



Foreign Direct Investment (FDI) Guidelines for Construction Services 2022

Construction Development Board
Thimphu: Bhutan

First Publication 2022

© Construction Development Board (CDB)

All rights reserved. No part of this publication may be reproduced in any manner and for financial gain without the prior written consent from CDB.

FOREWORD

Construction Development Board as a central agency mandated for regulation and development of construction industry recognizes the importance of facilitating an enabling environment for the Foreign Direct Investment (FDI) in the industry.

While the FDI Policy 2019 and FDI Regulations 2019 provides a comprehensive substantive and procedural requirements for establishment of FDI companies in Bhutan, additional sectoral requirements have to be in place for efficient implementation of the FDI in construction industry.

The FDI Guidelines for Construction Services 2022 will institute a mechanism with streamlined procedure for sectoral clearance, the registration requirements of FDI companies, the monitoring of works and administrative sanctions for non-compliance to requirements.

In pursuit of the above, Construction Development Board hereby adopts FDI Guidelines for Construction Services 2022 on this 19th April 2022.

This guidelines shall come into effect from 19th April 2022.

Tashi Delek!



(Dorji Tshering)

Hon'ble Zhabtog Lyonpo
Chairperson, CDB

Introduction

The nation's long-term development is guided by the concept of maximizing Gross National Happiness (GNH). The spirit and intent is to “maximize the happiness of all Bhutanese and to enable them to achieve their full and innate potential as human beings”. This is envisaged through the adoption of policies and programs that operationalizes the nine domains of GNH namely living standards, health, education, good governance, ecological diversity and resilience, time use, psychological wellbeing, cultural diversity and resilience, and community vitality.

In pursuance of the above, the Royal Government of Bhutan first adopted the Foreign Direct Investment (FDI) Policy in 2002. Taking cognizance of the changes in the economic and business environment, the Policy was periodically revised which resulted in adoption of the current Policy i.e FDI Policy, 2019 by Lhengye Zhungtshog on 8th July, 2019. To implement the provisions of the policy, FDI Regulations 2019 was adopted by Ministry of Economic Affairs which came into effect from 30th October 2019.

With Policy and Regulation in place and proposal for FDI establishment for construction service, 73rd Board Meeting instructed CDB Secretariat to formulate a guidelines which shall provide standard process in securing sectoral clearance to FDI companies desiring to pursue construction activities.

Hence, a guidelines outlining detailed process in availing sectoral clearance, registration and other regulatory requirements was formulated by the Secretariat which was consulted with respective stakeholders.

Contents

CHAPTER 1.....	7
PRELIMINARY	7
Title 7	
Objectives	7
Commencement	7
Application.....	8
CHAPTER 2	9
SECTORAL REQUIREMENTS	9
Status of registration in the country of origin	9
Tax clearance certificate	9
Undertaking.....	9
Compliance to class and category proposed for registration.....	10
Employment of Bhutanese	11
Transfer of skills and knowledge	11
Corporate Social Responsibility	12
Mechanization	12
Compliance to other legal instruments of CDB	12
CHAPTER 3	13
FACILITATION OF FDI CLEARANCE.....	13
FDI committee for construction services.....	13
Appointment and replacement of committee members.....	13
Quorum and decision	13
Mandates of FDI committee	14
Functions of Member Secretary	15
Process of providing clearance and registration	16
FDI Clearance& Registration Process Flow Chart.....	17
Renewal and validity of registration certificate and FDI clearance..	18
Cancellation	18
Registration Fees.....	18
CHAPTER 4	19
MONITORING AND REPORTING.....	19
Monitoring	19
Reporting	19

