

RULES OF PROCEDURE FOR TREATY MAKING 2016

In order to streamline treaty making process by the Government and for ratification by Parliament, in accordance with Article 10(25) of the Constitution of the Kingdom of Bhutan; The Lhengye Zhungtshog hereby frames this Rules of Procedure for Treaty Making 2016 as follows:

CHAPTER I PRELIMINARY

1. This subsidiary legislation shall be called the Rules of Procedure for Treaty Making 2016 and come into force 13th February 2016.

Purpose

2. The purpose of this Rules of Procedure is to set procedure to be followed by all agencies to propose, initiate, formulate, sign and implement treaties.

Application

3. This Rules of Procedure shall apply to the:
 - (1) Initiation, formulation, negotiation, signing, amendment and implementation of treaties covered under paragraph 31 of this Rules of Procedure, concluded by the Royal Government with other states or international organizations, which create rights and obligations under international law, including any treaties concluded to seek membership in international organizations; and
 - (2) Other Legal instruments.
4. The Lhengye Zhungtshog and all concerned agencies of the Government shall ensure that the provisions of this Rules of Procedure are followed.
5. If the government deems that signing and ratification of a particular treaty warrants urgent attention, the Lhengye Zhungtshog may exempt the concerned agency from following the procedures laid down in this Rules of Procedure and table before

Parliament expeditiously as an Urgent Bill for ratification. The treaty shall be deemed as Urgent Bill if it satisfies the requirement laid down in the Legislative Rules of Procedure of Parliament.

CHAPTER II GENERAL PROVISIONS

Ratification process

6. All treaties provided under Article 10(25) of the Constitution of the Kingdom of Bhutan shall be enforced as law only if they are duly acceded by the Government and ratified by Parliament.

Initiation

7. Any concerned agency may initiate and recommend a treaty proposal to the Government.
8. Where the Lhengye Zhungtshog initiates any treaty proposal, it may direct a relevant agency of the Government to undertake the necessary processes.
9. Before initiation of any treaty proposal, the agency shall seek political advice and clearance of the Ministry of Foreign Affairs.

Stakeholder Consultation

10. Unless the draft text of a treaty requires confidentiality as determined by the parties to the treaty, it shall be made in consultation with the stakeholders and public.
11. The concerned agency shall inform all stakeholders of the treaty proposal through website, newspapers and official correspondence.
12. The concerned agency shall hold stakeholder consultations to undertake assessment of the treaty proposal and to solicit views and comments of the stakeholders on the treaty, level of preparedness and impact of the treaty on domestic laws and policies.

13. The concerned agency shall seek advice from the Office of the Attorney General on the treaty's impact on the domestic laws.

Preliminary National Interest Analysis

14. Upon completion of the consultation, the concerned agency shall prepare the Preliminary National Interest Analysis on the treaty proposal, which shall include:
 - (1) Subject matter;
 - (2) Main obligation, if applicable;
 - (3) Time consideration;
 - (4) Ministerial responsibility;
 - (5) Advantages and disadvantages;
 - (6) Tentative cost analysis of entering into the treaty;
 - (7) Social, economic, cultural, environmental and political implications;
 - (8) Possible effect on domestic laws;
 - (9) Any other associated instruments on the same subject; and
 - (10) Report of the multi-stakeholder consultation.
15. The concerned agency shall submit the Preliminary National Interest Analysis to the Lhengye Zhungtshog as per the template provided in Annexure I.
16. The concerned agency shall present the Preliminary National Interest Analysis to the Lhengye Zhungtshog if directed by it.

Review by the Lhengye Zhungtshog

17. Upon receipt of the Preliminary National Interest Analysis, the Lhengye Zhungtshog shall review and decide whether to proceed with the treaty proposal. If the Lhengye Zhungtshog decides to proceed with treaty proposal, it:
 - (1) May itself draft the text of the treaty in consultation with the relevant stakeholders and experts or direct the relevant agency to do so;

- (2) Shall, in coordination with the Ministry of Foreign Affairs, determine and agree on negotiating positions and parameters to be followed by the negotiating delegation;
 - (3) Shall identify on advice of the Ministry of Foreign Affairs, and authorize the relevant agency to lead the negotiation;
 - (4) Shall determine and identify on advice of the Ministry of Foreign Affairs the composition of negotiating delegation; and
 - (5) Shall direct the Ministry of Foreign Affairs to coordinate and provide necessary guidance and advice on negotiation.
18. If treaty proposal is not in the interest of nation and people, the Lhengye Zhungtshog may not approve it and the treaty proposal shall remain closed till further instruction.

