

ROYAL MONETARY AUTHORITY OF BHUTAN

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INVESTMENT ADVISORS REGULATIONS, 2011

SEPTEMBER 2011

1. Short title and commencement

- i. These regulations are issued in pursuant to Section 202 of the Financial Services Act of Bhutan, 2011 and must be read in conjunction with the additional requirements under the Financial Services Act, 2011.
- ii. These regulations may be cited as the Investment Advisors Regulations, 2011.
- iii. These regulations shall come into operation on such date as may be specified by the Royal Monetary Authority by notice in the official newspaper and RMA website.
- iv. The requirements which are preconditions for granting a license should be met at all times during the on-going business operations.

2. Definitions

In these regulations, the following terms shall have the meaning indicated unless the content clearly indicates otherwise:

- i. **“Act”** means the Financial Services Act, 2011.
- ii. **“Applicant”** means the Promoter(s) of the proposed company.
- iii. **“Auditor”** means an auditor empanelled by Royal Audit Authority.
- iv. **“Authority”** means the Royal Monetary Authority of Bhutan (RMA) established under the Royal Monetary Act of Bhutan.
- v. **“Companies Act”** means the Companies Act of the Kingdom of Bhutan, 2000 and the amendments thereto.
- vi. **“Corporate Finance Advisory”** means giving advice concerning:
 - a) Compliance with or in respect of financial laws;
 - b) An offer or invitation to the public to subscribe for or purchase securities or to sell or otherwise dispose of securities;
 - c) The arrangement, restructuring or take-over of a company or any of its assets or liabilities.
- vii. **“Financial Planning”** means analyzing the financial circumstances of a person and providing a plan to meet that person’s financial need and objectives such as tax planning, investment planning etc.
- viii. **“Insider trading”** has the same meaning as in Section 39 of the Companies Act of 2000 and the amendments thereto.

- ix. **“Investment Advisor”** means any person who is licensed as an investment advisor by the Authority.
- x. **“Investment advisor activities”** means the provision of corporate advisory, financial planning and/or investment research services.
- xi. **“Investment discretion”** means legal authorization to select, obtain and dispose of investment on the client’s behalf without separate authorization for each transaction.
- xii. **“Investment research”** means providing advice concerning securities, other than corporate finance advisory activities, and includes the issuance or promulgation of research reports and analysis.
- xiii. **“Person”** shall mean a natural person (individual) or a legal entity.
- xiv. **“Significant Owner”** shall be as defined under the Financial Services Act of Bhutan, 2011.

3. Application for grant of license

- i. An application for a license to act as an investment advisor shall be made in writing to the authority and shall contain the following documents along with a non-refundable fee of Nu. 20,000 in cash/draft/cheque in favor of the Authority:
 - a) Letter of Application (Annexure I)
 - b) Application Form (Annexure II)
 - c) Biographical Report (Annexure III)
- ii. Persons other than individuals who are applying for a license must assure that all those performing or supervising investment advisor functions on their behalf are individually registered with the Authority.

4. A person in the business of providing advice on investment that include in a substantial way investment in securities shall obtain a license as an investment advisor, but no license shall be required if:

- i. The advice is permitted by another license obtained under the Act or is allowed under a law regarding pension fund;
- ii. The advice is solely incidental to the person’s practice of law, accountancy or the teaching profession and involves no special compensation;
- iii. The advice is not directed to specific customers nor separately paid for by them but is part of analysis or commentary appearing in general or specialized newspapers, magazine or other mass media or public discussion;

- iv. The advisor has fewer than 15 customers in Bhutan, none of which is an investment fund required to be licensed. However, such advisors are required to be registered with the Authority.

For the purpose of Section 4(iv) above, in case of a natural person a customer shall mean an individual and in case of a legal entity a customer shall mean an entity with a maximum of 5 employees.