CHAPTER 5	21
ADMINISTRATIVE SANCTIONS	21
Reprimand or Improvement notice.....	21
Suspension of clearance and registration.....	22
Cancellation of CDB registration certificate.....	23
Other sanctions	23
CHAPTER 6	25
DISPUTE RESOLUTION.....	25
Dispute settlement.....	25
Appeals on Administrative sanctions	25
CHAPTER 7	26
ABBREVIATION AND DEFINITION	26
ANNEXURE I.....	28
Letter of Undertaking	28
ANNEXURE II	29
FDI Clearance for Construction Services.....	29
ANNEXURE III	30
FDI Application Form for Construction Services	30

CHAPTER 1 PRELIMINARY

Title

1. FDI Guidelines for Construction Services 2022

Objectives

2. The objectives of this guidelines are:
 - 2.1 To provide a comprehensive framework to guide foreign and local investor to venture in FDI business for construction services;
 - 2.2 To provide a legal backstopping for regulating the FDI in construction services;
 - 2.3 To encourage employment generation, technology and skills transfer, mechanization, professionalization;
 - 2.4 To promote socio-economic development;
 - 2.5 To ensure compliance to sectoral requirements by persons applying for FDI in construction services;
 - 2.6 To ensure participation of qualified and competent persons for FDI in construction services; and
 - 2.7 To achieve uniformity in providing clearance for FDI in construction services.

Commencement

3. This guideline shall commence with the signing of ‘Foreword’ or notification from the chairperson of CDB after necessary enhancement of CDB systems if such enhancement requires.

Application

4. This guidelines shall apply to all persons seeking sectoral clearance and applying for registration with CDB for FDI in construction services.

CHAPTER 2 SECTORAL REQUIREMENTS

Status of registration in the country of origin

5. Foreign investor shall produce certificate of registration with the authority in the country of origin for verifying the status of registration for:
 - 5.1 construction firm or companies; or
 - 5.2 engineering consultancy firms or companies.

Tax clearance certificate

6. Foreign investor shall produce a tax clearance certificate from the country of origin for last one year preceding the date of application.

Undertaking

7. Foreign investor shall submit an undertaking as prescribed in Annexure I for the following:
 - 7.1 To concertededly promote mechanization and professionalism in the construction industry and abide by the laws of the country;
 - 7.2 To declare noninvolvement in violations of laws, corrupt and fraudulent practices in the country of origin;
 - 7.3 To declare that there is no pending court case in the country of origin;
 - 7.4 To declare that the quality and safety shall not be compromised while executing construction projects; and

7.5 To declare that there are no adverse records in the country of origin for past ten years preceding the date of application as may be applicable.

8. The English version of the certificate and clearance mentioned in clause 5 and 6 of this guidelines shall be dully notarized.

Compliance to class and category proposed for registration

9. FDI company except for engineering consultancy firms or companies shall register only in the large class and single category provided in the Registration Guidelines of CDB subject to restrictions imposed by clause 10 of this guidelines.
10. FDI company except for engineering consultancy firms or companies shall execute projects:
 - 10.1 Any projects with estimate more than Ngultrum one billion.
 - 10.2 If the project estimate is less than Ngultrum one billion for the following categories of works:
 - 10.3 Underground works;
 - 10.4 Underground piling;
 - 10.5 Slope stabilization works;
 - 10.6 Railways;
 - 10.7 Sky train tracks;
 - 10.8 Tunneling;
 - 10.9 Hydropower;
 - 10.10 Solar or wind energy harnessing works;

- 10.11 Irrigation dam; or
- 10.12 Any other specialized works.

- 11. FDI company except for engineering consultancy firms or companies registered under clause 9 of this guidelines shall not change category up to two years from the date of registration or renewal.
- 12. While registering as provided in clause 9 and 10 of this guidelines, the FDI company shall comply with the requirements provided in Registration Guidelines of CDB.

Employment of Bhutanese

- 13. FDI company established for construction services shall employ five Bhutanese employees for every expatriate employee within five years of establishment which shall be progressively increased after every year of establishment.
- 14. The employment of Bhutanese shall be distributed across all levels for the purpose of attaining the ratio mentioned in clause 13 of this guidelines.

