Prospective foreign direct investors are cordially invited to take this opportunity to invest in Bhutan.

Tashi Delek,

(Yeshey Zimba)
Minister of Trade & Industry

FOREIGN DIRECT INVESTMENT RULES AND REGULATIONS, 2005

PART ONE

Short title and commencement

These rules and regulations may be called the Foreign Direct Investment (FDI) Rules and Regulations 2005 and shall come into force on 1st July, 2005.

Definitions

"Foreign investor" means:

- in the case of an individual – a person who is not a Bhutanese subject;
- in the case of a company – a company incorporated or registered in a country other than Bhutan;
- and in every other case – an entity which is not incorporated or not constituted under the law of Bhutan;

"Foreign direct investment (FDI)" means any activity for the purpose of generating revenue in industry, and includes any company in which a foreign investor owns or beneficially holds a minimum of 20% and maximum of 70% of the equity of the investment.

"Department" means Department of Industry.

"Director General" means head of Department of Industry.

"Minister" means the Minister for Trade and Industry.

"Ministry" means Ministry of Trade and Industry.

"Registration Officer" means the officer appointed by the Department for implementation of these rules and regulations. .

"Provisional Certificate" means Foreign Direct Investment Registration Certificate issued prior to the approval of the business and wherein "provisional "is printed on the certificate.

"Certificate" means a final FDI Registration Certificate issued upon approval of the business

"Business" means Foreign Direct Investment Business

"Minimum Size of business" means total fixed cost excluding working capital.

“Sectoral clearance” means approval, permits and licenses from relevant Ministry(s), Department, local administration or Agency(s) as required by these Rules and Regulations, legislations and by-laws.

“Local administration “means Dzongkhag, Dungkhag or a Municipality overseeing administration of the locality where the business is proposed or established

“Foreign direct investment register” means the register of foreign direct investment businesses maintained by the Registration Officer.

GENERAL

1. Minimum size of investment

The minimum size of the investment shall be US $ 1 million in the manufacturing sector and US $ 0.5 million in the service sector.

2. Sector open to the investor

2.1 The list of open sectors in the manufacturing sector is annexed in Schedule I.

2.2 The list of open sectors in the service sector is annexed in Schedule II

2.3 The specific business under each sector shall be as per the policies and priorities of the sectors concerned which shall be included in Schedule I and II and notified by the Ministry from time to time.

3. Collaboration and Franchise

3.1 Collaboration in different forms like technical, marketing and franchise for use of trade names, patents and trademarks shall be allowed subject to prior approval of the Ministry

3.2 Application for approval of any collaboration and franchise as per rule 3.1 shall be submitted to the Ministry with a copy of the draft agreement.

4. Subscription

4.1 The foreign investor(s) in the business shall fully subscribe the equity as prescribed.

4.2 The paid up capital shall be deposited in the company’s bank account with the banks in Bhutan

5. Debt equity Ratio

The initial debt/equity ratio of the foreign direct investment business shall not exceed 1:1.

6. Foreign Exchange

The following provisions shall apply till amendments, and /or coverage of these provisions, in the Foreign Exchange Regulations of Bhutan, 1997 are affected.

6.1 All foreign exchange (convertible currency) required during the lifetime of the investment business shall be arranged

i. By the business within the policy framework of the Royal Monetary Authority of Bhutan and the Foreign Exchange Regulations of the Royal Government of Bhutan, and national legislations and by-laws.

ii. Or met from the foreign exchange receipts from the business

6.2 All foreign currency loans shall be subject to prior approval of the Ministry of Finance. Repayment of foreign currency loans shall be as per the terms and conditions set at the time of approval of the said loan.

6.3 Repatriation of capital on sale, liquidation, nationalisation, expropriations of the business including capital gains shall be in the currency of investment.

6.4 Royalties, technical services fees and management fees shall be allowed in foreign exchange as appropriate on approval of the royalty agreement, technical service/management agreements.

6.5 All businesses shall be allowed to open a foreign currency account with the banks in Bhutan.

6.6 All business transactions shall be routed through the normal banking channels in Bhutan.

7. Remittance of Dividends and Repatriation of Capital

7.1 Remittance of dividends and repatriation of capital shall be governed by the applicable provisions of the Income Tax Act of the Kingdom of Bhutan, 2001; the Foreign Exchange Regulations of Bhutan, 1997 and the amendments thereof; the Foreign Direct Investment Policy, 2002; and these Rules and Regulations.

7.2 Repatriation of profits/dividends shall be in the currency of earning of the business and in proportion to the various currencies earned by the business.

