

# THE STANDARDS BILL OF BHUTAN 2009

## CONTENTS

<b>Preamble</b> .....	1
<b>CHAPTER I</b> .....	2
<b>PRELIMINARY</b> .....	2
Short Title, Commencement and Extent .....	2
Repeal .....	2
<b>CHAPTER - II</b> .....	2
<b>BHUTAN STANDARDS BUREAU</b> .....	2
Establishment of the Bhutan Standards Bureau, appointment of Director and its members .....	2
<b>CHAPTER - III</b> .....	4
Powers and Functions of the Bureau .....	4
<b>CHAPTER- IV</b> .....	7
License .....	7
<b>CHAPTER – V</b> .....	8
<b>Finance, Accounts and Audit</b> .....	<b>8</b>
<b>Finance</b>	
<b>Accounts</b>	
<b>Audit</b>	
<b>CHAPTER VI</b>	
<b>Miscellaneous</b> .....	9
Information and Annual Report .....	9
Restriction on the use of Name, Trade Mark or a Mark .....	9
Use of Compulsory Standards for an Article or Process .....	10
Offence and Penalty.....	10
Jurisdiction of the Courts .....	11
Power to make Regulations .....	11
Rule of Construction .....	12
Amendment .....	12
Authoritative Text .....	12
Definitions .....	12

# **THE STANDARDS BILL OF BHUTAN 2009**

## **PREAMBLE**

WHEREAS, it is highly important to foster and promote standards and standardization activities as a means of advancing the national economy, benefiting the health, safety and welfare of the public, assisting and protecting consumers, protecting our natural environment, promoting industrial efficiency and development, facilitating domestic and international trade;

ANDWHEREAS, the Royal Government is desirous to promote the concept of “Brand Bhutan” as a mark of quality, purity and originality;

AND WHEREAS, Bhutan respects international standardization norms and practices, and had acceded to major international standardization bodies;

AND WHEREAS, there is a need for an umbrella institution to coordinate and oversee all standardization activities in the country and avoid duplication of works;

Parliament of the kingdom of Bhutan do hereby enact the Standards Act of the Kingdom of Bhutan 2009, at its \_\_\_\_\_ session of the first Parliament as follows:

**CHAPTER - I**  
**PRELIMINARY**

**Short Title, Commencement and Extent**

1. This Act shall;
  - (a) Be called The Standards Act of Bhutan 2009;
  - (b) Come into force on the \_\_\_\_\_ day of the \_\_\_\_\_ month of the Earth Female Ox Year of the Bhutanese Calendar corresponding to \_\_\_\_\_ day of the \_\_\_\_\_ month of 2009; and
  - (c) Extend to the whole of the Kingdom of Bhutan.

**Repeal**

2. This Act shall repeal all other laws, by-laws, rules, regulations or directives the provisions of which are inconsistent with this Act.

**CHAPTER - II**  
**THE BHUTAN STANDARDS BUREAU**

**Establishment of Bhutan Standards Bureau, Appointment of Director and its members**

3. There shall be a Bhutan Standards Bureau which shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name sue and be sued.
4. The Bureau shall have the mandate to:
  - (a) develop national standards and facilitate their implementation;
  - (b) establish and operate metrological referral and calibration laboratories
  - (c) establish and operate product testing infrastructure
  - (d) Carry out/operate product and management system certification schemes;
  - (e) permit, coordinate and facilitate accreditation of laboratories and certification bodies;

- (f) promote quality and standardization;
  - (g) oversee the implementation of the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT); and
  - (h) carry out such other mandate related to standardization and quality control including monitoring as may be assigned by the Royal government
5. The Bureau shall consist of the following members:
- (a) A Chairperson ex-officio, who shall be the Minister in-charge of the Ministry having administrative control of the Bureau;
  - (b) The Secretary in-charge of the Ministry of the Royal Government having administrative control of the Bureau, ex-officio;
  - (c) The Head of the Bureau, ex-officio, who shall be the Member Secretary of the Bureau; and
  - (d) not more than 15 members representing industry, scientific and research institutions, consumer interests and other interests appointed by the Minister who shall possess knowledge of standards or other matters likely to be of assistance to the Bureau in the performance of its functions under this Act.
6. The term of office and the service conditions of the members shall be such as may be prescribed in the rules and regulations.
7. The Minister shall, on the recommendation of the Royal Civil Service Commission, by public notice, appoint a person suitably qualified, scientifically and technically as the Head of the Bureau who shall be the Chief Executive Officer of the Bureau, subject to the general superintendence of the Bureau.
8. The terms and conditions of service of the Head of the Bureau shall be such as may be prescribed in the regulations.
9. The Head of the Bureau shall exercise and discharge such powers and duties of the Bureau as may be delegated to it by the Bureau.
10. The Bureau may appoint or hire on contract such officers and staff of the Bureau as the Bureau may deem necessary for the proper performance of the functions of the Bureau under this Act.
11. The terms and conditions of service of the officers and employees of the Bureau appointed under sub-section (8) shall be such as may be determined by the regulations.
12. The conditions of service, including remuneration, of any officer or staff appointed under sub-section (8) shall be determined by the regulations.