Transfer of skills and knowledge

- 15. FDI company shall build the capacity of Bhutanese employees in contract administration, quality management, safety, specialization, mechanization, research and development and others.
- 16. FDI company shall ensure transfer of specialized skills to the Bhutanese employees.
- 17. Procuring agencies may include the provision of transfer of skills and knowledge in the contract documents.

Corporate Social Responsibility

18. FDI company may make charitable contributions to the community in which construction projects are executed.
19. FDI company may make contributions towards limiting the damages to the environment while executing construction projects.
20. FDI company may look into subletting certain works involving low technicality to local community.

Mechanization

21. FDI company except for construction consultancy shall introduce appropriate and available technologies to save time and reduce human effort in execution of projects.
22. FDI company except for construction consultancy shall promote environment friendly mechanization in the industry including labour saving devices and equipment.

Compliance to other legal instruments of CDB

23. FDI company shall comply with all guidelines, codes, e-Zotin Terms and Conditions and other legal instruments adopted by CDB from time to time.

CHAPTER 3

FACILITATION OF FDI CLEARANCE

FDI committee for construction services

24. The committee comprising of the following shall be constituted to review the criteria, provide clearance and regulate the FDI in construction services except for registration requirements:
 - 24.1 Head of the Agency as chairperson;
 - 24.2 Division head, Construction Regulatory Division as member;
 - 24.3 Division head, Construction Service Division as member; and
 - 24.4 Head, Legal Services as member secretary.

Appointment and replacement of committee members

25. The chairperson of the committee mentioned in the sub-clause 24.1 of this guidelines may replace any member of the committee upon approval of the chairperson of the CDB.

Quorum and decision

26. The clearance shall be provided in presence of $2/3^{\text{rd}}$ majority of the members mentioned in clause 24 of this guidelines.
27. The decision required for this guidelines shall be made by simple majority of the members present.

Mandates of FDI committee

28. The committee constituted under clause 24 of this guidelines shall:
 - 28.1 Approve FDI clearance for construction services as prescribed in Annexure II within seven working days from the date of submission of application if the FDI partners has complied with clause 5,6,7,8 of this guidelines;
 - 28.2 Disapprove FDI application within seven working days from the date of application if the FDI partners has not complied with clause 29.1 of this guidelines;
 - 28.3 Review the monitoring report mentioned in clause 41 of this guidelines and issue instructions accordingly;
 - 28.4 Instruct for monitoring of compliance of the following by the FDI company:
 - 28.4.1 Bhutanese employment provided in clause 13, 14 and 15 of this guidelines;
 - 28.4.2 Transfer of skills and knowledge provided in clause 16, 17 & 18 of this guidelines;
 - 28.4.3 Corporate social responsibilities provided in clause 19, 20 & 21 of this guidelines;
 - 28.4.4 Mechanization provided in clause 22 & 23 of this guidelines; and
 - 28.5 Instruct the Registration Section of CDB to comply with clause 8, 9, 10, 11, 12, 14 & 15 of this guidelines while verifying and approving the registration of FDI company;

- 28.6 Impose administration sanctions for non-compliance to this guidelines as provided in chapter 5 of this guidelines; and
- 28.7 Perform any other functions incidental to FDI in construction services as and when necessary.

Functions of Member Secretary

- 29. Member Secretary appointed under clause 25 of this guidelines shall:
 - 29.1 Receive FDI application for construction services as prescribed in Annexure III;
 - 29.2 Review and verify the documents furnished by the Foreign investor within fifteen working days from the date of submission of application as per clause 5,6,7 and 8 of this guidelines;
 - 29.3 Inform the applicant to furnish missing or authentic documents within five working days from the date of completion of verification mentioned in clause 30.2 of this guidelines;
 - 29.4 After receipt of the application with all required documents, the member secretary shall within five working days schedule a convenient date for meeting;
 - 29.5 Upon instruction of the committee, intimate the rejection of FDI application mentioned in clause 29.2 of this guidelines;
 - 29.6 Intimate the applicant the clearance signed by the chairperson if the committee decides to approve the FDI application;