8. Employment and Labour

8.1 All businesses shall be granted automatic entitlement to work permits based on the size of the investment as below:

i. Business with investment above US Dollar 5 million – 5 expatriate personnel

ii. Business with investment between US dollar 1-5 million Dollar – 3 expatriate personnel

iii. Business with investment below US Dollar 1 million -2 expatriate personnel.

8.2 On approval of the business, a memorandum of understanding (MOU) shall be signed with the Ministry of Labour and Human Resource on the training and recruitment plan.

8.3 Recruitment of expatriate workforce, not including automatic entitlement, shall be as per the legislation, policies and procedures of the Royal Government of Bhutan.

8.4 The business shall implement a training program endorsed by the Ministry of Labour and Human Resources for transfer of technology and enhancement of skills of Bhutanese workers employed by the business.

PART TWO

REGISTRATION OF FDI

9. Eligibility

9.1 The proposed business shall be in the open sector prescribed in Schedule I and II

9.2 The proposed business fulfils the minimum investment requirement as prescribed in these Rules and Regulations.

9.3 The proposed business shall have identified the shareholding pattern between the Bhutanese and the foreign investors.

10. Filing of FDIR Application

10.1. The application for registration must be submitted as prescribed in Schedule III

10.2. The application shall be completed in all respects as specified in the Schedule III including the listed attachments and endorsement

10.3. The application shall be submitted by the authorized representative of the proposed business.

11. Issuance of Provisional FDI Registration Certificate

11.1 The Registration Officer shall issue the *Provisional Certificate* in two working weeks, upon satisfaction that all the requirements have been completed.

11.2 The *Provisional Certificate* shall clearly state the conditions and requirements that shall be fulfilled for seeking business approval.

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11.3 The issue of *Provisional Certificate* shall be delayed in the following events.

i. If the Registration Officer, when considering an application for a certificate requires clarification from the concerned sectors.

ii. Where additional information or clarification is sought from the applicant on the documents submitted.

12. Refusal of Provisional Certificate

The Registration Officer shall inform the applicant in writing, giving the grounds on which the application has been refused.

13. Validity of Provisional Certificate

The provisional certificate shall be valid for a period of one year from the date of issue with a provision for renewal in case the business approval process could not be completed within this period for genuine reasons. If otherwise, the provisional certificate shall cease to be valid on

i. Surrender of the same by the investor

ii. Issue of final certificate

iii. Expiry of the date specified in the provisional certificate

iv. Rejection of the proposed business

v. Cancellation.

14. Project Preparation

14.1 The investor shall initiate work on the preparation of Detailed Project Report on issuance of provisional certificate.

14.2 Detailed Project Report (DPR) shall, among others, include detailed information on main chapters as contained in the guidelines for preparation of projects reports (available in the Ministry website www.mti.gov.bt) and applicable changes made by the Ministry from time to time.

14.3 Detailed Project Report shall take into account all applicable Government legislation, policy, rules & regulations and establish technical feasibility, environmental management plan and commercial viability of the proposed business.

14.4 The Detailed Project Report shall be submitted to the Director General, Department of Industry in triplicate (three copies) within one year from the issue of Provisional Certificate.

14.5 In case of delay, the investor shall inform the progress in project preparation and causes of delay including estimated time required for completion and submission.

14.6 The Department will serve as the focal agency, and forward copies of Detailed Project Report to relevant sector representative in the FDI Committee for appraisal and clearance.

14.7 Simultaneously, the Department shall appraise the report. During this period, the Department may seek clarification/ additional information.

15. Business Approval

15.1 The Royal Government shall constitute a FDI Committee to decide on FDI proposals. The Committee will have the following membership.

Secretary, Ministry of Trade & Industry	Chairperson
Managing Director, Royal Monetary Authority of Bhutan	Member
Head of Department, Department of Labour	Member
Head of Department, Department of Revenue & Customs	Member
Head, EIA Division, National Environment Commission	Member
General Secretary, Bhutan Chamber of Commerce & Industry	Member
Head of Department, Department of Industry	Member Secretary

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

15.2 The FDI Committee shall meet at least once in every three months. The Chairperson may call for more frequent FDI Committee meeting if there are justifiable numbers of FDI proposals ready for discussion.

15.3 The sectoral representatives in the FDI Committee shall give sectoral clearances, including terms and conditions if any, for each FDI proposal during the FDI Committee meeting.

15.4 The Department shall issue a letter of approval upon approval of the business by the FDI Committee.

15.5 If otherwise, the Department shall convey the decision of the FDI Committee to the authorized representative of the proposed business.