13. The Bureau shall have the power to exercise disciplinary control over the Head, officers and staff of the Bureau in accordance with the regulation made in this behalf.
14. The Bureau may delegate all or any of its powers relating to the appointment of officers or staff of the Bureau to its Head.

### **CHAPTER – III**

#### **POWERS AND FUNCTIONS OF THE BUREAU**

##### **Powers and Functions of the Bureau**

15. The Bureau shall exercise such powers and perform such functions as may be assigned to it by or under this Act and, in particular, such powers include the power to:
  - (a) frame policies and directives on standardization and conformity assessment for promotion of quality and international competitiveness of goods and services;
  - (b) establish, publish and promote in such manner as may be prescribed, the Bhutan Standards, Technical Specifications and Codes of Practices in relation to any article or process;
  - (c) constitute, as and when considered necessary, such number of technical committees of experts for the formulation of standards in respect of articles or processes;
  - (d) undertake testing and research for the formulation of Bhutan Standards in the interest of consumers and manufacturers;
  - (e) formulate policy for compulsory enforcements of Bhutan Standards;
  - (f) inspect and control the manufacturing plants, processes and quality control facilities of companies whose products and services are required to conform to Bhutan Standards;
  - (g) prohibit the import for sale in the kingdom of products not conforming to mandatory Bhutan Standards, except where the standards as per which the products were manufactured are higher than Bhutan Standards;
  - (h) carry out inspections at sites, shops, factories, go-downs or any such places to check the conformance of products and services to Bhutan Standards where ever such conformance is so required;
  - (i) specify a Standard Mark to be called the Bhutan Standards Certification Mark and oversee its operation and authorize inspection of any article or process, in relation to the

Standard Mark which is required to conform to Bhutan Standard by this Act or under any other law for article or process in Bhutan or intended to be brought into Bhutan from a place outside Bhutan as specified in the regulations;

- (j) control the use of Standards mark and distinctive marks operated by agencies in the country or out sourced to other country(ies);
- (k) Permit, coordinate and facilitate accreditation of laboratories and certification bodies in the country, and to foster cooperation with such facilities in other countries.
- (l) establish conformity assessment procedures, coordination of such measures and enter into mutual agreements with country(ies) and organizations outside Bhutan on this matter;
- (m) establish testing laboratories for quality control of articles and processes and to check their conformance to Bhutan Standards or any other standards;
- (n) establish and maintain metrological referral laboratory for providing calibration services for weights and measuring devices and for basic instruments/equipment used by testing laboratories in Bhutan, and carry out monitoring of weights and measures as may be prescribed;
- (o) grant, renew, suspend or cancel a license for the use of the Standard Mark subject to such conditions and on payment of such fees as may be determined by regulations;
- (p) make such inspection and take such samples of any material or substance as may be necessary to see whether any article or process in relation to which the Standard Mark has been used conforms to the Bhutan Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without a licence
- (q) represent Bhutan in International and Regional Standardization and Accreditation Bodies such as ISO, IEC ,SARSO and APLAC to formulate national view on issues affecting national interest;
- (r) oversee implementation of WTO-TBT provisions including operation of TBT National Enquiry Point;
- (s) recognize any institution in Bhutan or outside which is engaged in the standardization of any article or process and recognize standards prepared by them as Bhutan Standards, in such manner as may be prescribed ;
- (t) seek recognition of the Bureau and of the Bhutan Standards outside Bhutan on such terms and conditions as may be mutually agreed upon by the Bureau with any corresponding institution or organization in any country;
- (u) respect and recognize international and regional standards and other national standards which are based on international standards;