29.7 Instruct the FDI partners to proceed for FDIRC from MoEA;

29.8 Coordinate committee meetings as and when necessary;

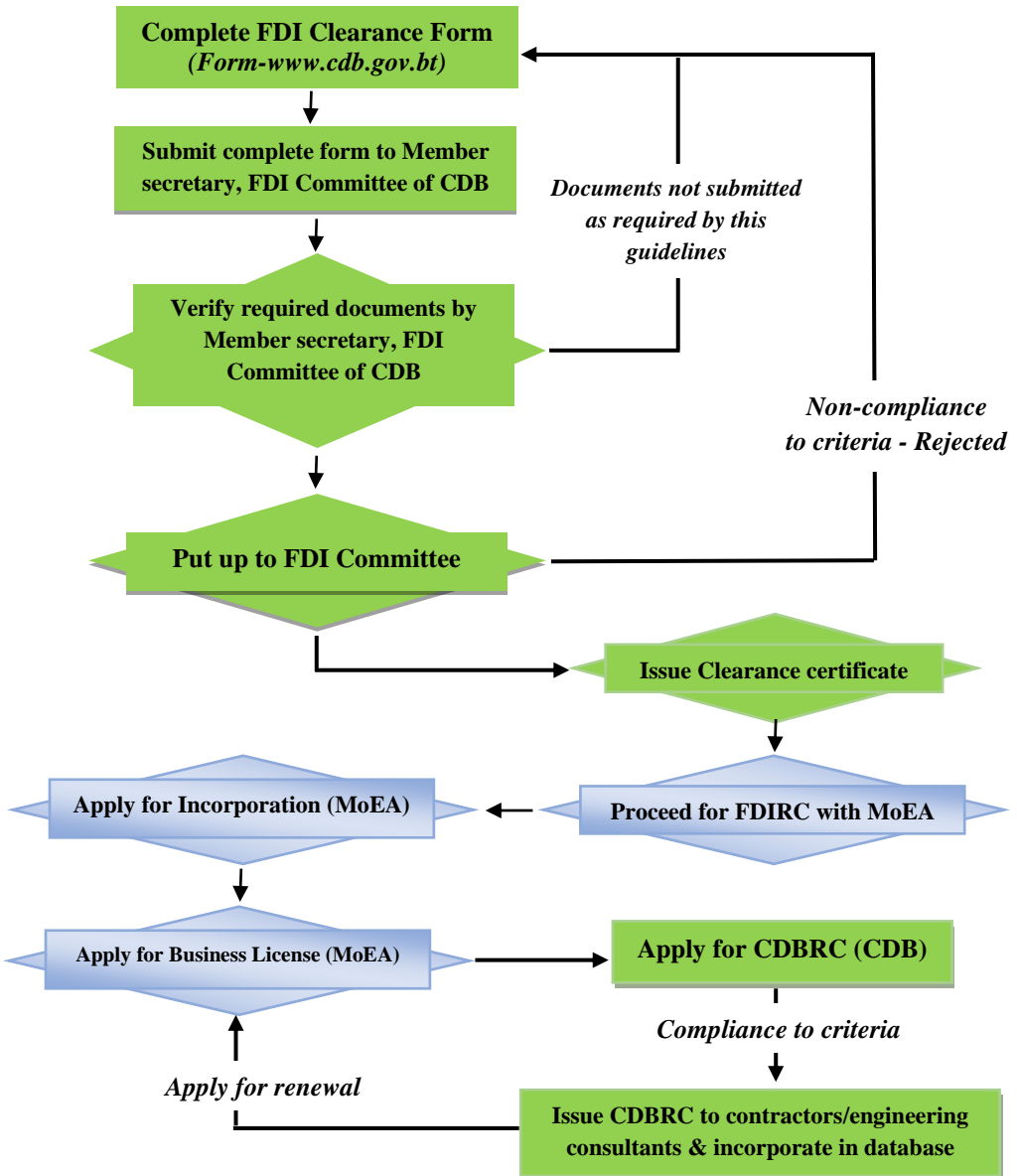
29.9 Record minutes of meetings mentioned in clause 30.8 of this guidelines; and

29.10 Perform any other functions incidental to FDI for construction services upon instructions of the committee.

Process of providing clearance and registration

30. The FDI clearance and registration for construction services shall be processed as provided below:

FDI Clearance& Registration Process Flow Chart



CHAPTER 4 MONITORING AND REPORTING

Monitoring

37. The monitoring section of CDB shall monitor the FDI companies upon instructions of FDI committee or in compliance to the annual plan of CDB for monitoring.
38. Monitoring section of CDB shall monitor the following:
 - 38.1 Compliance to registration requirements of FDI company provided in clause 9, 10, 11 and 12 of this guidelines;
 - 38.2 Compliance to other requirements provided in clause 7, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of this guidelines;
39. The monitoring section of CDB shall include the applicable requirements mentioned in this guidelines in the monitoring checklist of monitoring guidelines.

Reporting

40. The monitoring section of CDB shall furnish and present the monitoring report to FDI committee subsequent to monitoring conducted in pursuant to clause 38 of this guidelines.
41. The monitoring section of CDB may recommend relevant administrative sanctions to FDI committee for non-compliance to this guidelines as provided in chapter 5 of this guidelines.
42. The monitoring section of CDB may recommend reasonable recognition for best performing FDI companies such as:
 - 42.1 Appreciation certificates;
 - 42.2 Insertion of achievements in CDB systems;

- 42.3 Inclusion in the list of top performing contractors in Bhutan;
 - 42.4 Publish in CDB Annual Reports; or
 - 42.5 Any others.
43. The monitoring section of CDB shall comply with instructions of FDI committee as provided in clause 28.3& 28.4 of this guidelines.

CHAPTER 5

ADMINISTRATIVE SANCTIONS

Reprimand or Improvement notice

44. FDI company except for engineering consultancy firms or companies not ensuring introduction or promotion of mechanization as provided clause 21 and 22 of this guidelines shall be reprimanded or issued improvement notices.
45. FDI company not employing Bhutanese as prescribed in clause 13 and 14 of this guidelines for first instance shall be reprimanded or issued improvement notices.
46. FDI company not ensuring transfer of skills and knowledge as prescribed in clause 15, 16 and 17 of this guidelines shall be reprimanded or issued improvement notices.
47. FDI company breaching other legal instruments adopted by CDB as provided in clause 23 of this guidelines for the first instance shall be reprimanded or issued improvement notices.
48. FDI company except for engineering consultancy firms or companies not complying with ‘works in hand limit’ mentioned in Registration Guidelines of CDB for first instance shall be reprimanded or issued improvement notices.
49. FDI company except for engineering consultancy firms or companies compromising quality and safety mentioned in clause 7.4 of this guidelines shall be reprimanded or issued improvement notices if the breach is considered minor by the FDI committee.

50. FDI company engaging in activities other than approved class and categories for the first instance shall be reprimanded or issued improvement notices.
51. FDI company except for engineering consultancy firms or companies not complying with restrictions imposed by clause 10 of this guidelines for the first instance shall be reprimanded or issued improvement notices.

Suspension of clearance and registration

52. FDI company engaging in activities other than approved class and categories for more than one instance shall be suspended for three months to five months.
53. FDI company except for engineering consultancy firms or companies not complying with restrictions imposed by clause 10 of this guidelines for more than one instance shall be suspended for three to five months.
54. FDI company submitting false documents while seeking clearance, registration and renewal for the first instance shall be suspended for three months to five months.
55. FDI company breaching any other laws of the country shall be suspended for five to nine months if the sanctions are not mentioned in the laws breached by FDI company if the breach is for first instance.
56. FDI company except for engineering consultancy firms or companies compromising quality and safety mentioned in clause 7.4 of this guidelines shall be suspended for three to five months if the breach is considered major by the FDI committee.

57. FDI company breaching other legal instruments adopted by CDB for second instance shall be suspended for three to five months.
58. FDI company except for engineering consultancy firms or companies not complying with works in hand limit mentioned in Registration Guidelines of CDB for more than one instance shall be suspended for three to five months.
59. FDI company not employing Bhutanese as prescribed in clause 13 and 14 of this guidelines for more than one instance shall be suspended for three to five months.

Cancellation of CDB registration certificate

60. The registration certificate of FDI company submitting false documents for more than one instance while seeking clearance, registration and renewal shall be cancelled.
61. The registration certificate of FDI company breaching any other laws of the country for more than one instance shall be cancelled.
62. FDI company breaching other legal instruments adopted by CDB repeatedly shall be cancelled.

Other sanctions

63. Non-compliance by FDI committee and Member Secretary to this guideline shall be referred to Human Resource Committee of CDB as per Bhutan Civil Service Rules.
64. Non-compliance to registration and monitoring requirements shall be sanctioned as per Registration Guidelines and Monitoring Guidelines of CDB if certain sanctions are not mentioned in this guidelines.

65. Non-compliance to ethical requirements shall be sanctioned as per Ethical Code of Conduct for Contractors if certain sanctions are not mentioned in this guidelines.
66. Breaches related to other construction issues shall be sanctioned as per Construction Grievance Redressal Forum Guidelines if certain sanctions are not mentioned in this guidelines.

CHAPTER 6

DISPUTE RESOLUTION

Dispute settlement

67. Disputes arising between the parties may be resolved initially through negotiation, mediation or conciliation.
68. If parties fail to resolve disputes as provided in clause 67 of this guidelines, parties may resort to arbitration as per ADR Act of Bhutan.
69. Parties failing to resolve disputes as provided in clause 67 and 68 of this guidelines may appeal before the Royal Court of Justice of Bhutan.
70. Notwithstanding clause 67, 68 and 69 of this guidelines, parties may choose to resolve disputes as agreed in the contract executed.

Appeals on Administrative sanctions

71. Appeal from administrative sanctions by FDI committee lies to chairperson of CDB.
72. The appeal mentioned in clause 71 of this guidelines shall be made within ten working days from the day of imposition of sanctions by FDI committee.

CHAPTER 7

ABBREVIATION AND DEFINITION

73. The abbreviations used in this guidelines are as follows:
 - 73.1 CDB: Construction Development Board;
 - 73.2 MoEA: Ministry of Economic Affairs;
 - 73.3 FDI: Foreign Direct Investment;
 - 73.4 FDIRC: Foreign Direct Investment Registration Certificate; and
 - 73.5 ADR: Alternative Dispute Resolution.

74. The terms used in this guidelines are defined as follows:
 - 74.1 **Country of origin** means country where the business of FDI investor is originally established.
 - 74.2 **Foreign investor** shall mean an entity for construction or engineering consultancy services which is incorporated or registered outside of Bhutan.
 - 74.3 **FDI partners** shall mean the foreign investor and local partner proposing to form FDI company.
 - 74.4 **Foreign Direct Investment Registration Certificate** means a certificate issued by the Ministry of Economic Affairs to the authorized person of FDI business based on the FDI Registration Application allowing them to process their investment proposal.
 - 74.5 **FDI Company** means a business registered and incorporated in the country for the purpose of undertaking construction and engineering consultancy activities with mandates provided by FDI Rules and Regulations and this guidelines.