5. Investment Advisor's License (Individual)

i. Minimum Financial Requirement

The applicant shall only provide financial planning and investment research services for which he shall possess a minimum paid-up capital of Nu.100,000 and net total personal assets (net worth) of at least Nu. 100,000 at all times.

ii. Qualification and Experience

For purpose of undertaking financial planning and investment research, an applicant shall possess:

- a) Relevant professional or tertiary qualifications, which include but are not limited to a degree in finance, economics, accounting, commerce or law;
- b) If without any professional or tertiary qualifications, at least five (5) years of direct and relevant experience in investment advisory related activities.

iii. Registration of Business

An applicant shall have its business registered with Ministry of Economic Affairs.

iv. "Fit" and "Proper" criteria

An applicant shall fulfill the criteria as required under Annexure III of these regulations.

6. Investment Advisor's License (Company)

i. Minimum Capital Requirement

- a) The minimum paid-up capital for the investment advisor shall be Nu. 300,000 for conducting Investment research, corporate finance advisory and financial planning activities.
- b) The capital contribution shall be deposited with the Authority after the

issuance of “In -Principle Approval” and must be verified by the Financial Regulation and Supervision Department. The contribution shall not be funded through borrowings and must be from legitimate sources.

c) The applicant shall provide any or all of the activities listed below:

- Investment Research
- Corporate finance advisory activities
- Financial Planning

ii. *Ownership and Governance*

- a) Companies fully owned and managed by Bhutanese nationals shall be licensed as an Investment Advisor.
- b) The applicant shall be a company registered under the Companies Act of Bhutan with a minimum of 4 shareholders.
- c) The applicant shall operate only under the name that has been approved by the Authority.
- d) The applicant shall comply with these regulations, and any other applicable laws and regulation of the Authority.
- e) Every significant owner of an investment advisor must have at least one year experience in investment advisory related activities.
- f) In terms of composition of board, at least one member of the board should have an experience of 2 years in investment advisory related business.
- g) Any change in the ownership pattern of the company shall require prior approval of the Authority.
- h) The Investment advisor shall not be considered a financial institution.

iii. *Individual Representative*

An individual employed by a licensed investment advisor, unless in a purely clerical capacity or in another capacity not inherently related to the professional services provided to customers shall fulfil the same requirement as provided under Section 5(ii) and shall be registered with the authority.

iv. *“Fit” and “Proper” Criteria*

Every significant owner and key post holders (CEO, director and investment advisor) including the individual representative shall fulfill the fit and proper criteria as required under Annexure III of these regulations.

General Requirements (Both Individual and Company)

7. Continuing Professional Education (CPE) Programme

All licensed investment advisors (individual) and licensed investment representatives are required to undergo training programs conducted by the financial training institute in order to have their licenses renewed.

8. Grant of License

- i. Only licensed investment advisor shall be permitted to carry out investment advisory business in Bhutan.
- ii. From the date of commencement of these regulations, no persons/consultants shall function as an investment advisor unless a license has been granted to him by the Authority under these regulations.
- iii. The Authority shall grant a license to an applicant, if it amongst others, is satisfied that:
 - a. The managerial capacity of the applicant is adequate to conduct the proposed operations;
 - b. The applicant will conduct its business in an honest and transparent manner and with the professional skills appropriate to the nature and scale of its proposed activities;
 - c. The applicant will conduct its business in a sound and prudent manner so as not to jeopardize performance of financial obligations;
 - d. The applicant will maintain adequate accounting and other records of its business with adequate systems of control; and
 - e. It will become economically sustainable in a reasonable period of time.
- iv. Other Requirements:
 - a. After consideration of the documents and other investigations, the Authority if satisfied may issue "In-Principle Approval". This approval shall be valid for the period of three months. During this period, the applicant shall take all necessary preliminary measures specified therein. The issue of "In-Principle Approval" does not bind the Authority to issue a license to conduct business;
 - b. A company in respect of which an "In-Principle Approval" has been given should not commence business before the issue of a license. Every advertisement, notice, etc. issued prior to the issue of the license should specify that it has not been issued a license to carry on investment advisory business;