Preparation of draft text and consultation

19. If the Lhengye Zhungtshog directs the concerned agency to proceed with treaty proposal, it shall prepare or convey the draft text, and consult relevant stakeholders and experts, including the Ministry of Foreign Affairs and the Office of the Attorney General.
20. In the event of any major objections from the stakeholders, the concerned agency shall seek directives of the Lhengye Zhungtshog.

Negotiation

21. Negotiation shall be carried out within the mandates and parameters drawn by the Lhengye Zhungtshog. The negotiators or relevant agency may seek further clarification or approval of the Lhengye Zhungtshog if:
- (1) The other party has substantive difference with the negotiating positions or parameters approved by the Lhengye Zhungtshog;
 - (2) There are major changes in the subject of the proposed treaty; or
 - (3) Further clarification on the mandate of the negotiator is for any other reason required.

Finalization of the text of the treaty

22. The text of the treaty shall be finalized after negotiation, upon agreement of the parties. However in case of multilateral treaties where the text is already negotiated and concluded, the procedure provided under paragraphs 42 and 43 of this Rules of Procedure shall apply.
23. After the text of the treaty is finalized, the head of the delegation shall initial the finalized text of the treaty. The initialing procedure does not indicate the consent of Bhutan to be bound by the treaty or its object and purpose, and it only identifies as the final text as agreed during negotiations.
24. The concerned agency shall refer the finalized text to the Office of the Attorney General for legal opinion and the Ministry of Foreign Affairs for political advice and clearance.
25. The concerned agency shall submit the finalized text to the Lhengye Zhungtshog after process in paragraph 24 of this Rules of Procedure is completed.

Final National Interest Analysis

26. The concerned agency shall hold stakeholder consultation if required, and prepare the Final National Interest Analysis. The Final National Interest Analysis shall include:
 - (1) Subject matter;
 - (2) Ministerial responsibility;
 - (3) Time considerations;
 - (4) Associated instruments;
 - (5) Advantages and disadvantages;
 - (6) Obligations and proposed text of reservations, if any;
 - (7) Financial cost of entering into the treaty;
 - (8) Action plan to fulfill the treaty obligations;
 - (9) Social, economic, cultural, environmental and political implications;

- (10) Need for implementing legislation either by way of amendment of existing laws or enactment of a new legislation;
 - (11) Any other associated instruments on the same subject; and
 - (12) Report of the multi-stakeholder consultation.
27. The concerned agency shall submit the Final National Interest Analysis to the Lhengye Zhungtshog for further directives as per the template in Annexure II.
28. The concerned agency, along with the relevant stakeholders, shall present the Final National Interest Analysis to the Lhengye Zhungtshog if directed.
29. Upon receipt of the finalized text of the treaty and Final National Interest Analysis, the Lhengye Zhungtshog shall review and decide on:
- (1) Whether to accede the treaty;
 - (2) The need for domestic legislation and the timeframe of its enactment; and
 - (3) Allocation of adequate resources for treaty implementation.

Instrument of full powers

30. If the Lhengye Zhungtshog decides to enter into the treaty, it shall direct the Ministry of Foreign Affairs to issue the instrument of full powers to sign the treaty.

Instruments subject to ratification

31. All International Conventions, Covenants, Treaties, Protocols and Agreements will require ratification by Parliament, if it;
- (1) Is of legislative nature or modifies domestic laws;
 - (2) Burden the State or people with significant financial obligations;
 - (3) Affect the security and sovereignty of the country; or
 - (4) Changes the territorial boundary of the Kingdom of Bhutan.

Instruments not subject to ratification

32. Any other legal instruments which are not covered by paragraph 31 of this Rules of Procedure may be entered into by the Government or other agencies without Parliamentary ratification, and without application of the procedures enshrined in this Rules of Procedure, subject only to paragraph 33 of this Rules of Procedure.
33. Agencies shall seek political advice and clearance of the Ministry of Foreign Affairs and approval of the Lhengye Zhungtshog before initiating any legal instruments not subject to ratification by Parliament.

Translation

34. If necessary, prior to signature, the concerned agency shall translate the final text of a treaty into Dzongkha, and prepare required copies for signature.
35. If translation of a treaty into Dzongkha text is not necessary at the time of signature, it shall be translated after appending the final signature.

Submission to Parliament for ratification

36. The Lhengye Zhungtshog shall submit the signed treaty to Parliament along with the Dzongkha text and the Final National Interest Analysis.

CHAPTER III BILATERAL TREATIES

Signature

37. The authorized representative shall append the signature on finalized text on a date and place as agreed between the two parties.

38. After signature, the concerned agency shall deposit the original signed copies of the treaty with the Ministry of Foreign Affairs. The copies of the same shall be submitted to the Lhengye Zhungtshog to table before Parliament for ratification.