- 74.6 **Authority** means agency similar to CDB in the country of origin responsible for issuing the registration certificate or certificate to prove that there is no adverse record.
- 74.7 **Legal instrument** means guidelines, codes, rules of procedures, terms of references, circulars, notifications issued by CDB from time to time.
- 74.8 **Sectoral clearance** means clearance issued by FDI committee of CDB for pursuance of FDIRC from MOEA and pursuance of CDB registration certificate for construction services.
- 74.9 **CDB registration certificate** means certificate issued in compliance to this guidelines and the Registration Guidelines of CDB to pursue for incorporation.
- 74.10 **Monitoring checklist** means the checklist used for compliance monitoring of FDI companies and projects executed by such companies.
- 74.11 **e-Zotin** means online system of CDB.
- 74.12 **Person** means an individual, partnership firm or a company.

ANNEXURE I

Letter of Undertaking

I.....(name) bearing Passport/Work permit
no..... Proprietor/CEO
of..... (firm name) do hereby undertake as follows:

- i. I agree to concertededly promote mechanization and professionalism in the construction industry and abide by the laws of the country
- ii. I declare that there is no pending court case in the country of origin.....(mention country)
- iii. I declare that my firm/company is not involved in violations of laws, corrupt and fraudulent practices in the country of origin.....(mention country)
- iv. I declare that there are adverse records in the country of origin.....(mention country) for past ten years preceding the date of application
- v. I declare that the quality and safety shall not be compromised while executing construction projects in Bhutan
- vi. I hereby do confirm that the information furnished and attachments submitted along with this letter of undertaking are true and correct
- vii. In the event the above declaration is found to be incorrect, shall be liable as per the Administrative sanction provided in chapter 5 of this guidelines

(Sign with Legal Stamp)

Name:

Email ID:

Contact No:

Date:

ANNEXURE II

FDI Clearance for Construction Services

To,.....(Name of the Foreign Investor/Authorized Representative & Local Partner)

..... (Name of proposed firm)

.....(Address of applicant)

..... (Contact details)

Subject: FDI Clearance for Construction Services

Sir/Madam,

With reference to your letter no..... dated,Construction Development Board FDI committee hereby accord the approval for the FDI clearance for construction services in pursuant to which you are instructed to comply the following:

- i. Apply for Foreign Direct Investment Registration Certificate;
- ii. Apply for CDB registration certificate (www.citizenservices.gov.bt);
- iii. Comply with the FDI guidelines for construction services& other legal instruments of CDB; and
- iv. All other existing laws of the country.

Kindly note that this clearance shall be used for pursuing the registration certificate of CDB only and valid for 6 months from the date of issuance.

Thanking You.

.....(Name)

Chairperson of FDI Committee

.....(Date)

ANNEXURE III

FDI Application Form for Construction Services

1. Name of the proposed firm: _____

2. Foreign Investor's details:

Name of the firm/company: _____

Address: _____

Mailing Address: _____

Website (if available): _____

Phone: _____ Fax: _____ E-mail: _____

3. Authorized Representative (Contact person):

Name: _____

CID No. _____

Age/Sex: _____

Designation: _____

Company/Organization: _____

Mailing Address: _____

Phone: _____ Fax: _____ E-mail: _____

4. Local Partner details:

Name of the firm/company: _____

CDB no.: _____

Address: _____

Gewog: _____ Dungkhag: _____ Dzongkhag/Thromde: _____

Website (if available): _____

Phone: _____ Fax: _____ E-mail: _____

5. Documents attached: *(Please tick in the box if documents are attached)*

- Power of Attorney for Authorized Representative ☐
- Certificate of Registration in the country of origin as prescribed in clause 5 & * of this guidelines ☐