- (v) assist the Royal Government or any local Bureau or other public body or any other person in the preparation and framing of any specifications or codes of practice;
  - (w) assist any manufacturer or association of manufacturers or consumers engaged in standardization and in the improvement of the quality of any article or process or in the implementation of any quality control activities;
  - (x) provide for the testing at the request and on behalf of the Royal Government, of locally manufactured and imported commodities with a view to determining whether such commodities comply with the provisions of this Act or any other law dealing with standards of quality or description;
  - (y) appoint agents in Bhutan or outside Bhutan for the operation of Standards Mark Scheme in other countries, inspection and testing of articles and such other purposes as may be prescribed;
  - (z) establish branches, offices or agencies in Bhutan or outside;
  - (aa) provide a library of books and other materials on matters relating to standards conformity assessment and metrology;
  - (bb) disseminate information and create awareness on standards, metrology, testing and quality through education programs and training courses; and
  - (cc) perform such other related functions as may be prescribed by the Royal Government.
16. In the exercise of its functions under this section, the Bureau shall maintain, so far as practicable, a system of close consultation and cooperation with any organization/agency or a body established by the Royal Government having regulatory functions relating to industrial or commercial goods and services generally.
  17. The Bureau shall perform its functions under this section in accordance with, and subject to, such rules and regulations as may be made by the Royal Government.
  18. The Bureau may, with the prior approval of the Royal Government, by a notification, constitute an Executive Committee to assist and carry out the day-to-day functions on behalf of the Bureau which shall consist of the following members, namely:
    - (a) A Chairperson, ex officio, who shall be the Secretary in-charge of the Ministry having administrative control of the Bureau;
    - (b) Head of the Bureau, who shall be its ex-officio Member Secretary; and

- (c) not more than 10 members representing industry, scientific and research institutions, consumer interests and other interests appointed by the Minister who shall possess knowledge of standards or other matters likely to be of assistance to the Bureau in the performance of its functions under this Act.
19. The Executive Committee shall perform, exercise and discharge such functions, powers and duties of the Bureau as may be delegated to it by the Bureau.
20. Subject to any regulations made in this behalf, the Bureau may, from time to time as and when it considers necessary, constitute various advisory Committee(s) for the efficient discharge of its functions.

## **CHAPTER IV**

### **LICENCE**

#### **License**

21. The Bureau may, by order, grant, renew, suspend or cancel a license in such manner as may be determined by regulations.
22. The grant or renewal of the license under sub-section (1) shall be subject to such conditions and on payment of such fees as may be determined by regulations.
23. Any person aggrieved by an order made under section 5 may prefer an appeal to the Appellate Board comprising of such members representing industry, scientific and research institutions, consumer interests, law and other interests, appointed by the Minister who shall possess knowledge of standards or other matters likely to be of assistance, within such period as may be prescribed in the regulations.
24. No appeal shall be admitted if it is preferred after the expiry of the period prescribed thereof:
- Provided that an appeal may be admitted after the expiry of the period prescribed thereof if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the prescribed period.
25. Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

26. The procedure for disposing of an appeal shall be such as may be prescribed in the regulations:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

## **CHAPTER - V**

### **FINANCE, ACCOUNTS AND AUDIT**

#### **Finance**

27. The funds of the Bureau shall consist of all fees, charges and moneys received or recovered under the provisions of this Act or the regulations by or on behalf of the Bureau and any moneys, capital budget, grants or loans provided for by the Royal Government.
28. The Head may, out of the funds of the Bureau, and with the consent of the Minister authorize the:
- (a) payment of all such sums of moneys as may be necessary to enable the Bureau to discharge its functions under this Act and to give effect thereto.
  - (b) payment for meeting the expenses on objects and for purposes authorized by this Act.

#### **Accounts**

29. The Bureau shall maintain proper books of account and other books and records in relation to the funds, and to all the undertakings, activities and property of the Bureau and shall, within such period after the end of each financial year as the Minister shall specify, prepare and submit;
- (a) a balance sheet showing in detail the assets and liabilities of the Bureau as at the end of that year;
  - (b) such other statements of account as may be necessary to indicate the financial status of the Bureau as at the end of that year.

#### **Audit**

30. The accounts of the Bureau shall be examined, audited and reported upon annually in accordance with the Audit Act of Bhutan in force.

## CHAPTER - VI

### MISCELLANEOUS

#### **Information and Annual Report**

31. The Bureau shall, submit to the Minister all such information as he may from time to time require in respect of the activities and financial position of the Bureau.
32. The Bureau shall as soon as practicable after the end of each financial year submit to the Minister an annual report on its activities including a balance sheet and a statement of income and expenditure audited in accordance with Audit Act of Bhutan in force , and such other particulars as the Minister may request, and such report shall be presented by the Minister before the Parliament.
33. The Annual report shall be published by the Bureau in such manner as it may deem necessary.

#### **Restriction on the use of Name, Trade Mark or a Mark**

34. A person shall not use without the approval of the Bureau, except in such cases and under such conditions as may be prescribed:
  - (a) any name which nearly resembles the name of the Bureau so as to deceive or likely to deceive the public or which contains the expression "Bhutan Standard" or any abbreviation thereof; or
  - (b) any mark or trade mark in relation to any article or process containing the expressions "Bhutan Standard" or "Bhutan Standard Specification" or any abbreviation of such expressions.
35. A person shall not use, in relation to any article or process, or in the title of any patent, or in any trade mark or design the Standard Mark or any colourable imitation thereof, except under a license.
36. A person shall not, use in relation to any article or process the Standard Mark or any colourable imitation thereof unless such article or process conforms to the Bhutan Standard, notwithstanding that, a license is granted.
37. Notwithstanding anything contained in any law for the time being in force, no registering Bureau shall:
  - (a) register any company, firm or other body of persons which bears any name or mark; or
  - (b) register a trade mark or design which bears any name or mark; or

- (c) grant a patent, in respect of an invention, which bears a title containing any name or mark

If the use of such name or mark is in contravention of sub- section (1), (2) and (3) of this section.

- 38. If any question arises before a registering Bureau whether the use of any name or mark is in contravention of section 10, the registering Bureau may refer the question to the Royal Government whose decision thereon shall be final.

### **Use of Compulsory Standards for an Article or Process**

- 39 The Royal Government, after consulting the Bureau, if it is of the opinion that it is necessary or expedient in the interest of the public, by an order publish in the newspaper;
  - (a) a notification of any article or process of any industry which shall conform to a Bhutan Standard; and
  - (b) a direction on the use of the Standard Mark under a license as compulsory on such article or process.
- 40. The fact that any commodity complies or is alleged to comply with a standard specification or a compulsory standard specification or has been or is alleged to have been manufactured, produced, processed or treated in accordance with any such specification, or that a distinctive mark or standardization mark is used in connection with any commodity, shall not give rise to any claim against the Royal Government, or the Bureau, or any member or employee thereof.

### **Offence and Penalty**

- 41. A person who is or has been engaged in the administration of this Act, discloses, except for the purpose of exercising his functions or when required to do so by a court or under any law, any information acquired by him in the exercise or purported exercise of his functions under this Act to any other person shall be guilty of an offence punishable with imprisonment for a term which may extend to six months or with a fine which may extend to seven months of daily national minimum wage rate .

Notwithstanding section 12 (1), the disclosure of any information for purposes connected with the administration of this Act shall not prejudice any application made subsequently for registration of a patent under the Industrial Property Act 2001.

- 42. A person who willfully contravenes section 10 shall be guilty of an offence punishable with imprisonment for a term which may extend to one year or with a fine which may extend to fourteen months of the daily minimum national wage rate.

43. Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

44. Notwithstanding anything contained in subsection (3), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **Jurisdiction of the courts**

45. No court subordinate to that of District Court specially empowered in this behalf shall try any offence punishable under this Act.
46. Any court trying a contravention under section 10 may direct that any property in respect of which the contravention has taken place shall be forfeited to the Bureau.
47. A court shall not take cognizance of any offence punishable under this Act except on a complaint made by or under the Bureau or by any officer empowered in this behalf by the Royal Government or the Bureau, or any consumer or any association recognized in this behalf by the Royal Government.

### **Power to make regulations**

48. The Minister, after consultation with the Bureau may make regulations for carrying out the provisions and purposes of this Act. Without prejudice to the generality of this section, the regulation may include, but not limited to, the following:
- (a) make provision for all matters in respect of which fee shall be payable under this Act or the regulation;
  - (b) prescribe the amount of any such fees and the persons who shall be liable for payment thereof;

- (c) prescribe forms to be used under this Act and the regulations;
- (d) provide for matters connected with appeals under this Act;
- (e) make provisions for licensing and appeals in relation to the use of Standard Mark
- (f) make provision for requiring persons to supply information relevant to the provisions of this Act and the regulations;

### **Rule of Construction**

49. In this Act, unless the context indicates otherwise, the singular shall include the plural and the masculine shall include the feminine.