Entry into force

39. The treaty shall enter into force in such manner and upon such date as provided in the treaty or failing any such provision, as soon as consent to be bound by the treaty has been completed through ratification by Parliament.

Termination

40. The Lhengye Zhungtshog may recommend Parliament for termination of a treaty if:
- (1) The parties agree to terminate the treaty in accordance with the procedures provided in the treaty;
 - (2) The objective of the treaty has been achieved;
 - (3) There is a fundamental change in circumstances which affect the implementation of the treaty;
 - (4) A party to the treaty fails to comply with or breaches the provision of the treaty;
 - (5) An existing treaty is superseded or replaced by a new treaty;
 - (6) The object of the treaty ceases to exist;
 - (7) The treaty is ruled as inconsistent with the provisions of the Constitution of the Kingdom of Bhutan by the competent court;
 - (8) New peremptory norm of general international law (“ius cogens”) emerges; or
 - (9) The treaty conflicts with peremptory norm.

CHAPTER IV MULTILATERAL TREATIES

Signature

41. Where Bhutan is party to negotiation, signature shall be appended by the authority mentioned in the instrument of full powers in accordance with the procedure determined

by the concerned depository of the treaty. Signature in such a case shall be considered as “duly acceded to by the Government” as provided in Article 10(25) of the Constitution of the Kingdom of Bhutan.

42. Where a treaty is open for signature and Bhutan is not a party to negotiation, paragraphs 7 to 16, 18 and 26 to 30 of Chapter II of this Rules of Procedure shall apply. Following which signature shall be appended by the authority mentioned in the Instrument of Full Power in accordance with the procedure determined by the concerned depository of the treaty. Signature in such a case shall be considered as “duly acceded to by the Government” as provided in Article 10(25) of the Constitution of the Kingdom of Bhutan.
43. Where a treaty is closed for signature and Bhutan is neither a party to negotiation, nor a signatory, paragraphs 7 to 16, 18 and 26 to 30 of Chapter II of this Rules of Procedure shall apply. In such a case, approval by the Lhengye Zhungtshog shall be considered “duly acceded to by the Government” as provided in Article 10(25) of the Constitution of the Kingdom of Bhutan.

Entry into force

44. The treaty shall enter into force in such manner and upon such date as provided in the treaty or failing any such provision, as soon as consent to be bound by the treaty has been completed through ratification by Parliament.

Termination, withdrawal or suspension

45. The Lhengye Zhungtshog may recommend to Parliament for termination, withdrawal or suspension of a treaty in accordance with the provisions set in the treaty, if;
 - (1) The parties agree to terminate the treaty in accordance with the procedures provided for in the treaty;
 - (2) The objective of the treaty has been achieved;
 - (3) There is a fundamental change in circumstances which affect the implementation of the treaty;

- (4) A party to the treaty fails to comply with or breaches the provision of the treaty.
In this case the treaty may be terminated with respect to this party only;
- (5) An existing treaty is superseded or replaced by a new treaty;
- (6) The object of the treaty ceases to exist;
- (7) The treaty is ruled as inconsistent with the provisions of the Constitution of the Kingdom of Bhutan by the competent court; or
- (8) A new peremptory norm of general international law (“ius cogens”) emerges.”

CHAPTER V POST-RATIFICATION

Deposit of treaty

46. Once the Treaty is approved by two Houses of Parliament and Royal Assent is granted, Cabinet Secretariat shall obtain the text of the ratified treaty and forward it along with the Dzongkha text to the Ministry of Foreign Affairs.
47. Upon receipt of the text of the ratified treaty, the Ministry of Foreign Affairs shall deposit the Treaty with the relevant offices, or share with the other party as the case may be.
48. The Ministry of Foreign Affairs shall prepare and deposit the instrument of ratification or accession with the depository.
49. The Ministry of Foreign Affairs may publish the ratified treaties on its official website or gazette as the case maybe.
50. The Cabinet Secretariat shall notify the concerned agency of completion of the ratification procedure and direct all relevant agencies to undertake necessary implementation as per the Final National Interest Analysis.

CHAPTER VI IMPLEMENTATION OF TREATIES

51. Upon ratification, the treaty shall be the law of Kingdom of Bhutan and national implementation shall be carried out in accordance with its provisions.
52. Where national implementation cannot be carried out without domestic legislation, the concerned agency shall:
 - (1) Propose a national implementing legislation; or
 - (2) Propose amendment of relevant domestic legislation.
53. The Government shall propose for enactment of a domestic legislation before or during ratification of the treaty if national implementation cannot be carried out without domestic legislation.
54. Notwithstanding paragraph 53 of this Rules of Procedure, the concerned agency shall ensure fulfillment of any other obligations under the treaty.