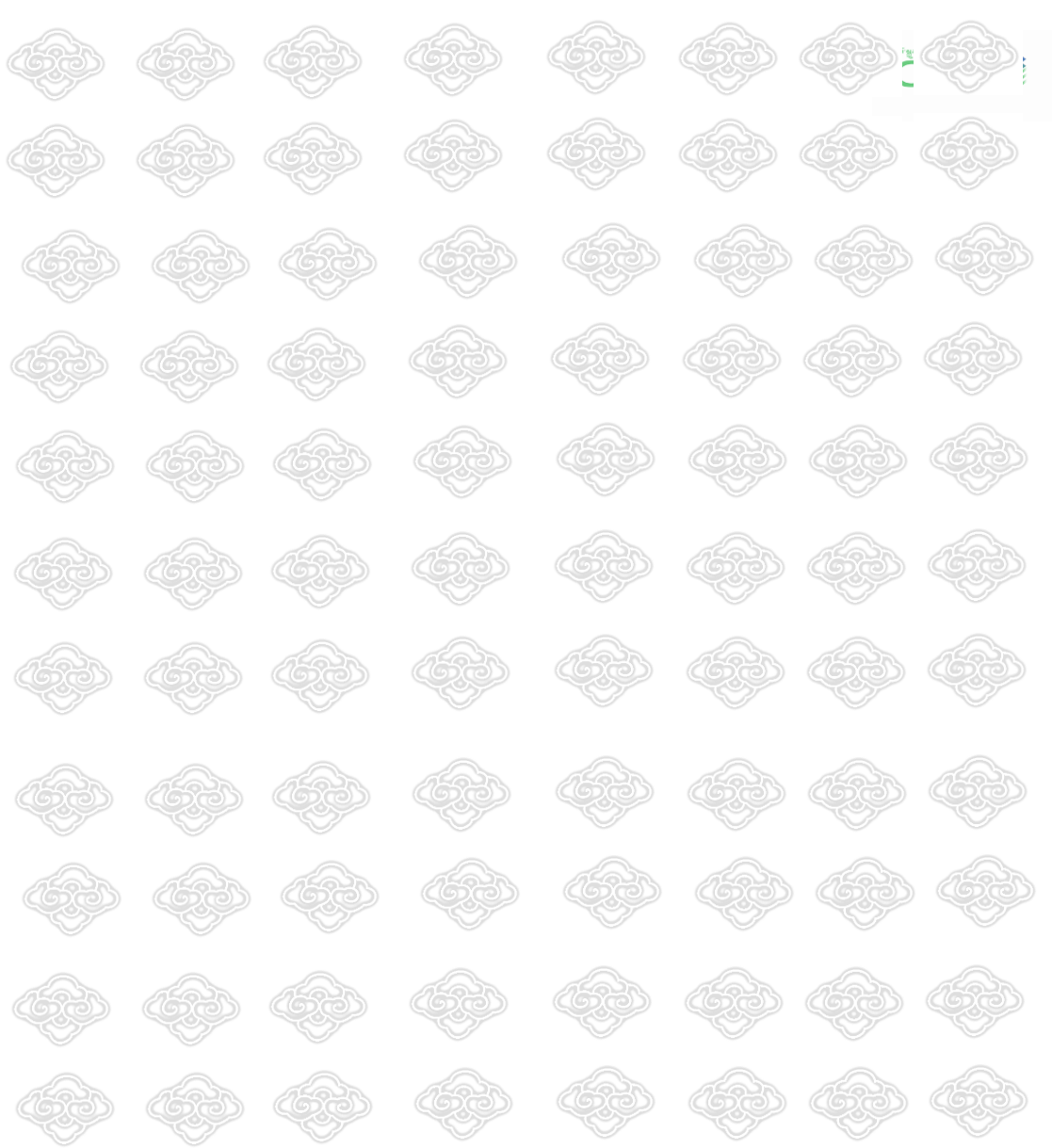
- Tax clearance certificate from the country of origin for past one year as prescribed in clause 6 & 8 of this guidelines ☐
- Undertaking as prescribed in clause 7 of this guidelines ☐

6. 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 CDB to make all necessary inquiries in relation to this application. In case the information provided in the application form is found to be false, the CDB may withdraw the registration and take action as per the FDI Guidelines for Construction Services and other laws of the land.

Proprietor/Authorized representative: _____ (Sign with Legal Stamp)

_____ (date)



Construction Development Board

Tel.; +975-2-326034-326035

Fax: +975-2-321989

Website: www.cdb.gov.bt