16. Business Rejection

The proposed business shall be rejected if it:

i. has been refused sectoral clearance

ii. has been refused environmental clearance

iii. does not conform to the provision of these Rules and Regulations.

17. Incorporation

Upon approval, the business shall be incorporated under the Companies Act of the Kingdom of Bhutan, 2000.

18. Licensing

A license from the concerned Regional Trade & Industry Office shall be obtained on completion and presentation of the certificate of incorporation and a copy of the Memorandum of Understanding (MOU) with the Ministry of Labour and Human Resources, within 60 days of the issuance of the letter of approval.

19. Issue of Certificate

19.1. The Registration Officer, on receipt of the copy of the license, shall issue the Certificate within two working weeks.

19.2. The Certificate shall clearly state the conditions and requirements that need to be fulfilled during the operation of the business.

PART THREE
REGISTRATION OFFICE

20. Registration Office

Upon delegation of the power by the Minister, the Department may set up registration office with such powers and functions as may be necessary to facilitate the implementation of these rules and regulations.

21. Appointment of Registration Officer

The Department shall appoint the Registration Officer.

22. Delegation by Registration Officer

The Registration Officer may delegate, by written notice, any or all of his powers under this section, other than the power of delegation, to an officer of the Department.

23. Functions of the Registration Officer

The Registration Officer shall:

i. receive applications

ii. amend Certificates

iii. maintain and administer the Register of Foreign Direct Investment

iv. maintain a list of business activities open to foreign direct investment

v. receive payments

vi. monitor whether the certificate holders comply with the conditions of their certificates and these rules and regulations

vii. Report annually to the Minister on the extent of foreign direct investment in Bhutan

24. Powers of Registration Officer

The Registration Officer shall have powers to:

i. issue or refuse Provisional certificate/Certificate

ii. cancel or suspend Provisional certificate/Certificate

iii. Enter the business premises to monitor compliance of the business with the conditions of certificates or with these rules and regulations.

iv. Impose penalties within the provisions of these rules and regulations

25. Foreign Direct Investment Register

The Registration Officer shall compile, maintain and update a Register that shall contain the relevant information on foreign direct investment.

26. Immunity to the Registration Officer

26.1 No action shall lie against the Registration Officer in respect of an act done or omitted to be done by Registration Officer or any of his officers in the execution, in good faith, of his function under these rules and regulations.

26.2 Where the Registration Officer furnishes, electronically or otherwise, information relating to a person registered under these rules and regulation to any other person, neither the registration nor any of his officers who is involved in the supply of such information shall be liable for any of loss or damage suffered by any person, by reason of any error or omission, of whatever nature 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 Registration Officer or authorised agent 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.

27. Dispute Settlement Committee

27.1 The Ministry shall constitute a FDI Dispute Settlement Committee for the settlement of cases under these rules and regulations

27.2 The dispute settlement committee shall consist of a chair person, vice chair person and other members as the Ministry thinks fit and shall function within the Department of Industry.

27.3 The chairperson, vice chairperson and other members of the dispute settlement committee shall be appointed by Ministry from amongst person of integrity and outstanding ability, having specialised knowledge and experience in the administration of FDI laws.

28. Jurisdiction

The dispute settlement committee shall sit and adjudicate the matter in Thimphu only.

29. Decision of Dispute Settlement Committee

29.1 Every order of settlement passed under this chapter shall be conclusive and in writing.

29.2 If the Members differ in opinion on any point, the point shall be decided according to the opinion of the Majority who have heard the case.

30. Appeal

30.1 A business which is refused a certificate or has its certificate suspended by the Registration Officer may appeal in writing to the Minister against that decision, only on the grounds that the reason for which the application was refused or for which the suspension was applied is not valid, within 10 days from the date of the communication to him of such decision or order.

30.2 Any person aggrieved by any decision or order passed by the Registration Officer and dispute settlement committee may appeal to the Minister after ten days provided that the Minister is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the stipulated time.

30.3 The Minister shall, after making such further inquiry as may be necessary, pass such order in writing, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against.

30.4 An order enhancing penalty or fine shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

31. Penalties

31.1 Penalties as specified in Schedule IV shall be applicable for default of provisions contained therein.

31.2 If an investor or any other person contravenes any other provision of these rules and regulation for which no punishment is provided elsewhere in these rules and regulation, they shall be punishable with a minimum fine of US Dollar 500 or equivalent in Ngultrum and where the contravention is a continuing one, with a further fine of US Dollar 100 per day during which the contravention continues.