CHAPTER VII MISCELLANEOUS

Amendment

55. The Lhengye Zhungtshog may amend this Rules of Procedure when deemed necessary.

Definitions

56. In this Rules of Procedure , unless the context otherwise requires,-
 - (1) “Agency” includes three branches of the Government;
 - (2) “Bilateral treaty” shall refer to an agreement executed between the Royal Government of Bhutan and another sovereign state or an international organization where the agreement is governed by international law;
 - (3) “Closed for signature” means that the interval between adoption and signature has passed. In this situation where the treaty usually is already in force, a state that

wishes to become a party to the treaty may not simply sign the treaty text any more but typically has to accede to the treaty.

- (4) “Concerned agency” shall mean any agency of the Government that is directly related to the subject matter of the treaty and responsible for initiation of treaty;
- (5) “Depositary” shall refer to the entity entrusted with the treaty. The depositary of a treaty may be one or more states, an international organization or the chief administrative officer of the organization. The depositary is determined by the negotiating States, either in the treaty itself or in some other manner.
- (6) “Legal instruments” shall refer to Treaties as defined in this Rules of Procedure and other instruments executed between the agency of the Kingdom of Bhutan and the agency of another State;
- (7) “International organizations” are associations of states that pursue common goals on the international level via organizations founded by these states;
- (8) “Multilateral treaty” shall refer to an agreement executed by the Royal Government of Bhutan with three or more sovereign states or international organization where the agreement is governed by international law;
- (9) “Open for signature” shall mean when states have negotiated a treaty they settle its form and content, the text has been adopted and states can sign the treaty.
- (10) “Stakeholder” shall refer to agencies of the Government, non-governmental entities and members of the public, which may be affected directly or indirectly by the proposed treaty; and
- (11) “Treaty” shall refer to international Conventions, Covenants, Treaties, Protocols and Agreements and such other written legal instruments concluded between Bhutan and other states or international organizations and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

Annexure I

Preliminary National Interest Analysis (NIA) template

Name of the treaty

Contents:

- (1) Subject matter;
- (2) Main obligation, if applicable;
- (3) Time consideration;
- (4) Ministerial responsibility;
- (5) Advantages and disadvantages of the treaty;
- (6) Tentative cost analysis of entering into the treaty;
- (7) Social, economic, cultural, environmental and political implications of the treaty;
- (8) Possible effect on domestic laws;
- (9) Any other associated instruments on the same subject; and
- (10) Report of the multi-stakeholder consultation.

Annexure II

Final National Interest Analysis (NIA) template

National Interest Analysis

With attachment on stakeholder consultation

**Name of the treaty action exactly as it appears in the final text,
with place and date**

FINAL NATIONAL INTEREST ANALYSIS

SUMMARY PAGE

(1 page limit)

Proposed treaty action

Explain briefly what treaty action is required by the provisions of the treaty, for example ratification, accession, acceptance, definitive signature, consent to be bound etc.

Indicate when the action is proposed to be undertaken (eg. before/after etc.)

Summary

This section explains both the purpose of the proposed treaty action and why it is in the national interest

BODY OF NIA

Explain the subject matter and why Bhutan should take the proposed treaty action

In addition to above, explain advantages and disadvantages of the treaty.

Bhutan's possible main obligations under the treaty

Explain clearly what Bhutan will be required by the treaty and do or refrain from doing. Elaborate on time consideration and ministerial responsibility; elaborate on text of reservations if any. Highlighted any associated instruments to the treaty.

Implementation

Explain the plan of action to fulfill the treaty obligations.

Describe clearly what will be, or has been, done to implement the obligations that will be imposed by the treaty on Bhutan. If the implementation of the treaty action requires changes to domestic laws or policy, how this would be taken care of. Explain clearly any social, economic, cultural, environmental and political implications of the treaty; explain its affect on domestic laws.

Explain if there is a need for implementing legislation either by way of amendment of existing laws or enactment of new legislation.

Costs

Must clearly state final cost implication for Bhutan to be compliant with the treaty action. It must include contributions to international organizations, cost of international or domestic DSA/TA, cost of establishing/administering any new domestic agency or financial implications to other agencies/ministries in the country.

Future treaty action

ATTACHMENT- FINAL STAKEHOLDER CONSULTATION

Note: This is an integral part of the NIA.

(Name of the treaty action exactly as it appears in the final text, with place and date)

FINAL CONSULTATION

Final consultation process be fully documented

- Who has been consulted and how were stakeholders informed of the treaty proposal
- At what stage they were consulted
- How were the consultations done
- What contributions were made, including support, concerns expressed, suggestions and criticisms
- How the feedback from consultations were incorporated into the text of the treaty
- Explicitly state whether the treaty action would impact citizen's rights or duties
- State explicitly whether the relevant committees of the National Assembly or the National Council has been consulted and state their views