- c. An applicant upon complying with the conditions specified in the “In-Principle Approval” may request the Authority to issue a license. The Authority being satisfied may issue a license to an applicant to carry on investment advisory business;
 - d. An investment advisor shall commence business within three months of issuance of a license;
 - e. A license issued by the Authority to the applicant is non-transferable and shall be valid for a period of one year;
 - f. An Investment advisor shall pay an annual non-refundable renewal license fee of Nu.5,000 in case of an individual and Nu. 10,000 in case of a company in cash/cheque/draft in favour of the Authority.
 - g. The license renewal fee shall be paid 15 days before the expiry of the license.
 - h. An investment advisor shall display its license at all the places of business at which it carries on its business
- v. Where necessary, the Authority may require other relevant or additional information to be submitted during the assessment of the application, and, thereafter, in regard to any other matter as may be deemed necessary by the Authority. The applicant shall, if so required, appear before the Authority for a personal representation in connection with an application.

9. General obligations

- i. An investment advisor shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.
- ii. An investment advisor shall display the list of charges wherever appropriate.
- iii. An investment advisor shall not divulge to anybody, either orally or in writing directly or indirectly, any confidential information about its clients, which has come to its knowledge, without taking prior permission of its clients except where such disclosures are required to be made in compliance with any law for time being in force.
- iv. An Investment Advisor must keep, preserve and maintain records and if requested, must present the following to the Authority for inspection:
 - a) Contracts between clients and the investment advisor;
 - b) Records relating to recommendations provided to clients and changes thereof.

- v. An investment advisor shall have procedures to ensure:
 - a) The proper handling of complaints from clients;
 - b) Prompt remedial action on those complaints;
 - c) Where the complaint is not properly remedied, the client is advised of any further avenues for complaints available to him under the act.

- vi. An investment advisor shall prepare the following accounts for every accounting year:
 - a) A balance sheet or a statement of affairs as at the end of each accounting period;
 - b) A profit and loss account for that period;
 - c) A statement of cash/fund flow; and
 - d) Additional statements on Investment advisory business as maybe required by the Authority.

- vii. An Investment Advisor shall submit to the Authority, a copy of the audited financial statements along with the auditor's report thereon within ninety days from the close of the accounting year along with the remarks or observations of the auditors, if any, on the conduct of the business, state of accounts, etc., and a suitable explanation on such observations shall be appended to such accounts filed with the Authority.

- viii. All the books and documents, statements, contract notes etc., referred to in this regulation and maintained by the investment advisor shall be retained for a period of at least ten years.

- ix. An investment advisor shall not be liable for any loss in case of advice given in good faith.

10. Notification of change in particulars

Any changes of particulars from those submitted in the application for a license shall be notified to the Authority within 14 days from the occurrence of the change in information.

11. Prohibition

Investment advisor(s) are prohibited from:

- i. Charging a client, an unusually high fee compared to that charged by other investment advisor(s) providing similar services;
- ii. Providing a report or recommendation to any client prepared by a person other than himself;
- iii. Guaranteeing a client that a specific result will be achieved as a result of the advice given;

- iv. Providing a recommendation to a client with respect to the purchase, sale or exchange of any securities without reasonable grounds;
- v. Recommending any investments as a result of any insider knowledge nor knowingly assisting any other person to participate in any such insider trading;
- vi. Entering into, changing, extending, shortening or renewing any investment advisory contract without a written approval from the client; and
- vii. Managing the client's funds.

12. Prohibition on use of title or inference of title

A person that does not hold an Investment Advisor's license shall not:

- i. take, use or by inference adopt the name, title or description of "Investment Advisor" or "Financial Planner", as the case may be; or
- ii. take, use or have attached to or exhibited at any place, any name, title or description implying or tending to create the belief that such person is an Investment Advisor or Financial Planner, as the case may be.