PART FOUR

MISCELLANEOUS

32. Amendment of Certificate

A business that has been issued a Certificate and needs to amend any information in the Certificate, shall apply to the Registration Officer.

33. Suspension of a Certificate

The Registration Officer may suspend a certificate and/or apply a penalty if:

i. the business carries on an activity for which it is not registered;

ii. the business refuses to comply with the penalties and/or fails to rectify the default

iii. any conditions specified in the certificate are breached;

iv. A business fails to substantially comply with these Rules and Regulations.

v. the business does not comply with provisions/conditions of any other Legislations, by-laws and conditions laid down

When suspended, the business shall cease to operate immediately. The suspension shall apply until the breach has been rectified and any penalty paid.

34. Cancellation of Certificate

A certificate may be cancelled by the Registration Officer if:

i. Upon suspension of the certificate, the business refuses to comply with the penalties and/or fails to rectify the default.

ii. any information given in the application for the certificate was incorrect so as to create a false impression of the owners or ownership of the business, or the nature of its activities;

iii. the business carries on an activity for which it is not registered;

iv. any other of the conditions specified in the certificate are breached;

v. the business does not commence within 1 year of the date of the issue of the certificate;

vi. A business fails to substantially comply with these Rules and Regulations.

vii. foreign shareholders or expatriate employees engage in activities that interfere with or undermine the authority or operations of the Royal Government of Bhutan

viii. The provisions/conditions of any other applicable legislation, bylaws and conditions laid down in the sector clearances is breached or contravened.

On notification of the cancellation, the business must immediately cease operation and commence winding up unless an appeal is commenced. If the appeal is successful, the certificate shall be reinstated. If the appeal is unsuccessful, the winding up of the business shall then commence immediately.

35. Reporting

35.1 Any change in information of the business shall be filed with the Registration Officer within thirty days.

35.2 All business Certificate holders must complete and submit annual FDI Survey Form as per Schedule V

36. Monitoring of Business

The Ministry of Trade and Industry shall monitor the business within the framework of national legislations, policies and by-laws including the FDI Policy, 2002; FDI Rules and Regulations, 2005; Companies Act of the Kingdom of Bhutan, 2000; Licensing rules and regulations and environmental legislations among others.

37. Land for Business

Land for the business may be leased from the Royal Government of Bhutan or private sector.

38. Business Operation

38.1 The businesses, its foreign shareholder or expatriate employees shall not engage in activities that interfere with or undermine the authority or operations of the Royal Government of Bhutan.

38.2 The investor(s) shall be fully responsible for the risk and returns from the proposed business. Approval of the business by the Royal Government of Bhutan is a permission to undertake a commercial activity in the Kingdom of Bhutan and shall not be construed as an endorsement or commitment on its part to fulfil obligations, if any, contained in the documents submitted for business approval.

38.3 The business shall not get any form of compensation from the Royal Government of Bhutan if the said business incurs any loss during the course of business operation owing to amendment of existing legislations/by-laws or introduction of new legislation/by-laws in broader national interest

39. Interpretation

The interpretation of the Ministry of Trade and Industry, as implementing agency of these rules and regulations, shall be final in case of contest in interpreting the provision.

40. Delegation of Authority

The Minister may delegate, by written notice, any or all the Ministers powers under this section, to an officer of the Ministry and/or committees established for the purpose.

41. Review

The FDI rules and regulations, 2005 shall be reviewed and amended, if needed periodically, and at least annually by the Ministry.

SCHEDULE I

SECTORS OPEN TO FOREIGN DIRECT INVESTMENT BUSINESSES

MANUFACTURING

- Mineral Processing
- Agriculture and Agro-processing
- Forestry and Wood-based Industries
- Livestock-based Industries
- Light Industries including Electronic Industries
- Engineering and Power Intensive Industries

SCHEDULE II

SECTORS OPEN TO FOREIGN DIRECT INVESTMENT BUSINESSES

SERVICES

- Tourism including Hotels
- Transport Services
- Roads and Bridges
- Education
- Business Infrastructure
- Information Technology
- Financial Services
- Housing

SCHEDULE III

Foreign Direct Investment Registration Application Form

Please ensure that:

a) The completed FDIR Application Form is routed through the respective Embassies (of the Foreign Investor) accredited to Bhutan.

b) The company incorporation certificate of Foreign Investor (s) is endorsed by the Notary or attested by the Issuing Authority.

c) The information in the Application Form is provided in print form using a typewriter or a computer and that all required information/attachments are included.