### **Amendment**

50. The amendment of this Act by way of addition, variation or repeal shall be effected by a simple majority of respective Houses or vote of no less than two thirds of the total members of Parliament present and voting on a motion submitted by one third of the members of either House, provided that the amendment does not undermine the functions and effectiveness of the **Bhutan Standards Bureau**.

### **Authoritative Text**

51. The Dzongkha text shall be the authoritative text, if there exist any difference in meaning between the Dzongkha and English text.

### **Definitions**

52. In this Act, unless the context otherwise requires:

- (a) **“Accreditation”** means third-party attestation relating to a conformity assessment body for conveying formal demonstration of its competence to carry out specific conformity assessment tasks.
- (b) **“Accreditation body/board”** means an authoritative body/board that performs accreditation.
- (c) **“Article”** means (as respects standardization and marking) any substance, artificial or natural, or partly artificial or partly natural, whether raw or partly or wholly processed or manufactured.
- (d) **“Bureau”** means the Bhutan Standards Bureau established under Section 3 of this Act.
- (e) **“Bhutan Standard”** means the standard (including any tentative or provisional standard) established and published by the Bureau, in relation to any article or process indicative of the quality and specification of such article or process and includes any standard recognized by the Bureau.

- (f) **“Certification”** means third-party attestation related to product or article, processes, systems or persons and is applicable to all objects of conformity assessment except for conformity assessment bodies to which accreditation is applicable.
- (g) **“Code of Practice”** means a set of rules relating to the methods to be applied or the procedure to be adopted in connection with the construction, installation, testing, operation or use of any article, apparatus, instrument, device or process.
- (h) **“Compulsory Standard Specification”** means a specification which has been declared to be a compulsory standard specification under section 8 of this Act;
- (i) **“Company”** means a body incorporated under the Companies Act of the Kingdom of Bhutan 2000.
- (j) **“Conformity assessment”** is a demonstration that specified requirements relating to an article, process or system are fulfilled.
- (k) **“Object of assessment” or “object”** means any particular material, installation, process, system, person or body to which conformity assessment is applied.
- (l) **“Consumer”** means a consumer of any good or service/article or process.
- (m) **“Head”** means the Head of the Bureau appointed under section 3(5) of this Act not below the rank of a Director General or Joint Secretary.
- (n) **“Executive Committee”** means the Executive Committee constituted under Section 4(4) of this Act.
- (o) **“Inspection”** means examination of an article design, article, process or installation and determination of its conformity with specific requirements or, on the basis of professional judgment, with general requirements.
- (p) **“License”** means a license granted to use the Bhutan Standards Certification Mark in relation to any article or process or management system which conforms to the Bhutan Standard.
- (q) **“Minister”** means the Minister for the time being responsible for matters relating to Bhutan Standards Bureau.
- (r) **“Person”** means any individual, partnership, company, un-incorporated organization, government, governmental agency or any other entity recognized by law.

- (s) **“Process”** includes any practice, treatment and mode of manufacture of any article.
- (t) **“Registering Authority”** means any Bureau/ Authority competent under any law for the time being in force to register any company, firm or other body of persons, or any trade mark or design, or to grant a patent.
- (u) **“Regulations”** means regulations made by the Bureau under this Act.
- (v) **“Sampling”** means a provision of a sample of the object of conformity assessment, according to a procedure.
- (w) **“Sell”** includes barter and exchange, and exposure or offer for sale, and export for or in pursuance of sale, and have in possession for any purpose of sale, export, trade or, manufacture.
- (x) **“Specification”** means a description of any commodity by reference to its nature, quality, strength, purity; composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics, or to any substance or material of or with which, or the manner in which, any commodity may be manufactured, produced, processed or treated.
- (y) **“Standard”** means a document, established by consensus and approved by the Bureau that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context.
- (z) **“Standardization”** means an activity of establishing, with regard to actual or potential problems, provisions for common and repeated use, aimed at the achievement of the optimum degree of order in a given context.
- (aa) **“Standard Mark”** means Bhutan Standards Certification Mark specified by the Bureau to represent a particular Bhutan Standard under section 4(1)(f) of this Act.
- (bb) **“Testing”** means determination of one or more characteristics of an object of conformity assessment, according to a procedure and it applies to materials, articles or processes.
- (cc) **“Third-party conformity assessment activity”** means conformity assessment activity that is performed by a person or body that is independent of the person or organization that provides the object and of user interests in that object