13. Disclosure to clients

A licensed person giving investment advice or exercising (insofar as permitted by its license) investment discretion on behalf of another, prior to a transaction must disclose:

- i. In writing whether it is giving independent advice or whether it has any material interest in the investment opportunities being recommended or selected;
- ii. In recommending or selecting a specific investment opportunity, must believe that the investment is suitable for the customer and have a reasonable basis for so believing; and
- iii. Commission and fees that it will receive for the services provided.

14. Advertising and soliciting business

- i. Any advertising material issued by an investment advisor shall:
 - a. Be honest and factual; and
 - b. Not be misleading or deceptive.
- ii. The Authority may prohibit the issue or require the immediate withdrawal of any advertisement issued by an investment advisor, which it deems to be deceptive, misleading, confusing or likely to lead to violations of the Act or the regulations there under.

15. Application to conform to the requirements

The application not complete in all respects and not conforming to the instructions specified in Annexure II and III as well as the other requirements of these regulations shall be rejected. However, the applicant shall be given 30 days to complete the application in all respects and rectify the errors, if any.

16. Continuous Compliance

All Investment Advisors must comply with the requirements of these regulations and all relevant provisions of the Act at all times.

17. Cancellation and Suspension of license

i. With Notice

The license of an Investment Advisor may be cancelled or suspended, after due notice and after giving him a reasonable opportunity of being heard, if he:

- a) violates the provisions of the Financial Services Act of Bhutan 2011 or rules or regulations, made there under;
- b) fails to furnish any information relating to his activities as an Investment Advisor as required by the Authority;
- c) furnishes wrong or false information; or conceals or fails to disclose material facts in the application submitted for obtaining a licence;
- d) does not co-operate with any inspection or enquiry conducted by the Authority;
- e) fails to maintain the capital requirements in accordance with the provisions of these regulations;
- f) fails to pay the fees or the reimbursement of expenses under these regulations;
- g) violates the conditions of license;
- h) does not carry out his obligations as specified in these regulations.

ii. Without Notice

The license of an Investment Advisor may be cancelled or suspended without notice, if he:

- (a) is found guilty of fraud, or is convicted of a criminal offence;

(b) commits such defaults, which require immediate action in the opinion of the Authority, provided that the Authority has communicated the reasons for the cancellation in writing;

(c) has not commenced the business within three months of being granted a license.

18. Publication of order of suspension or cancellation

The order of cancellation or suspension of the license shall be published in the media and Authority's website as the Authority may consider fit.

19. Submissions

All enquiries, applications and information as pursuant to these regulations shall be submitted to the Authority at the following address:

Hon'ble Governor
Royal Monetary Authority of Bhutan
P.O. Box 154
Chhophel Lam,
Kawajangsa
Thimphu, Bhutan
Telephone: +975-2-23111/217
Fax: +975-2-322847
Email- frsd.rma@rma.org.bt

ANNEXURE I

Date:

Hon'ble Governor
Royal Monetary Authority of Bhutan
Thimphu, Bhutan

Sub: Application for Investment Advisor License

Hon'ble Dasho,

I/We would like to request for a license to conduct Investment Advisory business in Bhutan under Section 286 of Financial Services Act of Bhutan, 2011. I/We confirm and declare that all applications made by us/me are in full compliance with the Investment Advisors Regulations, 2011 issued by the Authority. I/We further confirm and declare that I/we am/are satisfied to the best of our knowledge, information and belief that there is no information or statement nor is there any omission which would make our application false or misleading. I/We undertake to provide to Authority such information and documents as the Authority may reasonably require in relation to the application.

This application is made by the undersigned authorized person of (_____) pursuant to the authority granted to by written resolution of promoters passed on (_____).

For and on behalf of proposed company/business

Yours faithfully,

Name:

CID No:

Address

Tel No

Fax No.