1. Proposed project:

2. Brief project outline:

3. Summary of products/services

HS Code	Products/ services	Unit of measure	Annual production*	Annual turnover (US$)*

* Estimated for first year of full production

4. **Proposed location:**

5. Proposed ownership:

	Name of Individual or Company	Nationality	Ownership (%)
1.			
2.			
3.			
4.			
5.			

6. Principal foreign investor profile:

i) Name (individual or company name):

ii) Full address:

iii) Brief statement of background:

iv) Nationality:

v) Legal status (*attach company incorporation certificate(endorsed by Notary/Issuing Authority)/C.V of investor in case of individual endorsed/attested by the Embassy of respective countries in Bhutan or accredited to Bhutan)*

Private individual		Partnership	
Private limited company		Public limited company	
Other (please specify)			

vi) Shareholding: *(list shareholders holding 5% or more of shares)*

	Name	Nationality	Share-holding %		Name	Nationality	Share-holding %
1				7			
2				8			
3				9			
4				10			
5				11			
6				12			

vii) Bank details:

Investor account number

Bank name

Address Street Post code

City State Country

viii) Business background of investor *(attach tax return/audited accounts for the last 3 years)*

Total Net Worth (US$):…….

	Types of current businesses	**Date of commencement**	**Total investment (US$)**
1			
2			

3			
4			
5			

Total number of current employees: …….

7. Contact person (*attach letter of authority or power of attorney, if applicable***)**

Name:		Position:	
Address:			
Telephone:			
Fax:		E-mail:	

8. Project cost summary

Item	**Amount (US$)**
Land	
Site development	
Civil works	
Plant & machinery	
Infrastructure & utilities	
Technical know-how fees	
Miscellaneous fixed assets	
Pre-operating expenses	
Provision for contingencies	
Margin money for working capital	
Total project cost	

9. Proposed project financing

Form of finance	**Foreign shareholder (US$)**	**Local shareholder (US$)**	**Total (US$)**
Equity			
Long term loan			
Short term loan			
Total			

10. Potential markets

Domestic …..%
Export to India …..%
Export to other countries …..%

11. Expected manpower when in full production

Type	**Foreign**	**Local**	**Total**
Managerial			
Skilled			

Unskilled			
Total			

12. Raw materials

a) Domestic Raw Materials

HS Code	Item	Quantity/ annum	Price per Unit (Nu.)	Total cost/ annum (Nu)

b) Raw Materials from India

HS Code	Item	Quantity/ annum	Price per Unit (Rs.)	Total cost/ annum (Rs)

c) Raw Materials from third Country

HS Code	Item	Quantity/ annum	Landed price per Unit (US$)	Total cost/ annum US$)

13. Power requirement (in MW and in units):

14. Land requirement: (in sqft or acre):

15. Project Implementation Plan

Work plan	No of months
Feasibility study/project finalisation	
Commencement of project construction	
Installation of plant & machinery	
Trail run	
Commencement of commercial activity	

16. 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 Foreign Direct Investment Registration Officer to make all necessary inquiries and to conduct all necessary checks in relation to this application.

Name (*Block letters*) _____

Organisation _____

Signed at: _____this_____Day of ____200 ____

Signature _____

Legal Stamp

Documents/information to be submitted with this application

a) *Company incorporation certificate/C.V of Foreign Investor in case of individual*
b) *List of shareholders holding more than 5%.*
c) *Company profile and C.V of local shareholder*
d) *Tax return/audited accounts of foreign investor for last 3 years*
e) *Letter of Authority or Power of Attorney for contact officer*
f) *Company profile (foreign investor)*

SCHEDULE IV

LIST OF PENALTIES

The penalties listed below will apply to any foreign direct investment businesses registered in Bhutan that fails to comply with the indicated requirements for such a business under the FDI Rules and Regulations, 2005.

1. Failure to advise the Registration Officer of changes in the circumstances of a registered investment – Penalty US$500

2. Operating in an economic sector or activity for which the foreign direct investment business is not registered – Penalty US$20,000

3. Failure to implement an agreed training program – Penalty US$1,000

4. Failure to complete and submit the Foreign Direct Investment Survey Form (Schedule 5) – Penalty US$500

SCHEDULE V

ANNUAL FOREIGN DIRECT INVESTMENT SURVEY FORM

A proper survey form will be developed to obtain information primarily in the following:

- Employment generation
- Skills development;
- Capital inflow;
- Transfer of technology;
- Expanded market access and international trade;
- Convertible foreign exchange earnings; and
- Contribution to the revenue base