Email:

Encl: Documents pertaining to the application including the resolution signed by all the promoters.

LICENSING APPLICATION FORM

(Please ensure that this form is filled properly. In case of any clarifications, please feel free to call 321205 or visit Financial Regulation and Supervision Department of the Authority).

Instructions for filling up the form

- i. It is important that before this application form is filled in, the regulations made by the Authority are studied carefully and understood in full.
- ii. Applicants must submit a duly completed application form together with all appropriate, supporting documents to the Authority.
- iii. Application for license will be considered only if it is complete in all respects.
- iv. Applicants should sign the application form.
- v. Information which needs to be supplied in more details may be given on separate sheets which should be attached to the application form.

1) PARTICULARS OF THE APPLICANT

1.1	Name of the applicant	:	_____
1.2	Address	:	_____ _____
1.3	Name of the proposed company*	:	_____
1.4	Registration number*	:	_____
1.5	Date/Place of registration*	:	_____
1.6	CID Number**	:	_____
1.7	Telephone Number	:	_____
1.8	Fax No.	:	_____
1.9	Email	:	_____
1.10	Type of Business (Investment research and corporate finance advisory <u>OR</u> financial planning activities)	:	_____

Notes:

*Complete if the applicant is a company

** Complete if the applicant is an individual

1.11 Postal Address for correspondence : _____

1.12 Liaison Officer:
Name : _____
Telephone Number : _____
Email : _____

2. Capital Structure of the proposed Investment Advisor:

2.1 Amount of Authorized Capital : _____
2.2 Amount of Issued Capital : _____
2.3 Amount of Paid-up Capital : _____
2.4 Reserves (if any) : _____

3. Shareholding Pattern:

List of major shareholders (holding 10% and above of applicant directly or along with associates – applicable only to limited companies)

Shareholding as on: _____

Name of Shareholder	No. of shares held	%age of total paid-up capital of the company

4. Three years audited accounts of the company, if applicable.

5. Organization Structure

5.1 Status of the applicant (Individual or company) : _____

5.2 Copy of draft Articles of Incorporation (final Articles of Incorporation to be submitted upon incorporation of the Company with the Registrar of Companies)

5.3 Name and address of the Principal Banker of the applicant : _____

6. Business Information

- 6.1 A business plan/feasibility report for a period of 3 years for individuals and 5 years for company to be submitted. The business plan should include projected volume of business income for each class of business and income & expenditure statement in detail, internal control/IT systems, policies and procedures relevant to its proposed business.
- 6.2 Organization Chart separately showing functional responsibilities to be enclosed.
- 6.3 Particulars relating to the shareholders, directors & senior managers of the company to be completed in the prescribed format Annexure III.
7. Details of infrastructure like office space, equipment and manpower available with the applicant after the “In-Principal Approval”.
8. Any other information considered relevant to the nature of services rendered by the applicant.
9. Declaration should be provided by the person nominated as the applicant and all directors of the applicant declaring that they were not associated with a company as a director, whose registration as an Investment Advisor was suspended or cancelled or refused by the Authority.

These declarations should be submitted separately by the Applicant and Director of the company.

DECLARATION

I, the undersigned, solemnly declare that the above information given in this application form and other documents submitted on behalf of the proposed Investment Advisor are true, complete and correct to the best of my knowledge and belief.

Should the Authority come across any inconsistencies on the information provided, I hereby agree to fully abide by the penalties as specified under Section 138 of the Financial Services Act of Bhutan, 2011.

Further, I would like to pledge that if granted a license to conduct the business, the proposed company will not violate any laws and regulation of the Authority.

Name:
Citizenship ID No:
(Please attest copy)

Position:
Date:

Signature (Affix Legal Stamp):

Witness:
Name:
Citizenship ID No:
(Please attest copy)
Occupation:

Signature:

BIOGRAPHICAL REPORT**1. Personal Details.**

a. Name	
b. Date of Birth	
c. Nationality	
d. Citizenship ID No.	
e. Passport No. (Non-Bhutanese)	

2. Contact Information

a. Telephone No	
b. Mobile No.	
c. Fax No.	
d. E-mail	

3. Present Position.

a. Name and Address of the Firm	
b. Nature of Business	
c. Telephone No	

4. Family History/Dependent

Relationship	Name	CID No.	Date of Birth	Occupation	Email Address	Mobile No.
Father						
Mother						
Dependent						
Spouse						

5. Education

Name & Address of University	Years of Attendance	Major Area of Study	Degree/Certificate Granted	Date Awarded

6. Employment Record (Pertaining to previous 5 years). Use additional sheets, if necessary, and account for all gaps in employment.

Position held/ Department	Main responsibilities	Organization	Country	Duration

7. Do you have a license to practice any profession? Yes No
If yes, please give details.

a. Nature of License	
b. Date of Issue	
c. License/Registration No.	
d. Licensing Agency and Address	

8. (a) If self-employed, describe each enterprise, including the name, address, license number, your percentage of ownership and the type of business which you own or control. (Control means ownership of 10% or more of the stock or ability to effectively control the management of the corporation or other entity).

(b) List names, addresses and percentage of control and/or ownership of other incorporators, partners, directors, or officers of the entity or corporation referred to above.

<p>9. Are you employed in any professional capacity, or do you perform any services for or have any business connections with any institution which is subject to the supervision of the Royal Monetary Authority of Bhutan, or any other authority of the Royal Government of Bhutan? If "Yes", indicate the name of the institution, address and nature of your work.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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<p>10. Have you had, or do you now have, any financial interest, direct or indirect, in any financial institution in Bhutan If “Yes”, give the name of the institution, address and nature of the financial interest.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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11. Please tick whichever is relevant for the following questions below:

<p>1. Do you have more than 3 years experience in investment advisory related field.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>2. Were you or the company you worked for declared insolvent and adjudicated bankrupt.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>3. Were you convicted by a court in any criminal offense or has been involved in any fraud/forgery, financial crime or other illegal activities.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>4. Are any of your loan accounts with financial institutions classified as non-performing at any point of time (loan default by 90 days).</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

12. Answer “Yes” or “No” to any of the questions below if they apply to you as an individual, or a partner, director or officer of a corporation except for minor traffic violations.

<p>a. Are any arrests, indictments, criminal information or other criminal proceedings now pending against you?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b. Were you ever convicted for any violations of the law?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c. Have you or has any partnership of which you were a CEO or a major owner (more than or equal to 10% of the capital of the company) ever been liquidated or judged bankrupt?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>d. Has any business of which you were a director, officer, partner or major shareholder (10% or more of the voting shares) defaulted on his/her loan repayment?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>e. Has any enterprise in which you were a partner, director or officer been the subject of criminal indictment or other criminal proceedings?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

13. Income tax clearance: Fiscal Year (Attach tax clearance certificate)

DECLARATION

I hereby declare that I am aware that it is an offence under Section 138 of the Financial Services Act of Bhutan 2011 to provide the Authority any information which is false or misleading in a material particular.

I declare that the information given in the form above and accompanying documents is complete and accurate to the best of my knowledge, information and belief and that there are no other facts relevant to this application of which the Authority should be aware.

I also undertake that as long as I continue to be an Applicant /Director, I will notify the Director of the Financial Regulation and Supervision Department of the Authority of any material changes to, or affecting the completeness or accuracy of, the information given above as soon as possible, but in any event no later than 10 days from the day the changes come to my attention.

Further, I would like to pledge that, as long as I continue to be an Applicant/Director of the company, I will not violate any laws and regulations of the Authority.

Name:
Citizenship ID No:
(please attest copy)

Position:
Date

Signature (Affix Legal Stamp):

Witness:
Name:
Citizenship ID No:
(Please attest copy)
Occupation:

Signature: