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སྤྱི་ལོ་ ༢༠༡༠ ཅན་མ།

(དཔྱད་ཡིག།)

**FINANCIAL SERVICES ACT (2010)**

**(DRAFT)**

# FINANCIAL SERVICES ACT

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## **FINANCIAL SERVICES ACT**

An act to make provision for the regulation of financial services, for the licensing of the providers of financial services, and for connected purposes.

### **PART I - PRELIMINARY**

#### **1. Short Title, Commencement and Extent**

(1) This Act shall be called the Financial Services Act of the Kingdom of Bhutan 200\_ and may be cited as the FSA 200\_.

(2) This Act shall come into force with effect from [Bhutanese calendar date], corresponding to [international calendar date].

(3) This Act shall extend to the whole of the Kingdom of Bhutan.

(4) The Financial Institutions Act 1992 is hereby repealed. The Prudential Regulations 2002 and other similar regulations shall continue to be applicable under the Financial Services Act 200\_.

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

(6) In any instance of a difference in meaning between the dzongkha and the English text, each text shall be regarded as equally authoritative and courts shall reconcile the two texts.

#### **2. Definitions as used in this Act**

In this Act the following terms shall have the meanings indicated unless the context clearly indicates otherwise:

**Adverse action** means, with respect to action of the Royal Monetary Authority of Bhutan, refusal, restriction or conditioning of a license or permission required by this Act or the regulations under it, including a failure to decide such a matter within a legal time limit, refusal or revocation or partial revocation of an exemption (but not failure to impose a rule or adopt a regulation to provide an exemption), imposing a fine, action under section 41 generally (but not under section 93), foreclosure upon any deposit or effectuation of any other security device required as a condition of a license, or any other action specifically stated herein to be governed by the provisions relating to adverse action.

**Affiliate** means, except as more specifically provided herein, a company that is under common control with another company by virtue of common ownership, direct or indirect.

**Articles** mean articles of incorporation or comparable governing documents.

**Audit committee** means directors of a company acting as a committee of the whole board of directors (subject to such requirements as the Royal Monetary Authority may by regulation adopt as to expertise, independence of judgment and number of members or meetings) responsible for supervising audit-related matters and reports and such other matters as provided in this Act or the regulations under it.

**Auditor** means an auditor who is registered with the panel of auditors of the Royal Audit Authority, who is not an employee of the person audited and satisfies such other criteria of independence, integrity, diligence and skill as required by applicable law or regulation or set forth in regulations adopted by the Royal Monetary Authority with respect to audits of persons licensed under this Act or audits prescribed in the listing standards of a securities exchange.

**Authority** means the Royal Monetary Authority established by the Royal Monetary Authority of Bhutan Act, [    ].

**Bank** means a company licensed to do banking business under this Act.

**Banking business** means the business of receiving deposits of money or other repayable funds from the public for the purpose of making loans or investments for the account of the entity receiving them but shall not include the business of an investment fund licensed under this Act.

**Board** means the Board of the Authority.

**Branch** means an office of a company that is operating in a location other than company headquarters but is not a legal person separate from the company.

**Business**, in indicating a type of activity requiring licensing, means activity for compensation conducted on more than a sporadic or episodic basis and not limited to intimate associates.

**Business day or working day** means a day on which enterprises normally conduct business in the Kingdom of Bhutan, including, with respect to a securities exchange, days that are not necessarily **trading days** on which securities are traded.

**Companies Act** means the Companies Act of the Kingdom of Bhutan 2000 as it may be modified from time to time; reference to specific section of that Act in this Act shall be deemed to take account of any later re-numbering.

**Composite company** means an insurance/reinsurance company doing both life and general insurance businesses.

**Confidential** means, with respect to information, information of a type not commonly disclosed for reasons of individual safety or privacy or of commercial competitive or similar disadvantage, but not evidence of crime furnished to the appropriate authorities.

**Control person** means a director, shadow director, manager, significant owner; it also includes any person, or group of persons acting cooperatively, whose direct or indirect equity holdings in, or control over votes in the general meeting of, a company or its affiliate give it substantial influence over the conduct of the company's business.

**Customer** means a consumer or in the appropriate case potential consumer of the financial services regulated under this Act or an insurance policy beneficiary. In section 40(4) the meaning is the more general meaning of common usage.

**Deposit** means with respect to the banking business and section 61 of this Act a sum of money delivered for the purpose of safekeeping, possibly earning interest or similar return, repayable on demand or at a future time.

**Director** means any member of a board of directors or equivalent corporate body.

**Document** means information recorded in any form, provided that where documents are required to be furnished under this Act and information is recorded otherwise than in legible form, the information must be rendered legibly if possible.

**Escrow account** means a bank account where the bank holds assets as a third party to secure some right or obligation.

**Executive Committee** means the Executive Committee of the Authority

**Financial institution** means a bank; an insurer; a reinsurer; a stock exchange or another entity licensed under this Act, to the extent designated a financial institution under regulations adopted by the Authority in light of the licensee's scale of operation and the exposure of its customers to its insolvency. A foreign financial institution means an enterprise similar to a financial institution and licensed in its home country.

**Financial services** means banking business, insurance business, securities business and all other services designated in a regulation adopted by the Authority as a financial service, provided that such services shall be predominantly financial in character and shall deal with the public as customers or as sources of funding or shall be designated by the Authority as of special significance to the stability of the nation's financial system.

**Financial statements** means, unless otherwise indicated by Authority regulation, a balance sheet, profit and loss statement or account and cash-flow statement together with required notes.

**Fraud** has with respect to securities the meanings given in Part XVIII and elsewhere the meaning generally understood under the laws of Bhutan.

**General insurance** business means business relating to non-life insurance business including, without limitation, accident and health, fire, marine and transport, aviation, motor, liability or miscellaneous insurance business.

**Immediate family members** means the spouse, child, adopted child, step-child, brother, sister and parent.

**Independently audited** means audited by an Auditor as defined in this Act.

**Independent directors** means directors who apart from receiving director's remuneration do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the judgement of the board may affect their independence of judgement.

**Insurance agent** means a person licensed under Section 75 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance.

**Insurance broker** means a person licensed under Section 74 who, on the basis of the interests of the insured, negotiates an insurance contract or provides related services and collects a commission or remuneration and shall include a reinsurance broker.

**Insurance broking business** means the business of soliciting, negotiating or procuring a policy with an insurer, or the renewal, or continuance of the policy, for a policy owner other than himself and includes reinsurance broking for an insurer.

**Insurance business** means the business of providing financial protection against risk of loss or liability by pooling the payments of insured persons to cover the claims arising from the happening of events insured against and shall further include:

(i) the business of an insurer as commonly understood, that is the business of concluding direct insurance and reinsurance contracts, the settling of claims arising from such contracts and such similar business as may be prescribed in regulations adopted by the Authority, including, to the extent so provided, the business of providing fidelity, performance, administration or similar bonds or contracts of guarantee in return for payment of premiums; and

(ii) such other businesses similar to or related to the foregoing as the Authority may by regulation prescribe to be insurance business for the purposes of this Act.

**Insurer** means, apart from its use in the preceding definition, an insurer licensed under this Act.

**Licensee** means any person licensed by the Authority.

**Life insurance**, also known as long-term insurance, means the business of effecting contracts of insurance upon a human life, including any contract whereby the payment of money is assured on death or the happening of any contingency dependent upon a human life, and any contract which is subject to payment of premiums for a term dependent on human life and is deemed to include (i) the granting of annuities upon a human life; (ii) the granting of health benefits where a person becomes incapacitated for a period of not less than five years, until retirement or without limit of time; (iii) the granting of superannuation allowances and annuities payable out of a fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons.

**Manager** means a chief executive or person who, under the immediate authority of a director, directors or chief executive of a company,

(i) exercises managerial functions; or  
(ii) is responsible for maintaining accounts or other records of the licensee;  
and such other persons exercising managerial functions as may be defined in regulations adopted by the Authority.

**Manipulation** with respect to securities means the entering of bids, offers or orders, the effectuation or reporting of sales, the circulation of misleading information and similar activity intended to convey a false impression of demand for, prices available for or trading activity in a security but does not include withholding or gradual introduction of bids, offers or orders to avoid disadvantageous market impacts.

**Money-laundering** has the meaning given in the Penal Code of Bhutan.

**Newspaper** means any kind of media or a widely circulated newspaper or similar medium selected by the Authority in order to assure adequate public notice of official actions or proposals.

**Other business** means any kind of business that conflicts or competes with the financial institution's interests.

**Person** means a natural or a juridical person.

**Public companies** are as defined in the Companies Act of the Kingdom of Bhutan and which are listed with the stock exchange in Bhutan.

**Related-party transaction** means a transaction between a company (or a company it controls) and a related party or a person whose relationship to a related party is such as to provide reasonable suspicion that the related party in exercising his influence over the transaction would place such person's interests ahead of those of the company. Related parties include, without limitation, any person with the ability to control or exercise significant influence over the company in making business decisions and in any cases an employee with authority or substantial influence over the decision to enter the transaction or a control person. The Authority may adopt regulations further specifying the application of this definition having due regard to its purposes and to applicable accounting principles relevant to related-party transactions.

**Reporting Entity** means a licensee or other financial institutions or person designated by the Authority for the purposes of Sub-section 40 (4).

**Representative office** means establishment forming a legally dependent part of a foreign financial institution where activities are limited to the provision of information and liaison functions, and where no financial service business is conducted with the public.

**Securities** means:

- (i) equity and other similar instruments;
- (ii) bonds, debentures and other similar debt instruments;
- (iii) units of interest in an investment fund;
- (iv) financial futures contracts and similar instruments traded on a securities exchange or otherwise to the extent provided in regulations adopted by the Authority;
- (v) hybrids of or options to acquire or dispose of any of the securities listed above and options on financial indices; and
- (vi) other instruments and contracts as defined by the Authority offered to raise funds from and provide a return to a body of investors not generally active in the management of the issuer or derivatives of these.

**Securities business** means the business of conducting or arranging transactions involving securities, giving advice relating to or managing investments in securities or safekeeping of securities, including acting as a securities broker, an investment fund, an investment fund depositary, an investment advisor, a securities depository, a securities exchange or other organised marketplace for securities, a clearing and settlement institution for securities, or providing such services related to the foregoing as the Authority may by regulation define.

**Shadow Director** means a person in accordance with whose directions or instructions the directors of a company are accustomed to act.

**Significant owner** of a company means a person who either acting alone or through or in concert with one or more other persons represents 10 percent or more of the capital or the voting rights at the general meeting of the company or undertaking or exercise control over the management of the company or undertaking, as determined by the Authority.

**Solvency margin** means the amount of financial reserves an insurer must hold at all times in order to cover its known and potential liabilities, as calculated according to regulations adopted by the Authority.

**Subsidiary** is as defined in the Companies Act of the Kingdom of Bhutan.

**Terrorism** means terrorism as defined in the Penal Code of Bhutan, except that (and without prejudice to interpretation of that Code) as used in this Act terrorism shall not be limited to acts against Bhutan.

## **PART II - ROYAL MONETARY AUTHORITY**

### **3. The Authority's objectives under this Act**

The objectives of the Authority in exercising the powers provided under this Act shall be to promote:

- (a) the stability and soundness of the financial system in Bhutan;
- (b) elimination or control of conflicts of interest in financial services businesses that may be detrimental to the legitimate interests of customers;
- (c) competence in the providing of financial services;
- (d) the maintenance of adequate financial resources and operational controls by persons licensed under this Act in order to help assure performance of obligations to customers and compliance with the Act and the regulations issued under it;
- (e) customer understanding of financial products and services;
- (f) honesty in financial services businesses;
- (g) the avoidance of unwarranted burdens on competition in financial services businesses;
- (h) diligent, loyal and honest service by managers and directors of public companies to the interests of their shareholders;
- (i) the prevention of money-laundering, financing of terrorism and criminal uses of financial services businesses; and
- (j) in general to promote the maintenance of efficient, competitive, fair, safe and stable markets for financial services and securities to the benefit of and protecting the legitimate interests of customers and investors in Bhutan.

### **4. Exercise of functions and powers**

(1) The functions and powers conferred on the Authority by this Act shall be exercised by the Executive Committee except where this Act or the Board shall provide otherwise.

(2) The adoption of regulations under this Act shall be the function of the Board.

(3) The Executive Committee may delegate the exercise of those functions and powers which it is entitled by this Act to exercise (other than the granting and revocation of licence under this Act, the suspension of trading under section 93, the determination of a person's fitness and properness as required by this Act or such other functions expressly reserved to the Executive Committee) to such officers of the Authority as it deems appropriate.

(4) Such delegation of functions under subsection (3) shall be determined by the Executive Committee in consultation with the Board.

## **5. Exemption**

The Authority is exempted from the need to obtain a license under any part of this Act.

## **6. Immunity and indemnification**

(1) The Authority, its directors, officers and employees shall not be liable to any action in damages for anything done or omitted to be done in the intended exercise of any power or performance of any duty conferred or imposed by or under this Act or regulations made under it, unless the act or omission is shown to have been in bad faith.

(2) The Authority shall indemnify and keep indemnified its directors, officers and employees against any legal costs they incur in defending legal actions brought against them for anything done or omitted to be done in the intended exercise of any power or performance of any duty conferred or imposed by or under this Act or regulations made under it, unless the act or omission is shown to have been in bad faith or caused by gross negligence.

## **PART III - LICENCES**

### **7. Prohibitions**

(1) No person shall offer financial services as a business without obtaining the appropriate license under this Act or the regulations under it; nor shall any individual fulfill a function on behalf of a financial services business without the licence or registration, if any, required by this Act or the regulations under it. To the extent consistent with justice, a court may decline to enforce against a customer financial services contracts made in violation of the licensing requirements of this Act.

(2) A licence granted under this Act shall specify the type of financial service or services that the licensee is permitted to undertake, and the licensee shall engage in no other financial services business and, where this Act or the license so specifies, no other business. Licensees may apply under this Act for additional or expanded licenses, and persons subject to registration may also seek additional or expanded functions consistent with this Act and the regulations under it. Licensees permitted to engage in more than one business may be required by regulation or as a condition of the license to take prescribed measures for financially or organizationally separating a licensed activity from other activities so as to facilitate effective supervision and compliance with this Act and the regulations there under.

(3) Only a public limited company, listed with the stock exchange in Bhutan, shall be licensed as a financial institution.

(4) Any person who knowingly engages without a license or registration required under this Act in activity for which such is required, commits an offence and is liable on conviction to a fine not exceeding Ngultrum one million or imprisonment or both.

### **8. Exemptions**

(1) Despite the prohibition in section 7, the Authority may determine that the activities conducted by a person are of such limited scope, or that there are circumstances which ensure that the public are subject to an equivalent degree of protection as if the person were subject to regulation and supervision under this Act, so as not to warrant that person being required to obtain a license or registration under this Act. Exemptions granted under this Act may be granted also

under specific regulations adopted by the Authority and shall in any case be subject to public consultation under Part XIII.

(2) In the event that the Authority makes a determination under subsection (1) to exempt a person from the need to obtain a license or registration under this Act, that person shall be subjected to supervision by the Authority under the powers conferred under Part VIII as if that person were a person licensed under this Act, or the exemption may be made conditional upon specified partial or limited compliance with the Act or the regulations under it.

## **9. Application for a license**

(1) The Authority shall by regulation require applicants for a license to conduct financial services to provide as part of the application such information as the Authority shall specify as necessary to determine whether the applicant meets the standards of Section 10, including but not limited to:

- (a) an authenticated copy of the instrument under which the applicant company is formed, together with the article of Incorporation or bylaws, if any;
- (b) the amounts of the authorized and subscribed capital of the applicant, including the amounts that have been paid in;
- (c) information on control persons to assess their qualifications and integrity;
- (d) information showing the financial situation of the applicant (such as copies of audited financial statements);

- (e) a business plan setting out the business objectives and types of activities envisaged for the proposed financial institution; and
- (f) a description of the risk management processes and internal control systems.

(2) At any time after receiving an application and before determining it, the Authority may require the applicant to provide additional verification or clarifying information.

## **10. Grant of a license**

(1) The Authority, in light of such implementing regulations as the Authority has issued, shall grant a licence to an applicant if the Authority amongst others is satisfied that:

- (a) the applicant has adequate capital funds and other financial resources to satisfy all the regulations applicable to capital adequacy;
- (b) the applicant has or will have paid-up share capital amounting to not less than the amount prescribed by regulation for the activity it is licensed to perform;
- (c) each control person, auditor, person to fulfil a function requiring an individual licence or registration and, in the case of an insurer, the actuary, of the applicant is fit and proper, as defined in Part IV of this Act and as may be further defined by regulation, to hold the position that he holds or is to hold and has or will have any individual licence or registration required;
- (d) the managerial capacity of the applicant is adequate to conduct the proposed operations;

(e) 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;

(f) the applicant will conduct its business in a sound and prudent manner so as not to jeopardise performance of financial obligations;

(g) the applicant will maintain adequate accounting and other records of its business with adequate systems of control; and

(h) a proposed financial institution will become economically sustainable in a reasonable period of time.

The Authority may modify these criteria as necessary to take account of applicants who are individuals.

(2) Licensing requirements stated in this Act for specific activities are in addition to the standards of this section.

### **11. Time limit for processing applications**

(1) Within six months from the date of receipt of a complete application, the application shall be approved or denied by the Authority.

(2). If the Authority has neither denied nor approved an application referred to in Section 11(1) within six months of the date of its receipt, the application shall be deemed to be refused.

### **12. Refusal of application**

The Authority shall refuse an application for a license if it cannot reach the conclusion in section 10, or it may restrict or condition the license in such a way as to resolve such a problem.

### **13. Nature of license**

(1) A license granted by the Authority under this Act is personal to the applicant and non transferable.

(2) The licensee is required, as a condition of its license, forthwith, unless otherwise provided in regulations of the Authority, to give written notice to the Authority of any material change in any matter in respect of which it was required to supply information to the Authority in the course of its application for a license under this Act.

(3) A license may be terminated by request of the licensee provided that the Authority approves the request, which it may do so subject to conditions assuring that the licensee fulfills obligations undertaken pursuant to the license or to minimize inconvenience to customers in the course of the licensee's withdrawal from the licensed activity.

### **14. License fees**

The Authority may by regulation impose such application or licensing fees or periodic license fees payable to it as are reasonably calculated to defray the costs of administering this Act, mindful of the need to impose no unwarranted burdens on competition and of the scale or likely scale of operations of the persons upon whom such fee is imposed.

## **PART IV - FITNESS AND PROPERNESS**

### **15. Control persons and others**

(1) Every person who is, or is to be, a control person, auditor or actuary of a licensee, as well as an individual subject to a license or registration requirement, must be a fit and proper person to hold the particular position or status that he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position or status, regard shall be had to the person's honesty, respect for law, competence and qualifications for the position, and any conflict of interest potentially detrimental to customers that might arise from his holding that position. Where the person is not an individual, the fit and proper character of its control persons shall also be considered.

(3) Without limiting the generality of the foregoing provisions, regard may be had to the person's previous conduct, including any evidence that he has been:

(a) convicted of an offence involving fraud, dishonesty or violence;

(b) associated with any bankruptcy or financial loss due to his dishonesty, incompetence or malpractice in financial services or the management of companies;

(c) engaged in any business practices appearing to the Authority to be deceitful or oppressive whether unlawful or not;

(d) removed or suspended by an order of a regulatory or supervisory authority from serving as a director, chief executive officer or other officers in any financial institution or corporate body in Bhutan and abroad.

(4) These requirements are in addition to any specified for directors under the Companies Act; they may be amplified and detailed by regulations and guidelines issued by the Authority, including but not limited to requirements for written examinations or other tests of competence

## **16. Chief Executive Officer**

- (1) Every licensed institution shall appoint a chief executive officer who shall be-
  - (a) a natural person; and
  - (b) resident in Bhutan during the period of his appointment.
- (2) A chief executive officer of a licensed financial institution shall be in the whole-time employment of such financial institution and shall hold office for such period, not exceeding five years at a time, and shall be eligible for reappointment for one more consecutive term.
- (3) No CEO of a licensed financial institution is permitted to carry out any other business.

## **PART V– OWNERSHIP AND CONTROL OF FINANCIAL INSTITUTIONS; CORPORATE GOVERNANCE**

### **17. Control over management**

- (1) No licensee, and no controller of a licensee, shall appoint a person as director or chief executive officer except in accordance with the criteria set out in Part IV. It shall thereafter notify the Authority. The Authority shall have the right to annul any appointments which is not in line with the criteria set out.
- (2) Where the Authority is satisfied that a financial institution has violated the provisions of this Act, by violating repeatedly the provisions of the Prudential Regulations and other directives of the Authority, as a result of which the affairs of the financial institution is being conducted in a manner detrimental to the interest of the stakeholders, the Authority may, by notifying the requirement of the replacement of any chairman, director, chief executive officer or other officer or employee of the licensed financial institution.

(3) No order under Section 17(2) shall be made unless the chairman, director or chief executive officer or other employees concerned has been given a reasonable opportunity of making a representation to the Authority against the proposed order.

Provided that if in the opinion of the Authority, any delay would be detrimental to the interest of the financial institution or its stakeholders, the Authority may, at the time of giving the opportunity aforesaid or at any time thereafter, by direct order, that pending the consideration of the representation aforesaid, any chairman or, as the case may be director or chief executive officer or other officer or employee, shall not, with effect from the date of such order:

- (i) act as such chairman or director or chief executive officer or other officer or employee of the financial institution;
- (ii) in any way, whether directly or indirectly be concerned with, or take part in the management of the financial institution.

(4) Notwithstanding anything contained in any law or in any contract or any other such documents, on the replacement of person under this part that person shall not be entitled to claim any compensation the loss or termination of office.

(5) Where an order under subsection (2) has been made, the Authority's Board, by order in writing, appoint suitable person in place of the chairman or director or chief executive officer or other officer or employee who has been removed from his office under that sub-section, with effect from such date as may be specified in the order. Such person shall, hold office for the interim period not exceeding five years at a time as the Authority may specify.

(6) Any appointment or replacement of a director, chief executive officer or other officer or employee in pursuance of Section 17 shall have effect notwithstanding anything to the contrary contained in the Companies Act , or any other law for the time being in force or in any contract or in any other instruments.

### **18. Notice of intent to become significant owner**

(1) A person intending to become a significant owner of a financial institution shall notify the Authority and provide such information or documentation relevant to his status as the Authority may require to be satisfied that the person is a “fit and proper”.

(2) No person shall become a significant owner of a financial institution or increase his stake in the financial institution beyond the maximum specified by the Authority pursuant to subsection (3) unless:

(a) he has first notified the Authority in writing of his intention; and

(b) the Authority has notified him in writing that there is no objection to his becoming a significant owner or increasing his stake.

(3) The Authority, when notifying a person under subsection (2)(b) that there is no objection to his becoming a significant owner of or increasing his stake in the financial institution may specify a maximum stake that the person is permitted to acquire, stating its legal and factual grounds for this restriction.

(4) The Authority shall within 30 days of receiving notice under subsection (1) notify the person that it has no objection or that it does object to his becoming a significant owner of or increasing his stake in the licensee, in the case of objection stating the legal and factual grounds for objection. Where an objection has been notified, the question shall be determined subject to Parts IX and X not more than 21 days later, unless the person seeking to become a significant owner agrees to a later time.

(5) Grounds stated under subsections (3) and (4) may include failure to cooperate in furnishing necessary information or documents for the Authority to consider. The statement of grounds under subsections (3) and (4) and any such statement supporting a subsequent prohibition under Parts IX and X may be modified insofar as necessary to prevent the disclosure of confidential information or harm to a third party.

(6) Any notification under subsection (2) (a) shall lapse where the person has not become a significant owner or increased his stake within one year from the issuing of a notice of no objection under subsection (2)(b).

(7) Any person directly or indirectly owning five percent or more of the share capital of a financial institution should report such holding to the Authority.

(8) The Authority may adopt regulations extending the requirements of this section to such other control persons as it may specify.

#### **19. Restrictions on ownership of financial institution and investments by financial institutions**

1) No person shall hold more than the following percentage of interest in shares of a financial institution:

(a) in case of an individual, 10 percent,

(b) in the case of a company not being a financial institution, 20 percent,

(c) in the case of a company being a financial institution, as per the limit provided under subsection 4 below, and

(d) in case of a foreign financial institution, as per the RMA regulations in line with the foreign direct investment policy.

Except where the Authority on being satisfied that it would not be prejudicial to the promotion of a sound financial system in Bhutan; may permit a higher limit. However, such limits shall not exceed 20 percent for an individual and thirty percent for a company which is not a financial company.

(2) For the purpose of subsection 19 (1);

(a) Individual includes spouse, the individual's dependent children being of the same household.

(b) Company means a parent company/a holding company, its subsidiaries and affiliates, and vice versa.

3) A financial institution shall not, directly or indirectly, without written approval from the Authority, own shares in a company in excess of 20 percent of its capital fund. The Authority shall, at no point of time permit the financial institution to invest in a company in excess of 25 percent of its capital fund.

4) No financial institution can have ownership in another financial institution exceeding 5 percent of the other financial institution's paid up capital.

5) No foreign financial institution shall have share ownership of a financial institution in Bhutan in excess of the limits provided under Section 19(1d), except under the following circumstances:

(a) to rectify the financial institution's financial condition;

(b) merger and acquisition; or

(c) to maintain the overall Bhutanese financial system stability.

(6) To have legal affect, the acquisition or merger of a financial institution shall require the prior authorisation of the Authority.

(7) A person who has more than the holding specified under Section 19(1) does not have the power to receive any dividend nor the power to exercise any rights attached to that holding, and shall dispose part of it within a period of one year from coming into force of this Act.

## **20. Contraventions of notification requirement**

(1) Subject to subsection (2), a person who contravenes this Part by failing to give the notice required by section 18, not exceeding Ngultrum seven hundred thousand by the Authority.

(2) A person is not liable to the penalty under subsection (1) where he did not know of the facts or circumstances by virtue of which he became subject to it or increased his stake in the financial institution beyond the maximum permitted by the Authority, unless he has failed to give the Authority written notice within 14 days of becoming aware of such facts or circumstances.

## **21. Audit committee, risk management function and corporate governance**

(1) Each financial institution shall have an audit committee; each shall also maintain an internal audit and risk management function of a size and capability appropriate to its business or as specified in regulations adopted by the Authority.

- (2) (a) The board of directors of the financial institution shall, in consultation with the audit committee and the internal audit and risk management functions, establish corporate governance principles minimizing harmful conflicts of interest in the administration of the institution's business, ensuring adequate oversight of managers by the board of directors and establishing ethical standards for directors, managers and other personnel.
- (b) The board of directors of the financial institutions shall be responsible for supervising the implementation of the board policies.
- (c) The directors and managers of any licensee shall, in any case, be bound by the duties applicable to directors under relevant provision of the Companies Act.
- (d) Every financial institution shall have Board of Directors comprising of not more than 7 directors including the chairman.
- (e) Every financial institution shall have at least one Independent Director.
- (3) The financial institution's audit committee are responsible for:
- (a) recommending auditors to be retained or dismissed by the financial institution;
- (b) reviewing the progress and quality of the work of the financial institution's auditors;
- (c) reviewing the accuracy and completeness of the institution's financial statements and reports to the Authority;

(d) reviewing compliance with the financial institution's corporate governance principles and with legal and regulatory obligations; and

(e) making recommendations relevant to these matters, to the board of directors.

(4) Any rejection, material modification or failure to act upon an audit committee recommendation by the financial institution or failure to obtain such a recommendation where indicated in this Act shall be reported, insofar as the Authority may by regulations direct.

(5) The financial institution's audit committee shall meet no less than quarterly and as specially convened by the board of directors; its votes shall be by majority with no abstentions; and it may be assisted by experts specially appointed or engaged for its purposes.

(6) The financial institution's control persons shall notify the Audit Committee of any errors or misstatements of which they become aware in the institution's accounts or reports under this Act. Notification to the Audit Committee should be in relation to material errors, misstatements or omissions.

(7) The Authority may, notwithstanding any contrary provision of or under the Companies Act or any financial institution's articles or other arrangements that the institution shall modify to assure conformity, adopt regulations, including those to effect corporate governance in general, for financial institutions to:

(a) minimize conflicts of interest or their deleterious effects within financial institutions;

(b) restrict cross-shareholdings between or among financial institutions or their control persons in order to effect such minimization or to promote or preserve competition;

- (c) regulate the qualifications, structure or procedures of a financial institution's board of directors in order to promote informed and unprejudiced supervision of management and conformity with this Act and the regulations under it;
  - (d) require shareholder approval of audit committee members; and
  - (e) specify minimum presence on the board of directors of persons not connected to the Royal Government of Bhutan or its agencies in order to promote unprejudiced regulation and market-oriented management of the institution.
- (8) All members of the Board of Directors of the financial institution shall undergo the relevant training program conducted by the Authority.

## **22. Internal control, investment policy, and use of derivatives**

- (1) The financial institution's board of directors shall, upon the recommendation of the audit committee, establish and shall maintain an effective internal control system, including arrangements for delegating authority and responsibility and for the separation of duties.
- (2) The board of directors shall oversee the management of the financial institution's investments; ensure that the mixture and diversification by type is properly defined in its investment policy and that the policy includes:
- (a) limits or restrictions on the amount that may be held in particular types of investments;
  - (b) the financial instruments, property, and receivables that may be invested in;
  - (c) rules for the safekeeping of assets;

(d) consideration of the appropriate matching of assets and liabilities; and

(e) monitoring the level of liquidity.

(3) The board of directors shall establish for the financial institution a risk management system that includes setting and monitoring policies so that all major risks are identified, measured, monitored and controlled on an on-going basis.

(4) The board of directors shall establish an ongoing internal audit function that is appropriate for the nature and scope of the financial institution's business to ensure compliance with all its policies, practices and controls.

(5) The board of directors shall establish a policy for use of derivatives if such instruments are to be used by the financial institution, and the policy shall be approved and reviewed annually by the board of directors. Its vote shall be by majority of those attending with no abstentions.

(6) The Authority may adopt regulations regarding the content and approval of policies and practices adopted under this section and further prescribe ethical rules to protect financial institutions from the risks of dishonesty or conflicts of interest

(7) The board of directors shall establish a policy to ensure that no employees of the financial institution are permitted to carry out other business.

### **23. Related party transactions of financial institutions and public companies**

(1) The board of directors of a financial institution shall, on the recommendation of the audit committee, establish standards of business conduct and ethical behavior for directors, managers and other personnel, including policies on related-party transactions and other transactions of a non-arm's length nature.

(2) Financial institutions shall not enter related-party transactions unless:

(a) in the ordinary course of business on terms generally available to its customers; or

(b) on terms otherwise fair to the institution not affected by such influence as the related party may have over the decisions of the institution, if any.

(3) Any related-party transaction, or related series of such transactions, under subsection 2(b), amounting in value to more than one percent of the institution's revenues for the last fiscal year shall be approved by the board of directors outside the presence of and without the participation of any director who is a related party of the related party (or is himself the related party) in the transaction and shall be reported to the Authority before taking effect. Such transactions shall be notified to the shareholders within three days of its approval by the Board.

(4) The Authority may adopt regulations detailing the requirements of this section.

(5) The Authority may adopt regulations governing related-party transactions of public companies in order to assure that managers and directors of public companies operate them in the interests of their shareholders.

## **PART VI – FINANCIAL REQUIREMENTS, RECORDS AND AUDIT**

### **24. Maintenance of reserve fund**

(1) Every financial institution shall—

(a) maintain a reserve fund; and

(b) before declaring any dividend from its net profits of each year (after due provision made for taxation), transfer to its reserve fund out of the net profits of each year—

(i) a sum equal to not less than 50 percent of the net profits of that year, so long as the amount of the reserve fund is less than 50 percent of its paid-up capital; or

(ii) a sum equal to not less than 25 percent of the net profits of that year, so long as the amount of the reserve fund is 50 percent but less than 100 percent of its paid-up capital.

(2) Notwithstanding subsection (1), the Authority may from time to time specify a different portion of the net profits of each year, being either lesser or greater than the portions specified in subsection (1), to be transferred to the reserve fund of a licensed local institution for the purpose of ensuring that the amount of the reserve fund of such institution is sufficient for the purpose of its business and adequate in relation to its liabilities.

(3) Notwithstanding subsection (1), the reserve fund may, with the approval of the Authority and subject to such terms and conditions as the Authority may impose, be applied in paying up unissued shares to be issued to shareholders of the financial institution as fully paid bonus shares.

(4) Nothing in this section shall authorise a licensed institution to pay dividends out of the reserve fund.

## **25. Maintenance of capital fund**

(1) The Authority may specify that a financial institution shall maintain, at all times, capital funds unimpaired by losses, in such ratio to all or any assets or to all or any liabilities, or to both such assets or liabilities, of the institution and all its offices in and outside Bhutan as may be set out in the regulation.

(2) Where any financial institution referred to in subsection (1) is a corporation within a group of corporations which are related, the accounts of the financial institution shall not for the purpose of this section be on a consolidated basis unless the Authority otherwise specifies.

## **26. Maintenance of quick asset**

(1) The Authority may specify that a financial institution shall hold such minimum, or minimum average, amount of quick assets at all times or over such period of time as may be set out in the regulations.

(2) The minimum or minimum average, amount of quick assets specified under subsection (1) shall be expressed as a percentage of all or such of its liabilities incurred by its offices in Bhutan as may be set out in the regulations.

(3) The Authority may prohibit any financial institution from giving any credit facilities during the period in which the institution has failed to comply with any requirement of a specification under this section.

## **27. Records**

(1) A licensee shall at all times keep such records as are necessary to exhibit clearly and correctly the state of its affairs, to explain its transactions and financial position, and to enable the Authority to determine whether it has complied with the provisions of this Act and the regulations under it.

(2)(a) The records must be such that they can be reproduced in legible form when required.

(b) Each financial institution shall maintain and submit to the Authority an adequate and appropriate Disaster Recovery plan and Business Continuity plan indicating its procedures to assure the preservation of its records and provide for the continuation of its operations in emergency circumstances.

(3) The records required by subsection (1) must be kept for a period of at least ten years.

(4) If a person knowingly:

(a) destroys, conceals, mutilates or improperly alters any record or account required to be kept or maintained under any of the provisions of this Act or of regulations made under it; or

(b) sends or attempts to send or conspires with any other person to send out of Bhutan any such record or account, with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under this Act or under regulations made under it,

he commits an offence and is liable on conviction to a fine not exceeding Ngultrum one million or imprisonment or both.

## **28. Audit and financial statements**

(1) Within one month after being licensed under this Act, a financial institution shall have appointed an auditor approved by the Authority to audit its accounts in accordance with the generally accepted accounting principles and shall also be independently audited in accordance with the generally accepted auditing standards.

(2) The powers of the Royal Audit Authority given by section 72(2) of the Companies Act in respect of the audit of those government and government controlled companies (as defined in the Companies Act) which are financial institutions shall be exercised in consultation with the Authority.

(3) Where the licensee is a company, it shall:

(a) send copies of its balance sheet, profit and loss account, cash-flow statement, auditor's report, annual return and directors' report to the Authority at the same time as it sends copies of these documents to the Registrar of Companies, in accordance with sections 57 and 70 of the Companies Act, unless the Authority shall adopt regulations requiring earlier submission;

(b) publish them in newspapers; and

(c) keep a copy of them available for inspection by members of the public for at least a year in each of its places of business in Bhutan.

(4) In the event that a licensee is a holding company, then the documents referred to in subsection (3) shall also be prepared, sent to the Authority, and published on a consolidated and on an unconsolidated basis.

(5) Where the licensee is not a company incorporated under the Companies Act, the Authority may by regulation prescribe matters analogous to those required by subsection (3) and (4), with which the licensee shall be obliged to comply.

(6) The requirements under this section are in addition to such other reports as may be required in this Act or the regulations under it.

## **29. Duties of an Auditor**

- (1) The duties of an auditor appointed under subsection (1) shall be—
- (a) to carry out, in the case of a licensed local institution, an audit of the accounts of the institution;
  - (b) to carry out, in the case of a licensed foreign bank, an audit of the accounts of that bank in respect of its operations in Bhutan; and
  - (c) any other duties that may be decided by the Authority from time to time.
- (2) The Authority may, at any time, require an auditor appointed under this section to -
- (a) submit such additional information in relation to his audit as the Authority may specify;
  - (b) enlarge or extend the scope of his audit of the business and affairs of the institution in such manner or to such extent as the Authority may specify;
  - (c) carry out any specific examination or establish any procedure in any particular case; or
  - (d) submit a report on any of the matters referred to in the foregoing paragraphs,

and the Authority may specify the time within which any of the aforesaid requirements shall be complied with by the auditor and shall approve the remuneration which the institution shall pay to the auditor in respect thereof.

(3) The auditor shall comply with any requirement of the Authority under subsection (2) and the institution shall pay to the auditor the remuneration of the auditor referred to therein.

(4) If an auditor appointed under this section, in the course of his duties as an auditor of an institution, is satisfied that—

(a) there has been a contravention of any provision of this Act or that any offence which relates to dishonesty or fraud has been committed by the institution or by any other person;

(b) losses have been incurred by the institution which reduce its capital funds to an extent that the institution is no longer able to comply with the specifications of the Authority under section 25(1);

(c) any irregularity which jeopardises the interests of depositors or creditors of the institution, or any other serious irregularity, has occurred; or

(d) he is unable to confirm that the claims of depositors or creditors are covered by the assets of the institution.

he shall immediately report the matter to the Authority.

(5) A financial institution, and any director, controller or officer of that institution, shall—

(a) furnish to an auditor appointed under this section—

(i) all information within its or his knowledge or capable of being obtained by it or by him; or

(ii) any information which the auditor requires, to enable him to carry out his duties; and

(b) ensure that all information which is furnished to the auditor, including information furnished under subsection 5(a), is not false or misleading.

(6) The Authority may at any time examine the books, other documents, accounts and transactions of any person which was at any time, or is, an auditor of a financial institution and for the purposes of such examination, the Authority shall have and may exercise all such powers as it has or may exercise in relation to an examination of a financial institution under this Act.

## **PART VII - HEAD OFFICE, BRANCHES, SUBSIDIARIES AND REPRESENTATIVE OFFICES**

### **30. Head Office, Branches and Subsidiaries of Financial Institutions**

(1) A financial institution shall not establish a foreign branch office, subsidiary or representative office without first having notified, and received permission to do so from, the Authority, which permission shall not be withheld unless the Authority finds that it would jeopardize the institution's capacity to comply with this Act or the regulations under it.

(2) Nor shall a financial institution establish a domestic branch office, subsidiary or representative office but upon 45 days advance notice to the Authority and, where required by regulation, with the permission of the Authority, which permission shall not be withheld unless the Authority finds that it would jeopardize the institution's capacity to comply with this Act or the regulations under it.

(3) No financial institution, foreign or domestic shall move or close its branches subsidiaries or representative office without obtaining prior permission of the Authority.

(4) Before granting any permission under subsection 1, 2 and 3 the Authority may require to be satisfied by an inspection as to the history of the financial condition of the company, the overall management and the adequacy of its capital structure and earning prospects in order to ensure that public interest will be served by the opening or as the case may be change of location of place of business.

### **31. Foreign Financial Institutions**

(1) A foreign financial institution authorized by its own supervisory authority in its home country may establish a branch office in Bhutan, if it:

- (a) has received any required permission to do so from its home supervisory authority;
- (b) has applied to the Authority to license the office;
- (c) has supplied the Authority with such information as it may reasonably require; and
- (d) has received a notice in writing from the Authority that the office has been licensed under the Act.

(2) Branches of foreign financial institutions may be licensed to provide financial services in Bhutan if:

- (a) the Authority has an agreement with the financial supervisor in the home country of the foreign financial institution that states the foreign supervisor's supervisory responsibilities for the foreign financial institution, ensures that the foreign financial institution complies with the criteria of section 10 or comparable foreign regulation and provides the Authority with full access at all times to such information regarding the foreign financial institution's business in Bhutan and the foreign financial institution as the Authority deems necessary to carry out the purposes of this Act; and
- (b) the foreign nature of the institution will not impair the applicant's capacity to comply with or the Authority's capacity to enforce this Act or the regulations under it directly pertaining to services offered in Bhutan and the protection of customers in Bhutan.

(2) The Authority may specify in granting the license, or in regulations, specific provisions of this Act and the regulations under it that will be inapplicable or applicable in modified form to the foreign licensee based upon the existence of comparable foreign requirements sufficient to protect the interests of customers in Bhutan.

(3) Domestic companies owned by foreign persons may be licensed on the same grounds as domestic companies, provided that the foreign ownership is lawful under legislation applicable to foreign ownership and that the Authority does not find that the foreign ownership (including indirect ownership) would impair the applicant's capacity to comply with or the Authority's capacity to enforce this Act or the regulations under it.

(4) In granting a licence under this section, the Authority may impose such reasonable requirements as to the maintenance of assets, escrow accounts, or deposits in Bhutan or such other security devices as it deems appropriate to secure compliance with this Act and the regulations under it.

### **32. Representative Offices**

(1) A foreign financial institution authorized by its own supervisory authority in its home country may establish a representative office in Bhutan, if it:

- (a) has received any required permission to do so from its home supervisory authority;
- (b) has applied to the Authority to register the office;
- (c) has supplied the Authority with such information as it may reasonably require; and
- (e) has received a notice in writing from the Authority that the office has been registered under the Act.

(2) The Authority may decline to register or may withdraw registration of such an office if it finds that the activities of the office will or may jeopardize the enforcement of this Act or the regulations under it.

(3) A representative office shall limit their activities to the provision of information and liaison functions and shall not engage in the provision of any financial services to customers in Bhutan.

(4) Any person who knowingly violates this section commits an offence and is liable on conviction to a fine not exceeding Ngultrum seven hundred thousand or imprisonment or both.

## **PART VIII - INFORMATION, EXAMINATION AND INVESTIGATION**

### **33. Power to obtain information**

(1) The Authority may, as it shall reasonably deem useful for the administration of this Act, adopt regulations requiring licensees to submit periodic reports, including reports of events, or supplements to reports under section 28, verified in such manner or including such expert opinion as the Authority may specify.

(2) The Authority may at any point of time, by notice in writing, require a licensee or a control person of a licensee to provide it with such additional information as it may reasonably require for the exercise of its functions.

(3) Any person who, without reasonable excuse, and after having been warned by the Authority, fails to comply with the requirements of subsections (1) or (2) or to provide any other return, report, document, evidence or information required by this Act or the regulations under it commits an offence and is liable to an appropriate fine specified by the Authority in the regulations issued by the Authority.

### **34. Power to examine**

(1) The Authority may, at any time, with or without prior notice but upon presentation of a notice of inspection, conduct examinations or inspections of a licensee's operations and may appoint any person (an "authorized person") to exercise the powers of the Authority under this section.

(2) In the exercise of his powers under this section, an authorized person may:

(a) enter the licensee's premises;

(b) require the licensee, its employees, agents or others under its control to furnish documents, evidence or information relevant to the operations of the licensee or the enforcement of this Act or the regulations under it; and

(c) inspect, make copies of, take extracts from, or take possession of, such documents or evidence.

(3) For the purpose of an examination under this section, the licensee or other person mentioned in subsections (2) or (4) shall afford an authorized person such access, information or material as may be reasonably required for the examination.

(4) The power of the Authority under this section to require information, documents or evidence may, by authorization of the Authority's Executive Committee, be extended, where the Authority deems it necessary for the exercise of its functions, to an affiliate of the licensee.

(5) A licensee shall ensure that any person to whom it delegates or contracts the maintenance of records or other functions relevant to its regulatory obligations shall afford the Authority similar access, information, documents and evidence.

(6) Refusal without reasonable cause to permit a lawful inspection or examination under this section shall be an offence and liable to an appropriate fine specified by the Authority in the regulations issued by the Authority.

### **35. Power to appoint an expert person**

Where the Authority is satisfied that it is in the interest of a licensee, its customers or the general public, it may appoint in writing an accountant or other professionally qualified person to review and report upon information, documents or other material available to the Authority relating to the conduct of a licensee's business.

### **36. Power to investigate**

(1) The Executive Committee may issue an order of investigation, specifying the matters to be investigated, where it has reasonable grounds to believe that:

- (a) a violation of this Act or regulations made under this Act has been or is about to be committed;
- (b) a person has committed or is about to commit a fraud in the providing of financial services or under section 98;
- (c) there is uncertainty as to the ownership or control of a licensee or the identity or backgrounds of its control persons; or
- (d) an investigation is necessary to carry out the Authority's responsibilities as the Financial Intelligence Unit.

(2) An investigator appointed in the order of investigation may require any person he reasonably believes or suspects to have or to control any information, document or other evidence relevant to the matters specified in the order of investigation to furnish it to the investigator, within such time and at such place as he may reasonably require, and under oath (which the investigator is hereby empowered to administer) if requested.

(3) Refusal without reasonable cause to cooperate with a lawful investigation under this section or an investigation or audit under section 40 shall be an offence and liable to an appropriate fine specified by the Authority in the regulations issued by the Authority.

### **37. Duty to give information**

(1) A licensee shall promptly provide the Authority with any information in its possession where the licensee knows or has reasonable cause to believe that withholding the information is likely to result in the Authority being misled in the exercise of its functions under this Act as to any material matter relating to them.

(2) A licensee and its auditor or actuary shall promptly inform the Authority whenever it or he has reasonable grounds to believe that:

(a) the licensee is in danger of becoming unable to meet its obligations as they fall due or its assets are exceeded or about to be exceeded by its liabilities;

(b) the licensee is unable to comply with requirements of this Act or the regulations under it regarding capital, solvency or liquidity;

(c) the licensee is engaged in fraud; or

(d) in the case of an auditor, the auditor expects to make a material qualification in the report to the licensee's shareholders.

(3) This section shall not prevent the Authority from adopting other regulations regarding reporting of risks, early warning of potential financial deficiencies or similar reports.

(4) Information provided by professionals in good faith to the Authority under subsection (1) and (2) shall not be bound by the professional confidentiality requirement.

(5) A person who knowingly contravenes this section commits an offence and is liable to an appropriate fine specified by the Authority in the regulations issued by the Authority.

### **38. False, misleading or incomplete information**

All information provided under this Act or the regulations under it shall be full, accurate and complete in all respects.

### **39. Penalties for misinformation**

(1) Any person who knowingly provides the Authority or any other person with information which, in a material particular, is false, misleading or incomplete in purported compliance with a requirement imposed by or under this Act, or otherwise in circumstances in which the person providing the information intends, or could be reasonably be expected to know, that the information would be used by the Authority for the purpose of exercising its functions under this Act, commits an offence and is liable to an appropriate fine specified by the Authority in the regulations issued by the Authority.

(2) A licensee who knowingly makes any false or misleading statement, knowing the likelihood that a customer or potential customer could rely on it to his substantial detriment in dealing with a licensee, commits an offence and is liable to an appropriate fine specified by the Authority in the regulations issued by the Authority.

(3) The Authority may adopt regulations defining false or deceptive practices relating to financial services, including conduct by customers, the knowing violation of which will subject the violator to the penalties in subsection (2).

#### **40. Financial Crime, Money Laundering and Financing of Terrorism**

(1) A Financial Intelligence Unit (FIU) shall be set up within the Authority for the following purposes and with the following powers and functions:

- (a) to require a reporting entity to prepare and submit to the FIU suspicious transaction reports, cash transaction reports and any other reports or information in the time and manner required by the regulations.
- (b) to receive and analyse reports, made in accordance with the regulations, including suspicious transaction reports and cash transaction reports made by a reporting entity and any suspicious transaction otherwise coming to the attention of the Financial Intelligence Unit.
- (c) to provide, if the Authority considers it appropriate, reports, additional information, inspection reports and any analysis undertaken by the FIU to:
  - i. the Office of the Anti-Corruption Commission;
  - ii. the Office of the Attorney General; and
  - iii. the Royal Bhutan Police
  - iv. a judge, a court, a law enforcement agency or a supervisory body inside or outside the Kingdom of Bhutan;
- (d) to receive a request from a financial intelligence unit or a like body and, with the authorisation of the Authority, to carry out investigations and enquiries in respect of such requests and provide such information as may assist the financial intelligence unit with its investigations;

- (e) to request information from financial intelligence units, law enforcement agencies or supervisory agencies outside Bhutan for the purposes of any analysis undertaken under this Act;
- (f) to enter into memoranda of understanding with agencies of the Royal Government of Bhutan or financial intelligence units, as determined by the Authority, for the exchange of information and general cooperation;
- (g) to issue guidelines to reporting entities in relation to transaction record keeping, reporting obligations and any other matter relevant to the administration of this Act and with respect to the detection and avoidance of transactions involving named persons suspected of being involved in money laundering or in the financing of terrorism.
- (h) to require a reporting entity to provide information or documents in accordance with a direction issued by it.

(2) The Authority is responsible for ensuring that the FIU performs its functions properly, efficiently and effectively and must appoint legal or other officers to be members of the Financial Intelligence Unit. The Authority has the power to co-opt officers from other supervisory authorities and law enforcement agencies in Bhutan. The Authority also has the power to share information and cooperate in all ways necessary with other supervisors both domestic and foreign for purposes of combating money- laundering and the financing of terrorism.

(3) A reporting entity shall report forthwith to the Authority any evidence of the use of the reporting entity's business or facilities in connection with serious criminal activity or terrorism in Bhutan or elsewhere.

(4) This subsection shall apply to financial institutions and to any other person, whether licensed by the Authority or not, whom the Authority reasonably designates or describes in a regulation (to the extent provided in such regulation) as conducting activities subject to use in money-laundering or financing of terrorism. To combat money laundering and the financing of terrorism, a reporting entity, to the extent provided by any such regulation, shall establish procedures including:

(a) appropriate review of customers or those for whom they act, by establishing a 'know your customer' system of identification and verification;

(b) monitoring for complex, unusual or large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose or are otherwise considered to be suspicious;

(c) reporting suspicious and cash transactions to the FIU;

(d) developing internal programs, including training programs, procedures, controls and audit functions to combat money laundering and financing of terrorism; and

(e) ensuring that the institution's licensed foreign branches, subsidiaries or operations observe appropriate requirements to combat money-laundering and the financing of terrorism.

A reporting entity shall provide to the FIU copies of all procedures prepared in accordance with this subsection.

(5) No reporting entity providing information to the Authority under Sub-sections (1), (3) or (4) shall be liable to any action in damages for anything done or omitted to be done in the intended exercise of any power or performance of any duty conferred or imposed by or under this Act or regulations made under it, unless the act or omission is shown to have been in bad faith.

(6) The Authority may adopt further regulations to prevent the use of Bhutan's financial system for money laundering or the financing of terrorism.

(7) Any person who knowingly fails to comply with Sub-sections (1), (3) or (4) or regulations issued under Sub-section (6) commits an offence and upon conviction shall be liable to a fine not exceeding Ngultrum one million or imprisonment or both.

(8) Money-laundering shall be punishable as provided in the Penal Code of Bhutan; attempts to conceal the connection of funds or other assets to the financing of terrorism, if done with adequate reason to know the nature or likely nature of such attempts, shall upon conviction be liable to a fine not exceeding Ngultrum five million or imprisonment or both.

## **PART IX - INTERVENTION**

### **41. Restricting, revoking or imposing remedial conditions upon a licensee or significant owner**

(1) If the Authority finds that a licensee's conformity with the standards of section 10 or another provision of this Act or the regulations under it is impaired, or that the licensee otherwise is violating, has violated or is about to violate the Act or the regulations under it, or has an association with a person that is likely to impair its compliance with this Act or the regulations under it, the Authority may, according to the circumstances and gravity of the case, take one or more of the following measures:

- (a) revoke the license in whole or in part;

(b) suspend the license, in whole or in part, until such time as the Authority believes compliance with the Act and the regulations under it may be secured;

(c) subject exercise of the license to such restrictions, instructions or other conditions as the Authority may find appropriate to secure compliance, avoid non-compliance or correct the consequences of past non-compliance with the Act or the regulations under it; or

(d) issue a public censure of the licensee.

(2) Restrictions, instructions or conditions under subsection 1(c) may include, but are not limited to, requirements that specified assets be maintained in Bhutan, specified persons be dismissed by or separated from the licensee, remedial compliance procedures be adopted or specified services, markets or offices be abandoned. Under subsection 1(c), persons may be barred from employment or other association with a licensee, or their association subjected to conditions calculated to secure compliance with this Act and the rules under it, where the person is not fit and proper as required by this Act or the rules under it, has violated, caused a violation of or neglected duties that would prevent a violation of this Act or the rules under it, or whose association the Authority finds likely to impair the licensee's compliance with this Act or the rules under it, either because they exercise an influence comparable to that of a person required to be fit and proper but are not, or due to other circumstances.

(3) The Authority may also revoke a license if it finds that the holder of the license has not done business under it for a year or more.

(4) With respect to persons who are or are seeking to become significant owners of financial institutions or persons specified under section 18(8) whom the Authority finds not fit and proper or no longer fit and proper, the Authority may direct that specified shares relating to the person's ownership of the financial institution shall, until further notice, be subject to any of the following restrictions:

- (a) any transfer of or agreement to transfer of the shares shall be suspended;
  - (b) voting rights shall be restricted or not exercisable in respect of the shares;
  - (c) no payment or reduced payment shall be made to the owner of any sums from the licensed institution on the shares or otherwise;
  - (d) the owner shall sell all or a part of the shares.
- (5) Any person who, without reasonable excuse, fails to comply with a restriction, instruction, condition or other order issued under this section commits an offence and is liable on conviction a fine or imprisonment or both.
- (6) The remedies under this section are in addition to those prescribed in Parts XII and XVIII.
- (7) Analogous action under this section may be taken against persons registered as well as licensed pursuant to this Act.

## **PART X PROCEDURAL REQUIRMENTS AND APPEALS OF ADVERSE ACTION**

### **42. Notice and hearing**

(1) The Authority shall take no adverse action under section 41 or any other portion of this Act, unless the provision expressly provides otherwise, without providing written notice to the person who is the subject of the action, including any person to be barred from significant ownership in or other association with a licensee (or whose ownership or association is to be restricted or conditioned), stating the action contemplated and the reasons for it and providing not less than 14 days to present evidence and arguments against such action, either in person or by written submission, as the Authority may stipulate.

(2) In cases where good cause exists to fear damage to innocent persons if prompt action is not taken, the Authority may provisionally order the required action to be effective immediately, noting the reasons for the provisional action and providing a 14 day opportunity for response before the order is made permanent. The order will lapse if not made permanent in that time unless otherwise agreed. Review of the provisional nature of the order may be sought from the Board at any time, without further appeal, and its substance may be appealed under section 44 when made permanent.

### **43. Written record and recusal**

(1) No adverse action shall be taken, except provisional action under section 42(2), but upon a written order of the Authority, delivered as provided herein, and stating specifically the legal and factual grounds upon which it is based and summarizing such evidence as supports the Authority's factual determinations.

(2) No person within the Authority having an interest that might reasonably be believed to prejudice his judgment in a matter shall participate in the decision of the matter.

(3) Written notifications of adverse action may be delivered by any means reasonably calculated to effect delivery, including mail, e-mail, fax or, in the case of provisional order under section 42(2) oral notification, provided that in any case it shall be or also be mailed or otherwise delivered to the address provided in the records of the Authority, if any. Notifications prior to adverse action or otherwise required by this Act or the regulations under it may be delivered by similar means.

#### **44. Appeals**

(1) Adverse action under this Act taken by the Authority (unless by the Board) may be appealed to the Board by a person subject to the action in writing within 14 days of the notice of the decision having been delivered. The Board has full power to affirm, reverse or modify a decision or remand it for further consideration. Its decision shall state its legal and factual grounds.

(2) A decision of the Board on an adverse action may be appealed within 21 days to the High Court. The High Court may reverse or modify a decision of the Board only if it finds that the decision of the Board was clearly erroneous in its factual determinations or legal rationale. It may also remand the matter to the Board, in whole or in part, for further elaboration of the factual record and evidence.

(3) A person harmed or to be harmed by adoption of an unlawful regulation, certificate of inspection or order of investigation may petition the High Court to block its application, which the Court may do provisionally or permanently in cases of clear error.

### **PART XI - OFFENCES**

#### **45. Responsibility for offences**

The principles of the Penal Code of Bhutan as to culpability for involvement in criminal acts and as to relative responsibilities of individuals and business entities for unlawful conduct shall generally apply to offences specified under or pursuant to this Act, except that where knowing conduct is required herein for an offence to exist, the individuals involved must have acted knowingly, with respect both to a finding of individual culpability and to the imputation of an individual's conduct to a business entity.

#### **46. Prosecution and payment of fines; administrative fines**

(1) Offences under this Act may be prosecuted by the Attorney General in the Royal Court of Justice or by the Authority in such court, where and to the extent that the Attorney General appoints the Authority as a special prosecutor for the particular case. Appeals of judgments may be taken as provided in the criminal law.

(2) The Authority may impose upon licensees for offences to an appropriate fine specified by the Authority in the regulations issued by the Authority under this Act in its own proceedings conforming to Part X and subject to appeal as provided therein; it may further by regulation specify particular regulations the knowing violation of which may be penalized within the limits of this subsection.

(3) Failure to pay a fine imposed under subsection (2) shall constitute an offence under this Act and shall be liable to a fine not exceeding twice the amount of the fine specified under subsection (2) or imprisonment or both.

(4) Payment of the fines specified in this Act shall be to the Authority.

(5) Penalties under this Act for offences shall not exclude the imposition of higher penalties applicable under other laws, but in such a case the penalty shall not be higher than the highest available under any one applicable law.

(6) Notwithstanding anything mentioned in subsection (1) to (5), a person violating any provisions of this Act, and if no penalty is expressly provided for the offence in this act, shall be punishable with a fine as may be determined by the Authority from time to time.

**PART XII – PROMPT CORRECTIVE ACTIONS,  
CONSERVATORSHIP, WINDING UP AND BANKRUPTCY**

**47. Remedial measures by the Authority**

- (1) Where a financial institution informs the Authority-
  - (i) that its capital had depleted far below the minimum capital adequacy requirements;
  - (ii) that it is likely to become unable to meet all or any of its obligations; or
  - (iii) that it is about to suspend payment to any extent; or
  
- (2) Whether after an examination, or otherwise howsoever, the Authority is satisfied that the financial institution—
  - (i) is carrying on its business in a manner detrimental to the interests of its depositors, or its creditors, or the public generally;
  - (ii) is insolvent, or has become or is likely to become unable to meet all or any of its obligations, or is about to suspend payment to any extent; or
  - (iii) has contravened any provision of this Act or the Royal Monetary Authority Act\_\_\_\_\_, or any condition of its license, or any provision of any written law, regardless that there has been no criminal prosecution in respect thereof,

the Authority may, by order in writing, require the financial institution to take any steps, or any action, or to do or not to do any act or thing, whatsoever, in relation to the institution, or its business, or its directors or officers, which the Authority may consider necessary and which it sets out in the order, within such time as may be set out therein.

## **48. Conservatorship**

- 1) The Authority in consultation with Ministry of Finance may place a financial institution under Conservatorship when the Authority finds serious jeopardy to;
  - (a) the licensee's capacity to comply with its obligations under this Act or the regulations under it; or
  - (b) the licensee's financial capacity to meet its obligations to its customers or other creditors.
  
- (2) The decision placing a licensee under Conservatorship shall be subject to Part X and shall indicate:
  - (a) the reasons for the decision;
  - (b) the name of the Conservator appointed, who may or may not be an official of the Authority;
  - (c) the duration of the period of Conservatorship; and
  - (d) whether the Conservator has power to declare a moratorium in respect of deposits and other liabilities of the institution.
  
- (3) The Conservatorship shall take effect on the date of posting of a public notice or publication in the media of the decision ordering Conservatorship, whichever is the earlier.
  
- (4) Acts on behalf of or for the account of the licensee that occur without the prior approval of the Conservator after the date of such publication shall be null and void unless the Conservator otherwise decides.
  
- (5) The appointment of the Conservator shall, until the end of period of Conservatorship, cause the suspension from office of the directors of the licensee.
  
- (6) During the period of Conservatorship, no execution of any judgment shall be effected against the property of the licensee unless the Conservator agrees.

(7) A Conservator appointed to a licensed securities broker shall comply with any default rules of the securities clearing house of which the broker is a participant.

(8) The Conservator appointed by the Authority shall have the power of the board of directors to manage the licensee, and shall be authorized in the exercise of such power to adopt any measures required to normalize the situation of the licensee. With the written concurrence of the Authority as to the specific action, the Conservator shall have power for the purposes of this section to take actions requiring the approval of the licensee's general meeting of shareholders.

(9) During this period, the Authority may provide financial support to the licensee under conditions to be specified but only when it is satisfied that to do so is for the purpose of meeting any temporary liquidity deficiency. In general, the licensee shall bear the costs of the Conservatorship.

(10) In the event of a winding-up of the licensee, funds provided by the Authority to it during the period of Conservatorship shall have priority over all other liabilities of the licensee.

(11) The Conservatorship shall cease:

- (a) at the end of the term established if there is no extension; or
- (b) if the Authority deems that the licensee can operate normally; or
- (c) upon the appointment of a bankruptcy receiver or of a liquidator of the licensee.

#### **49. Duties of the Conservator**

(1) A Conservator is subject to the control of the Authority, may at any time be discharged by the Authority and shall follow directions given by the Authority and make such reports as the Authority may from time to time require.

(2) The Conservator may recommend and the Authority may direct that the business or part of the business of the licensee be transferred to another licensee, that the licensee be allowed to continue its business after a period of the Conservatorship, that the licensee be liquidated, or any other course of action that he considers appropriate. The Conservator may recommend different courses of action in respect of different parts of the licensee. Such recommendations are to be so directed unless it can be established by the Authority by negotiation or by petition to the court that the recommendations are against one or other of their specific objectives under the Act.

(3) A final report prepared by the Conservator shall be available for inspection by the public on the Authority's web site or at such other place as the Authority determines.

(4) If the Authority directs the transfer of the licensee's business, or part of the business of a licensee to another licensee, the Conservator shall prepare a plan for the transfer. Another licensee who is the subject of such an order directing transfer shall have the rights provided in Part X.

(5) The Conservator shall be liable for unlawful conduct in the course of his Conservatorship to the same extent as a director and shall be subject to the restrictions upon and duties of a director under sections 87 and 91 of the Companies Act. The Conservator shall enter no contract that would be governed by section 89 of that Act were he a director except with full disclosure to the Authority of the nature and extent of his interest and with the consent of the Authority. The application of section 91 of the Companies Act to the Conservator shall allow him to consider the interests of the licensee's customers and creditors. The Conservator shall not be liable for actions taken in good faith to implement the directions of the Authority.

(4) The Authority shall end control and management of the licensee by the Conservator when that control and management of the licensee are no longer needed under the criteria of section 48(1).

(7) The powers and obligations of the Conservator may be regulated further by the Authority by regulation, including the settlement of the licensee's obligations.

(8) The Conservator shall not be liable to any action in damages for anything done or omitted to be done in the intended exercise of any power or performance of any duty conferred or imposed by or under this Act or regulations made under it, unless the act or omission is shown to have been in bad faith.

## **50. Winding up orders and certain other major events**

(1) The Authority is the administrative Ministry under section 106 of the Companies Act for a licensed company and for a company whose principal business is one conducted in violation of section 7(1).

(2) Should a petition for the winding up of a company licensed by the Authority be presented under relevant provisions of the Companies Act by a party other than the Authority, then a copy of that petition must be served on the Authority no later than it is advertised under relevant provisions of the Companies Act, and the Authority has the right to be heard by the Court on that petition.

(3) No company licensed under this Act may be wound up, other than with the consent of the Authority and subject to regulations the Authority may adopt to secure the fulfillment or transfer to another licensee of obligations to customers.

(4) (a) A financial institution shall make no sale of its assets exceeding 10 percent or such lower number as the Authority may by regulation prescribe without 45 days notice to the Authority.

(b) Nor shall it make an application under Part VIII of the Companies Act or it or its directors any resolution or application to wind up the company but upon similar notice.

(c) Nor shall it but upon similar notice make any amendment of its articles, enter into any merger or reorganization or issue securities; provided further that any issue of debt securities should be approved by the Authority as not jeopardizing the institution's ability to comply with this Act and the regulations there under and that any prospectus for such an issue be approved by the Authority as to the adequacy of the disclosure therein.

(d) Nor shall it fail to report forthwith to the Authority any application under Part VIII of that Act or winding up application of which it is the subject.

(5) A knowing violation of subsection (4) shall be an offence subject to an appropriate fine specified by the Authority in the regulations issued by the Authority.

## **51. Bankruptcy**

(1) If it appears to the Authority that it is desirable for the purposes of this Act to do so, the Authority may present a petition for an Order of Adjudication in accordance with the Bankruptcy Act of the Kingdom of Bhutan 1999 against an individual licensed under this Act if he has committed an act of bankruptcy within the meaning of that Act, and that Act shall, with any necessary modifications, apply in relation to any such petition as it applies in relation to a petition presented by a creditor.

(2) A petition for opening of bankruptcy in a financial institution filed under the Bankruptcy Act of 1999 shall not be admitted for hearing by the High Court, Dzongkhag Courts or any other adjudicating body established by the Royal Government of Bhutan unless the Authority has granted approval for the petition to go forward. Every financial institution and any other licensee that is the subject of a bankruptcy petition shall forthwith notify the Authority, subject in the case of a financial institution to the penalties of section 50(5).

(3) In reaching its decision whether the petition should be allowed to go forward the Authority shall consider fairness to creditors and whether it is likely that the institution, under Conservatorship or otherwise, will be able to restore its financial soundness and bring itself into compliance with the relevant financial requirements. The Authority also shall consult with the debtor and petitioners in the proceeding.

(4) The Authority shall have the right to be heard on any motion, order or other decision of a bankruptcy proceeding against any licensee.

## **PART XIII – REGULATIONS AND RELATED MATTERS**

### **52. Regulations**

(1) The Authority is authorized to make regulations implementing the standards of section 10 and other provisions of this Act, whether or not such authorization appears in a specific provision of the Act.

(2) Without limiting subsection (1), the Authority may also make regulations with respect to:

- (a) assuring that the form, placement and content of advertisements or other promotional material regarding financial services or the customer agreements or documents regarding them are not likely to mislead, confuse or lead to violations of this Act or the regulations under it;

- (b) the information which a licensee must provide a customer or prospective customer;
- (c) identifying and restricting anti-competitive or misleading practices by providers of financial services;
- (d) the establishment of a fair, reliable and efficient contractual mechanism or mechanisms for the binding resolution of customer disputes arising out of the provision of financial services by licensees;
- (e) the rate of interest, bank charge and other terms and conditions on the advances or other financial services given by a financial institution to its clients;
- (f) the regulation and supervision of the Credit Information Agencies; and
- (g) mandatory lending to certain sector of the economy.

(3) Without limiting subsections (1) or (2) or any power under them to supplement the requirements of the Companies Act, the Authority may by regulation exercise with respect to licensees and public companies or the shares of public companies as defined under the Companies Act, the power under section 137 of that Act to alter schedules I, VI, VII, VIII, IX, XII, XIII and XIV of that Act.

(4) The Authority may by regulation establish standards for exemption from any requirement in this Act to belong to a professional society, provided that such regulation provides for equivalent assurance of standards of professional conduct and that exemption may be obtained only pursuant to such regulation.

### **53. Public consultation**

(1) The Authority shall not adopt, rescind or amend any regulation under this Act without first exposing it for public comment, by announcing in the media that the draft regulation for adoption, rescission or amendment and a statement of its legal grounds and policy justifications are available for inspection in the office of the Authority, and on its website, unless:

(a) the regulation pertains solely to the internal operations of the Authority or to formal, clerical or administrative matters not substantially affecting the legal or regulatory obligations of licensees or the public; or

(b) the Authority finds and describes good cause as described in section 42(2) requiring temporary effectiveness of the action during the comment period.

Manuals, rules, guidelines, instructions or similar materials pertaining to the Authority conducting inspections or enforcing or administering this Act, rather than creating the requirements being enforced or administered, are not required to be exposed to public comment under this subsection or to public availability under Part XV.

(2) The period for comment shall not be less than one month.

(3) The Authority shall assure that its regulations under this Act affecting the obligations of licensees or the public shall be publicly available in current form.

#### **54. Guidelines**

The Authority may issue such guidelines as it may consider necessary or desirable for the administration of this Act.

#### **55. Forms**

The Authority may specify by regulation forms that are required to be used for any purpose under this Act.

## **PART XIV - CONFIDENTIALITY OF INFORMATION**

### **56. Restrictions on disclosure of information**

(1) Except for the purpose of performance of his duties under this Act or as directed by the Authority, or when lawfully required to do so by any court of law, no person who is or has been a member of the Board or Executive Committee, an officer or employee of, or adviser to, the Authority, shall disclose to any person any confidential information relating to the affairs of the Authority or of any other person which he has acquired in the performance of his duties or the exercise of his functions without the prior permission of, in the case of members of the Board, the Chairman of the Board and in any other case, the Governor.

(2) The Authority may disclose confidential information obtained in the course of performing functions under this Act:

(a) to any department or agency or any state-authorized supervisory authority or state-authorized financial services sector self-regulatory organization or credit information agencies, if such information is likely to be relevant to the functions of such department, organ, authority or organization; and

(b) to any foreign state or to any foreign state-authorized authority having supervisory powers over foreign financial or investment services, where the information is required by an agreement or memorandum of understanding concluded by the Authority or another authorized agency of the Royal Government of Bhutan or where the Executive Committee concludes that release would effectuate enforcement of laws similar to those of Bhutan and would not be inconsistent with the responsibilities of the Authority.

(c) to the deposit protection agency where the disclosure is for the purpose of exercise of powers, the performance or functions or the discharge of duties of the agency.

(3) The Authority shall take reasonable steps to ensure that any information released under subsection (2) will be used only for the purpose for which the information is given and will be treated as confidential by the receiving entity to the extent consistent with those purposes.

(4) A person who knowingly contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding Ngultrum five hundred thousand or imprisonment or both.

### **57. Customer confidentiality**

(1) Present and former licensees or managers, directors or employees of licensees shall keep secret any confidential information obtained in the course of their financial services duties unless disclosure is required by law or by this Act or regulation made under this Act, or by order of a court, to protect the legitimate interests of the licensee. The Authority may by regulation further prescribe safeguards for customer information or the extent to which such information may be obtained from a credit information bureau.

(2) Business and financial information about any customer may however be exchanged between financial institutions and the Credit information bureau in accordance with arrangements for the proper interchange of information about credit risks.

(3) All financial institutions engaged in the business of lending shall be required to obtain the borrower's credit report from the Credit information bureau prior to sanctioning of loans.

(4) A person who knowingly contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding Ngultrum five hundred thousand or imprisonment or both.

## **PART XV - PUBLIC INFORMATION**

### **58. Register of persons licensed or registered under this Act**

(1) The Authority shall maintain a register of persons holding licenses and registrations under this Act in the form it considers most appropriate.

(2) For each licensed or registered person, the register shall record:

- (a) the name and business address of the licensed or registered person, including both the Bhutan and home office of a foreign institution licensed in Bhutan;
- (b) the date on which the license or registration was granted;
- (c) the type of financial services or capacity licensed or registered;
- (d) any order of revocation or other action under Parts IX, XI or XII; and
- (e) such other particulars as the Authority prescribes by regulation as appropriate in the interest of the general public.

(3) For each representative office registered under section 32 the register shall record:

- (a) the name of the foreign financial institution represented;
- (b) the address of the representative office and of the institution's head office in its home country;
- (c) the date on which the registration was recorded; and
- (d) such other particulars as the Authority considers appropriate in the interest of the general public.

(4) The register shall be open to inspection during usual office hours by members of the public free of charge.

(5) The register required by subsection (1) shall also be available on the Authority's website.

## **59. Notification of change in register particulars**

(1) Where,

(a) a person licensed or registered under this Act ceases to carry on the business or maintain the office to which the license or registration relates, or

(b) a change occurs in any matter particulars of which are required by section 58 to be entered in the register of licensed and registered persons,

the person licensed or the employer of a registered person whose employer is a licensee shall as soon as is practicable and in any event within 7 days give to the Authority notice in writing of the event concerned unless the Authority shall provide otherwise by regulation or unless the event is an act of the Authority.

(2) Notwithstanding anything contained in the Companies Act, the change of name of any licensee shall be approved only upon the Authority's certification in writing that it has no objection to such change.

## **60. Regulations, guidelines, exemptions and annual report**

(1) Regulations adopted by the Authority not pertaining solely to the internal operations of the Authority but imposing requirement on others, as well as guidelines adopted under this Act, shall be maintained by the Authority in current and publicly available form.

(2) The Authority shall maintain a current and public record of exemptions granted under this Act stating their legal and factual bases and shall include these in the annual report under subsection (3) for the year in which they are granted.

(3) The Authority shall include in its annual report under the Royal Monetary Authority of Bhutan Act information on the policies it has pursued and on its activities under this Act during the year reported upon, as well as any specific matters that are required by this Act to be included.

## **PART XVI - BANKING**

### **61. Prohibition on the taking of deposits**

(1) No person shall conduct a business of taking deposits from the public except as authorized by a license or exemption obtained under this Act.

(2) Any person who knowingly contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding Ngultrum one million or imprisonment or both.

### **62. Permissible activities of banks**

Banks may engage in the following activities:

- (a) accepting deposits;
- (b) extending credit;
- (c) operating debit and credit clearing systems;
- (d) providing money transmission services;

- (e) issuing guarantees and stand-by letters of credit;
- (f) issuing and accepting bills of exchange, promissory notes, and like instruments;
- (g) issuing means of payment (e.g. cheques, letters of credit, banker's drafts, travelers' cheques, credit and debit cards);
- (h) factoring (receivables financing);
- (i) acting as trustee and administrator of estates and as an asset manager;
- (j) exchanging and trading foreign exchange;
- (k) giving financial advice, including investment advice;
- (l) purchasing and selling securities, including, to the extent additionally licensed for that role by the Authority, as a broker;
- (m) anything incidental to items (a)-(l) or which the Authority may by regulation prescribe.

### **63. Regulations and guidelines in respect of banking**

Without prejudice to the generality of Part XIII, the Authority may make regulations and issue guidelines specifying general or specific prudential requirements relating to matters set out in section 10 including:

- (a) the manner of calculating, the minimum amount and nature of, financial resources that a bank must maintain, having regard to the risks of its business;

- (b) the maintenance of reserves for bad or doubtful debts and other contingent liabilities;
- (c) the accounting and other records, and internal controls which must be maintained;
- (d) the identification, control and limitation of risks in the business;
- (e) the classification of a bank's assets;
- (f) restrictions to be placed on a bank with respect to investments in other companies;
- (g) such other supplementary, incidental or transitional matters, whether relating to the bank or its affiliates, all in so far as they may affect the safety and soundness of the bank or its ability to satisfy its obligations to customers and other persons who have dealings with it.

#### **64. Limits on credit risk exposures**

- (1) A bank must not enter into a transaction with a person (the "principal person") that violates this section.
- (2) A transaction violates this section, subject to applicable regulations adopted by the Authority, if the transaction, together with all other transactions between the bank and the principal person, together with any transactions with the affiliates of the principal person, exposes the bank to a risk of a loss in excess of the limits prescribed in the regulations, as provided in subsection (6) below.
- (3) Transactions for the purposes of this section are to include the extension of credit, granting of guarantees, holding of securities, bills of exchange and promissory notes and similar transactions, which may be further described by regulations made under this Act.

(4) Persons are to be treated as affiliates of the principal person under subsections (2) and (5) if the financial soundness of those persons and the principal person represent to the bank a single risk because those bodies, taken together, are so interconnected that it is reasonable to conclude that if one of them experiences financial problems the other or all of them are also likely to encounter repayment difficulties.

(5) Regulations made under this Act by the Authority may treat as transactions entered into by a bank, all transactions entered into by:

(a) the bank and persons under common control with it and to whose financial well-being its own is substantially connected; with

(b) the principal person and his affiliates, as defined in subsection (4).

(6) The limits for the purposes of subsection (2) are not to exceed:

(a) 30 percent of the capital of the bank, and an additional 10 percent in case of infrastructure lending worked out as prescribed in the regulations; except that:

(i) a lower limit may be set by regulation; and

(ii) if the transaction is a related-party transaction — it must be contained within the limits as prescribed in the regulations; and

(b) 8 times the bank's capital fund in respect of the bank's sectoral large loans, worked out as prescribed in the regulations.

(7) A bank must report to the Authority any transaction that may involve a violation of this section, within 7 days of the bank becoming aware of the possible violation.

## **65. Banking names and descriptions**

(1) Persons engaged in business through offices in Bhutan other than banks shall not use the word "bank", or translations or composite forms thereof, in the name under which they undertake business or to describe themselves or their activities.

(2) The prohibition in subsection (1) shall not apply to

(a) the Authority;

(b) enterprises whose name is established or recognized by legislation, by international agreement or where the use of the name has been specifically permitted by the Authority.

(3) Any person who, without reasonable excuse, contravenes the prohibition in subsection (1), commits an offence and is liable on conviction to a fine not exceeding Ngultrum five hundred thousand or imprisonment or both.

## **Subpart A: Banking and Financial Institutions**

### **66. Abandoned Property**

(1) Notwithstanding anything contained in any other law, any money or articles shall be deemed to be abandoned property in terms of this Section if the owner fails to claim the money or the articles within a stipulated period of time as may be prescribed in the regulations by the Authority.

(2) Notwithstanding anything contained in any other law, all abandoned property shall be transferred by the financial institutions to a special account in the Authority and may be utilized by the Authority for such purpose as may be determined by the Authority after consultation with the Ministry of Finance.

#### **67. Restriction on payment of dividend**

(1) A financial institution shall not pay any dividend on its shares until all its capitalized expenditure (including preliminary expenses, organization expenses, shares selling commission, brokerage, amount of losses incurred, and any other item of expenditure not represented by tangible assets) has been completely written off and the conditions set out in section 24(1) (b) has been fulfilled.

#### **68. Advances against securities**

A bank must not grant credit, give any guarantee or incur any other liability, against the security of:

a. its own shares, the shares of a subsidiary, or the shares of a parent company; or

b. the shares of a subsidiary of its parent company.

#### **69. Deposit Protection Agency**

(1) The Authority in consultation with the Royal Government of Bhutan may establish a deposit protection agency.

(2) All deposit taking institutions in Bhutan shall be the members of deposit protection agency.

## **PART XVII - INSURANCE**

### **70. Licensing of insurance business**

#### (1) Licensing restrictions for the insurers

(i) An insurer shall not carry on any business other than an insurance business, except that its licence may authorize it to manage pension fund assets subject to such regulations as the Authority may adopt in furtherance of the objectives of this Act.

(ii) An insurer shall be restricted to writing either general or life insurance business, except where the general insurer's life business is limited to reinsurance or the life insurer's general business is restricted to accident and health.

(iii) Companies already doing business of both kinds before enforcement of this Act ("composite company") may continue to do so, provided they maintain separate book-keeping and accounting for life and non-life insurance operations and provided they take appropriate steps to ensure that life insurance policyholders are not at risk from losses in the non-life sector and vice versa.

#### (2) Licensing requirements for reinsurers

A reinsurer shall be permitted to carry reinsurance business in any of the following business;

- a) Life reinsurance
- b) General reinsurance
- c) Composite reinsurance

The Authority may issue regulations specifying the licensing requirements for a reinsurance company.

### **71. Licensing requirements for insurers**

(1) Any company applying for a licence as an insurer must demonstrate that they have a minimum paid up capital of such amount as may be prescribed by the Authority by regulation.

(2) 10 percent of the company's paid up capital must be deposited with the Authority in cash or securities approved by the Authority.

(3) An application for a licence to operate as an insurer must include a business plan and the proposed arrangements for reinsurance, as well as the general requirements given in section 9 &10.

(4) A company applying for a licence as a life insurer must provide an actuarial certificate, provided by a person who meets the qualifications set out in Section 72 (2), in respect of all and any of the products they are planning to offer, in addition to the other requirements stipulated for licensing in this Act.

(5) An actuary is required to provide a view on the adequacy of actual and proposed resources (reserves in particular) in relation to actual and planned risk.

## **72. Appointment of an actuary by a company offering life insurance**

(1) An applicant for a licence to provide life insurance business shall give details of its appointed actuary, such person to be approved by the Authority.

(2) An appointed actuary shall not be deemed fit and proper unless he is a Fellow of the Institute of Actuaries, England, or of the Faculty of Actuaries, Scotland or of the Society of Actuaries, United States, or of the Institute of Actuaries, Australia, or of another such body designated in regulations promulgated by the Authority, and he has at least three years post-fellowship relevant experience.

(3) The appointed actuary shall prepare an actuarial report, and certify it, in such form as the Authority may specify.

### **73. On-going requirements for licensed insurers**

(1) Insurers must, at all times, maintain the following, in a manner and amount as prescribed by this Part or in regulations:

- (a) minimum paid-up capital;
- (b) minimum solvency margin; and
- (c) adequate reserves.

(2) An insurer must ensure that at all times its :

- (a) liabilities under contracts of insurance entered into by it are covered by assets of appropriate safety, yield and marketability;
- (b) investments are appropriately diversified and adequately spread, keeping in mind the liabilities of the company, and that excessive reliance is not placed on investments of any particular category or description; and
- (c) reinsurance arrangements are appropriate to avoid concentration of risk on reinsurers.

(3) Such assets are to be valued and designated as admissible for the purposes of calculating solvency margins as prescribed by the Authority in regulations.

(4) By regulation or pursuant to Part IX and without limiting other remedies available under that Part, the Authority may require an insurer:

(a) not to make investments of a specified kind;

(b) to hold its assets in a specified form, manner or place;

(c) to take such other measures as the Authority considers necessary for the effectuation of the standards of section 10.

(5) A life insurer shall within fourteen days of any change in its appointed actuary provide the Authority with a written notice including the name and qualifications of the person so appointed.

(6) An insurer licensed to write life insurance business shall have an actuarial report produced, no less than once a year, in the manner and form as prescribed in regulations adopted by the Authority and provide a copy to the Authority.

#### **74. Insurance broker's license**

(1) An application for an insurance broker's licence shall state which class and, if applicable, sub-class of insurance business is the subject of the application.

(2) A licence granted under this section shall specify the business activity that the insurance broker is permitted to undertake, and the insurance broker shall be restricted to such business.

(3) No person shall be issued a licence to act as insurance broker unless he has demonstrated that he has adequate professional indemnity insurance in place.

(4) No company may be licensed as an insurance broker where there is a connection with an insurer such that:

(a) the company is a shareholder of an insurer or

(b) a director or manager of the company or director or chief executive officer of an affiliate is a director, shareholder or employee of an insurer.

(5) The Authority may by regulation impose such application or licensing fees or periodic licence fees payable to it by the broker.

### **75. Requirements for insurance agents**

(1) An insurance agent may provide insurance products only on behalf of an insurer or insurance broker licensed by the Authority.

(2) An insurance agent must be able to provide to potential customers a certificate issued by the insurer stating that the agent has a contract of appointment to act for and on behalf of the insurer.

(3) The insurer must maintain a register of insurance agents that are acting for and on behalf of the insurer, such register to be continually updated, submitted annually to the Authority and made available upon request to the Authority for reference or inspection purposes.

(4) Such register must contain every insurance agent's name and address, state the scope of his authority and date of appointment by the insurer and the expiry date of the agent's contract.

(5) The insurer is responsible for ensuring that all its agents are fit and proper, adequately trained to carry out their functions and that such training is updated periodically. The agent must fulfil the minimum required qualifications as prescribed in the regulations issued under this part of this Act.

(6) A person acting as a loss adjuster or insurance surveyor may be a natural person, as well as a limited company under the Company Act. A loss adjuster or insurance surveyor must either:

(a) be a member of a recognised professional association; or

(b) be approved as fit and proper by the Authority and accepted onto a register maintained by the Authority and made publicly available.

#### **76. Regulations and guidelines in respect of insurance business**

(1) Without limiting the generality of sections 52 and 54, the Authority may make regulations and issue guidelines specifying grounds and methods of calculation and general or specific prudential requirements and defining standards relating to the matters set out in section 10 and, including, but not limited to:

(a) paid-up capital;

(b) margins of solvency;

(c) the admissibility of assets;

(d) establishing and maintaining adequate technical provisions and mathematical reserves;

(e) the accounting and other records and internal controls that must be maintained;

(f) the identification, control and limitation of risks in the business;

(g) restrictions to be placed on a licensee with respect to investments in other companies;

(h) restrictions on dividends and bonuses;

(i) the appointment of insurance agents; and

(j) such other supplementary, incidental or transitional matters, whether relating to the licensee or its affiliates, in so far as such matters may affect the safety and soundness of the licensee or its ability to satisfy its obligations to its policy holders.

(2) The Authority may also make such regulations and guidelines for insurance brokers as it may consider necessary for effectuating the provisions of this Act.

(3) The Authority may further adopt regulations as to:

(a) reasonable terms for insurance policies required by law to be obtained, in light of competitive discipline in the market;

(b) requiring for an insurance contract a relationship, commonly known as an insurable interest, between the person or thing insured and the beneficiary of the contract;

- (c) restricting claim payments in excess of the loss incurred;
- (d) prohibiting in legal actions the deduction from the calculation of damages arising from the death of the insured of the proceeds of a life insurance policy paid for by the decedent;
- (e) allocation of surpluses in which life policy holders are entitled to participate; and
- (f) protection of policy holder rights in any transfer of policy obligations from one insurer to another or in a full or partial withdrawal from the insurance business.

### **77. Insurance Guarantee Scheme Fund**

The Authority may establish and maintain a separate insurance guarantee scheme fund through regulations for both general and life business in line with the regulations issued by the Authority.

### **78. Surrender of insurance policy**

Where a life insurance policy is surrendered by a policy holder for;

- (1) single premium life policy in force, or
- (2) a life policy other than a single premium life policy which has been in force for 3 years or more,

the insurer shall provide the surrender value of the life policy to the insured.

Notwithstanding the above, the insurer may provide a surrender value for a life policy which has been in force for less than three years.

## **PART XVIII - SECURITIES BUSINESS**

### **79. Securities business supervision**

All companies listed on the securities exchange are subject to regulation and supervision by the Authority.

#### **Subpart A. Securities Brokers and Investment Advisors**

### **80. Licensing requirement**

(1) A person in the business of effecting transactions in securities for the account of others or in the business of dealing in securities for his own account (but not simply an investor) shall obtain a license as a securities broker.

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

(a) the advice is permitted by another licence obtained under this Act or is allowed under a law regarding pension funds;

(b) the advice is solely incidental to the person's practice of law, accountancy or the teaching profession and involves no special compensation;

(c) 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 specialised newspapers, magazines, other mass media or public discussion;

(d) the advisor has fewer than 15 customers in Bhutan, none of which is an investment fund required to be licensed. The Authority may issue regulations as to when an entity constituted by or representing a number of persons shall be counted as a single customer by reason of the understanding, expertise or other protection provided by the entity itself and regulations otherwise relating to the counting of customers.

### **81. Securities broker's or investment advisor's licence**

(1) An application for a securities broker's or investment advisor's licence shall state the services which the applicant will hold itself out as being able to provide.

(2) The Authority shall not grant a broker's licence to an individual unless he operates only as an introductory broker or independent trader.

(3) An introductory broker is one who transmits customer orders for execution to another broker and who holds no customer assets, unless for prompt forwarding to an executing broker. An introductory broker may be required, should the Authority so determine, to associate for regulatory purposes with a licensed securities exchange on terms set forth in regulations of the Authority.

(4) An independent trader is a person dealing for his own account as a member or participant of a licensed securities exchange who has no outside customers.

(5) Securities brokers and investment advisors must keep customers' money in a bank account separate from their own money, subject to such temporary exceptions as may be allowed in regulations or rules adopted or approved by the Authority.

(6) Notwithstanding anything to the contrary contained in the Bankruptcy Act 1999 the customer money, deposited in a bank account clearly designated as one for the benefit of customers shall remain the property of customers and shall not be deemed assets of the licensee in the event of the latter's bankruptcy.

(7) The Authority may issue further regulations as to persons licensed or registered pursuant to this subpart implementing the objectives of section 3 of this Act and its provisions generally.

(8) All entities conducting securities business shall keep records of all transactions for a minimum period of ten years.

(9) All entities conducting securities business shall provide their clients with adequate information on the selling or purchase of securities. Full statements should be provided to the clients at least once a year.

## **82. Investment advice**

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

- (a) in writing whether it is giving independent advice or whether it has any material interest in the investment opportunities being recommended or selected;
- (b) 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.

### **83. Individual representatives**

(1) An individual employed by a licensed securities broker, unless in a purely clerical capacity or in another capacity not inherently related to the professional services provided to customers, shall be fit and proper, pass such examination and undertake such training as may be required by the regulations of the Authority, and be registered as a Securities Broker Representative and under any sub-classification as the Authority may determine.

(2) The Authority may by regulation also designate persons with supervisory responsibilities over the persons in subsection (1) to be Securities Broker Representatives required to be fit and proper for their positions and registered.

(3) The Authority may in a similar manner prescribe regulations for the registration of individuals employed by or associated with licensed investment advisors.

### **Subpart B. Investment Funds**

#### **84. Investment fund forms**

(1) An investment fund is any pooling of funds for purposes of collective investment of the fund thus raised in securities, with a dividend or other return to each unit of interest in the fund, but does not include:

- (a) pools with fewer than 25 participants unless offered in a public way to ordinary investors;
- (b) banks, insurers or pension funds subject to separate regulation;

(c) ordinary industrial or commercial enterprises employing a holding company structure;

(d) entities organized in accordance with rules adopted by the Authority solely to issue securities with a stated return designed to pass through to holders the revenue from a pool of mortgages, debt obligations or similar instruments; or

(e) other pools defined by regulations of the Authority as not of the type contemplated by this section.

(2) The investor's interest in the investment fund shall herein be called a "unit," and the unit shall represent a percentage part of the investment fund.

(3) An investment fund may be organized as an ordinary company with its units being the transferrable shares issued by the company and not subject to regular redemption by the company; such a fund shall be known as a closed-end fund.

(4) An investment fund may also be organized to allow frequent or continuous redemption of units and in such case be known as an open-end fund. Management of an open-end fund shall be contractually delegated to a management company under a contract requiring that the fund be managed in the interests of unit holders.

(5) The Authority may adopt regulations supplementary to the provisions of this subpart, and without limiting other regulations authorized by this Act, with respect to:

(a) controlling related-party transactions and other conflicts of interest to insure that the investment fund is managed in the interests of its unit holders;

- (b) requiring a closed-end fund to retain a depositary;
  
- (c) modifying the application of Part IV of the Companies Act or other of its provisions relating to the issuance, transfer or redemption of units, with respect to any open-end fund organized as a company under that Act;
  
- (d) specifying professional qualifications or other fit-and-proper requirements for control persons of an investment fund or of its management company or for persons responsible for investment decisions of an investment fund;
  
- (e) insuring the solvency of or limiting the risks undertaken by an investment fund;
  
- (f) assuring adequate disclosure of matters material to a decision to buy, sell or hold units of an investment fund;
  
- (g) assuring proper audit, record-keeping and internal controls for investment funds and management companies;
  
- (h) assuring a sound, adequately disclosed and fair basis for valuing the assets of an investment fund, determining the value of a unit or calculating fees and expenses associated with management; and
  
- (h) regulating fair and efficient means of effecting the issue and redemption of units of an open-end investment fund based on the net value of the fund and the fractional interest therein that the unit represents.

## **85. Licensing of investment fund**

(1) An investment fund shall be licensed only if the Authority, after review of such information as it may require regarding the investment fund and any proposed management company or depositary, has determined that the criteria of section 84 are satisfied and that each contract with any management company or depositary is consistent with these; in the absence of regulations adopted under section 84(5), the Authority may apply the criteria of section 84(5)(a),(b) and (d)-(i) in restricting or conditioning a licence.

(2) Without limiting subsection (1), the Authority shall only license an investment fund if it finds that the control persons of any management company and depositary are fit and proper.

(3) Neither the management company nor the depositary may be replaced, nor may the fund rules, management contract or depositary contract be amended, without the prior approval of the Authority under the standards of this section.

(4) No open-end fund shall be licenced unless the Authority finds that its organizational form is legally sufficient to protect the interests of unit holders and that its arrangements for redemption of units are lawful, practical and not likely to cause harm to the fund by reason of the illiquidity of the fund's investments.

## **86. Financial resources and activities of the management company**

(1) A management company shall have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.

(2) No management company may engage in activities other than the management of investment funds.

(3) The management company may only be paid or receive the fee stipulated in the prospectus of the investment fund for managing the fund.

(4) The investment fund may not purchase securities issued by the management company, and the latter may not trade on its own account ahead of the investment fund in the same securities, or otherwise act in a way inconsistent with the interests of the investment fund.

### **87. Safekeeping of the investment fund's assets**

(1) An open-end investment fund's assets shall be entrusted to a depositary for safe-keeping.

(2) A depositary shall be a bank.

(3) A depositary shall receive, deliver, safe-keep and value the securities in the portfolio of the investment fund and administer the issuance and redemption of units in an open-end fund, seeing to the conduct of these operation in accordance with this Act, the regulations under it, the rules of the investment fund and the depositary's contract.

### **88. Requirements for the management company and the depositary**

(1) No single company shall act as both management company and depositary nor shall any affiliated companies to the extent prohibited in regulations adopted by the Authority.

(2) In the context of their respective roles, the management company and the depositary shall act independently and solely in the interest of the unit-holders.

(3) A management company or depositary acting on behalf of an investment fund may not grant loans or guarantees out of or against funds assets.

### **89. Investment policies of investment fund**

(1) The rules of an investment fund or the contract with its management company shall describe the investment policy the investment fund will follow, indicating among other things:

(a) whether and the extent to which the investment fund invests in securities not listed on a securities exchange licensed in Bhutan;

(b) the maximum percentage of its assets that the investment fund may invest in the securities issued by the same company or affiliated companies and the maximum percentage of a company's share capital that the investment fund will hold;

(c) the maximum percentage of its total assets it will invest in units of another investment fund;

(d) whether the investment fund will borrow money and the maximum amount it will borrow indicated in percentage in relation to the value of the investment fund; and

(e) the general investment objectives and policies of the fund.

(2) The fund rules shall provide the method for the valuation of assets and the rules for calculating the issue price and redemption price, if any, of the units of an investment fund.

(3) The fund rules shall prescribe the remuneration and the expenditure which a management company is empowered to charge the investment fund and the method of calculation of such remuneration.

## **90. Disclosure to Investors**

(1) A closed-end investment fund or an open-end investment fund organized under the Companies Act shall make available to investors and file with the Authority a prospectus and periodic reports under the Companies Act subject to such alteration or supplementation as the Authority may adopt by regulation to assure availability of information material to a decision to buy, hold or sell units.

(2) An open-end investment fund not organized under the Companies Act shall make available to investors and file with the Authority such prospectus and periodic reports as the Authority may prescribe by regulation to assure availability of information material to a decision to buy, hold or sell units.

(3) Any open-end investment fund shall up-date its prospectus with the frequency prescribed by regulation by the Authority in light of the frequency with which such fund issues units.

(4) The prospectus of an investment fund shall be approved as to completeness and adequacy of disclosure by the Authority and shall be accepted for filing with both the Authority and the Registrar of Companies on that basis.

## **91. Exemptions**

The Authority may grant exemptions from the requirements of this subpart and the rules under it, where it determines that the burden imposed is disproportionate to the protections intended by the provision in question.

## **Subpart C. Securities Exchanges**

### **92. Securities exchange licences**

(1) Any person in the business of operating an organized forum or marketplace for transactions in securities, unless as part of the internal operations of a licensed broker, shall obtain a license to operate a securities exchange.

(2) An application for a licence to operate a securities exchange shall be accompanied by a copy of the applicant's articles, proposed rules and requirements for listing.

(3) In determining an application to be licensed as a securities exchange, the Authority shall be satisfied that the following requirements are met:

(a) the applicant can provide and maintain to the satisfaction of the Authority adequate and properly equipped facilities or systems for the conduct of the business of a securities exchange;

(b) the rules and practices proposed to be followed by the applicant are such that it will ensure the business conducted by means of its facilities or systems will be conducted;

(i) in an orderly manner minimising risks of market disruption, confusion or manipulation;

(ii) so as to promote the effectuation of participant responsibilities to customers; and

(iii) so as to accord protection to investors in accordance with the objectives of this Act;

(c) the applicant has made such arrangements as the Authority considers satisfactory for:

- (i) the recording and publication of transactions and market data and the maintenance of records required under applicable provisions of this Act;
- (ii) market surveillance;
- (iii) the effective monitoring and enforcement of compliance with its rules, this Act and regulations under this Act;
- (iv) investigating complaints in respect of business transacted by any of its securities brokers;
- (v) clearing transactions either by becoming licensed to operate as a clearing house or requiring all trades to be settled in accordance with the rules of a licensed clearing house;
- (vi) settling transactions either by becoming a licensed depository; or by requiring all trades to be settled in accordance with the rules of a licensed depository; or by making other acceptable arrangements;
- (vii) listing securities on the exchange including requiring adequate access to information about listed issuers;
- (viii) admitting persons to membership or participation and expelling, suspending or disciplining them or otherwise limiting their access to services; and
- (ix) fair procedures for implementation of its rules and responsibilities.

(4)(a) The Authority shall exercise its powers with respect to the securities exchanges and any exemption from a requirement to trade on a securities exchange in the interest of promoting competitive, efficient, transparent, informed and reliable markets with reasonable access to participation and listing and placing no undue burden on competition and of promoting compliance with this Act and the regulations under it in general.

(b) The Authority may supervise rules regarding admission to listing also in the interests of proper corporate governance of listed companies, to the end of assuring that they are managed in the interests of their shareholders.

(c) The Authority shall exercise its powers regarding listing rules, and rules or regulations as to exemptions from a requirement to trade on a securities exchange, so as to allow listing classifications reflecting the risks of an investment but to avoid precluding lawful trading by the public in some forum unless there is a dangerous likelihood that such trading would be based upon investor confusion, ignorance or misunderstanding.

(5) In determining the degree of supervision required of a securities exchange, including but not limited to approval or amendment of its rules and appeals from the decisions of the securities exchange, the Authority shall give consideration to:

- (a) the degree to which the exchange has a dominant position in the securities market or is subject to effective competition or potential competition from others; and
  - (b) any subsidy or revenue the exchange may derive from governmental sources.
- (6) The Authority may adopt regulations specifying the circumstances in which the nature and extent of a licensed broker's business, including the participation therein of other brokers, shall require re-licensing as a securities exchange.

### **93. Power of Authority to direct suspension of trading**

- (1) The Authority may direct a licensed securities exchange by written notice to suspend trading on the market of the exchange, either wholly or in part or in respect of specified securities, for a period not exceeding five consecutive trading days if, in its discretion after consulting the management of the exchange, it determines that the orderly conduct of such trading is being or is likely to be prevented by reason of natural disaster, war, political upheaval or economic or financial crisis wherever occurring or by any other circumstances. In cases where the limited number of securities involved and other circumstances make this feasible, the Authority should also consult with the issuers of the securities suspended.
- (2) A notice under subsection (1) shall specify the reason for and the duration of the suspension and shall take effect upon its delivery to the licensee.
- (3) The Authority may, after consulting the management of the licensee, direct the licensee to extend the period of suspension of trading under subsection (1) for an additional period not exceeding five trading days provided that it gives to the securities exchange two clear business days' written notice of such extension and specifies the reason for the extension.

(4) A notice under subsection (3) shall take effect upon its delivery to the securities exchange.

(5) The Authority shall, on the business day following delivery to the securities exchange of a notice under subsection (1) or (3), provide an opportunity for the exchange to be heard on the need for a suspension of trading or an extension of suspension of trading.

(6) The Authority may revoke, withdraw or modify a direction made under subsection (1) or (3) at any time prior to the expiration of the period of suspension.

(7) The jurisdiction of the Authority under this section shall not detract from the authority of the securities exchange to suspend trading under its own rules.

#### **94. Approval of rules**

(1) A securities exchange licensed under this Act shall submit to the Authority:

(a) all proposed rules and proposed amendments to its rules, including significant policies and interpretations having the effect of rules; and

(b) explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Authority to decide whether to approve them or refuse to approve them.

(2) The proposed rules or amendments shall not have effect unless the Authority has approved them in writing.

(3) The Authority shall, within 8 weeks after receiving the proposed rules or amendments for approval, issue an order to the exchange that

(a) the Authority approves them; or

(b) it refuses to approve them.

Refusal to approve a rule is adverse action with respect to the exchange. A decision as to approval or refusal under this section or amendment under the following section shall be based upon the standards set forth in this Act and the regulations thereunder.

### **95. Power of Authority to require amendment to rules**

Where the Authority considers it necessary for the purposes of this Part, it may, subject to the requirements of Part X, require the securities exchange to make or to amend any rule.

### **Subpart D. Clearing and settlement**

#### **96. Clearing house licences**

(1) Any person in the business of tabulating the results of securities transactions and establishing the resulting settlement obligations, unless part of the internal operations of a licensed broker, shall obtain a license as a clearing house. An application for a licence to operate a clearing house shall be accompanied by:

(a) a copy of the applicant's articles, rules or proposed rules; and

(b) particulars of the securities market and, where appropriate, depository, with which the applicant proposes to be associated, together with a letter of confirmation of these arrangements from them.

(2) In determining an application made subsection (1), the Authority shall not grant a licence to an applicant unless the Authority is satisfied that:

(a) the applicant has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules; and

(b) the applicant's clearing services will be consistent with the goals of:

(i) providing safe, accurate and efficient settlement of securities transactions on their terms, including such interface as the Authority may deem necessary with other clearing or settlement institutions; and

(ii) reasonable access to participation, placing no undue burden on competition, and fair procedures for the implementation of its rules and responsibilities.

(3) The Authority shall for the promotion of the objectives of subsection (2) have the same power to approve and amend the rules of a licensed clearinghouse as is set out with respect to securities exchanges in sections 94 and 95. In its general exercise of regulatory authority, it shall consider with respect to clearing houses the factors set out in section 92(5).

(4) The settlement rights and obligations of clearing participants and their clients on transactions submitted for clearing to a licensed clearing house are established by the rules of the clearing house, including any relating to the establishment of claims for loss on failed settlements, set-off, bilateral or multilateral netting or use of a central counterparty, and shall be the rights and obligations recognised in a bankruptcy proceeding, and the court shall endeavour to harmonise them with the requirements generally applicable in such a proceeding.

(5) The assets of a fund raised under the rules of a licensed clearing house to guarantee the settlement of cleared transactions shall be reserved exclusively for that use and shall not otherwise be subject to the claims of creditors of the clearing house or claims of a clearing participant or its creditors, except as provided in the rules of the clearinghouse and the regulations of the Authority.

(6) The Authority may adopt regulations specifying in more detail the activities requiring licensing as a clearing house and the combination of this function with other licensed activities.

## **Subpart E. Securities Depositories**

### **97. Depository licenses**

(1) Any person who, in order to facilitate securities trading, accepts securities to be transferred into its own name as holder for the accounts of others or accepts a registrar function from their issuer with respect to securities not represented by certificates, must be licensed as a securities depository, where such securities represent a substantial portion of the market for listed or publicly traded securities. An application for a licence to operate a depository shall be accompanied by:

- (a) a copy of the applicant's articles and rules or proposed rules; and
- (b) particulars of any securities exchange or clearing house with which the applicant proposes to be associated, together with a letter of confirmation of these arrangements from these organisations.

(2) In determining the application, the Authority shall not grant a licence to an applicant unless the Authority is satisfied that:

(a) the applicant has the experience necessary to enable it to conduct its business and to carry out its duties as a depository; and

(b) the applicant's depository services will be consistent with the goals of:

(i) providing safe, accurate and efficient settlement of securities transactions on their terms, including such interface as the Authority may deem necessary with other clearing or settlement institutions; and

(ii) reasonable access to participation, placing no undue burden on competition; consistency with the applicable provisions of the Companies Act; and fair procedures for the implementation of its rules and responsibilities.

(3) The Authority shall for the promotion of the objectives of subsection (2) have the same power to approve and amend the rules of a licensed depository as is set out with respect to securities exchanges in sections 94 and 95. In its general exercise of regulatory authority, it shall consider with respect to depositories the factors set out in section 91(5).

(4) The Authority may adopt regulations specifying in more detail the activities requiring licensing as a depository and the combination of this function with other licensed activities.

## **Subpart F. Liability for securities offences and certain other matters**

### **98. Securities offences**

The liabilities established under this subpart shall apply to:

(a) materially misleading statements, whether by assertion or omission, in any prospectus or in any annual or other periodic report provided by an issuer to a securities exchange or otherwise provided for the use of investors;

(b) any materially misleading statement, whether by assertion or omission, made in connection with the purchase or sale of securities or of services regulated under this Act as securities business, regardless of whether the person making the misstatements is or is required to be licensed, but not including ordinary commentary by disinterested persons without dishonest intent;

(c) insider trading as defined under relevant provisions of the Companies Act, provided that the Authority may by regulation define additional publicly traded securities as to which the provisions of that section may apply;

(d) securities manipulation as defined in section 2;

(e) such specific practices or courses of action relating to securities or the securities business as the Authority may by regulation define as being deceptive, dishonest or likely to give rise to investor confusion.

### **99. Insider trading**

The Authority may exercise the rights of the Government under applicable section of the Companies Act, without prejudice to its powers under this Act; provided that the Authority may prosecute or enforce directions under relevant provision through action under Part XII of that Act only with the consent of the Attorney General.

## **100. Private right of action and further remedies**

(1) The conduct described in section 98 may be redressed by a suit at law against persons substantially causing or substantially participating in the conduct by an injured party or parties seeking compensation of loss or an order that the conduct cease; a suit by the Authority (without limiting its other powers) seeking compensation on behalf of investors or customers or an order that the conduct cease; or by other means stated in this Act or in other law, provided that:

(a) no person may recover compensation more than once for the same damages unless explicitly allowed by law;

(b) no person having brought suit in his own right shall be bound by the results of a suit brought by the Authority unless the court should determine that the person's awareness of and opportunity to dissociate himself from the Authority's suit was such as to render a judgment on his own suit unjust;

(c) no person shall be required to pay damages for unintentional errors except to the extent of his benefit from them, unless provided otherwise by agreement of such person or by regulation adopted by the Authority or by other law;

(d) in demonstrating that the misconduct alleged has caused the damage for which recovery is sought, the person making the claim need not show specific reliance on the misleading conduct alleged if the court determines that there is other sufficient evidence of substantial and reasonably foreseeable causation; the court is also entitled to weigh the reasonableness of any reliance claimed in light of the nature and circumstances of the statements complained of;

(e) in determining damage causation as to insider trading, the court shall consider who would have incurred the loss or gain associated with ownership of the subject security but for the misconduct alleged; in cases where this determination is too complex to be readily performed, the court may order payments made to or for the benefit of a class of investors but should in no case allow the wrongdoer to retain the benefits of his misconduct, whether they be in the nature of gains or of losses avoided; and

(f) the fees and expenses involved with bringing the suit may be allocated by the court in the interests of justice.

(2) Subject to the requirements of Part X, the Authority may issue an order, enforceable against any person, forbidding the offer or sale of any security based upon the circumstances described in section 98(a) or requiring the amendment of any misleading or incomplete document referred to therein.

(3) Knowing violation of the order shall be an offence upon conviction and subject to a fine of not more than Ngultrum one million or imprisonment or both.

### **101. Securities fraud offence**

A person who knowingly commits conduct in section 98(a), (b), (c), (d) or (e) that has caused or could potentially cause substantial damage to investors commits an offence and is liable on conviction to a fine not exceeding Ngultrum one million or imprisonment or both.

## **102. Large holder reports**

(1) The Authority may by regulation require persons, or a group acting together, who control 10 percent or more of the votes in the general meeting of a public company to report such holdings and changes in such holdings, to it and to any securities exchange where shares in the company are traded. Such reports may also require other information or material from the investors as to the holdings or as to the intentions of the person or group with respect to such holdings.

(2) A person who knowingly violates a regulation under subsection (1) commits an offence and is liable to an appropriate fine specified by the Authority in the regulations issued by the Authority.

## **103. Ownership in securities**

### **i) Passing of ownership**

Ownership of a security held in dematerialised or book-entry form in a licensed depository passes when ownership is re-registered on the books of the depository, subject to such allowance for clerical delay or clerical or similar error as the Authority may prescribe by regulation.

### **ii) Transfer of ownership**

Transfer of ownership of securities in the form of gift, inheritance and other non-commercial transactions shall be allowed only upon the approval of the Authority. Such kind of transactions shall be limited only to immediate family members, which shall be verified and approved by the Authority.

## **PART XIX – OTHER FINANCIAL SERVICES**

### **104. Regulation by Authority**

(1) The Authority may regulate financial services other than banking, insurance or securities business by adopting regulations to establish systems of licensing and regulation consistent with the sections of this Act applicable to financial services, including but not limited to:

- a) Inter corporate borrowings,
- b) Pension and Provident Funds,
- b) Trust funds,
- c) Cooperatives, lending companies, Foreign Exchange dealers or money transmitters, and
- d) Any services which is deemed financial in nature.

(2) The Authority shall discuss any such systems of licensing and regulation in its annual report and recommend whether amendment to this Act appears desirable and, if so, what the content of such amendment should be.

## **PART XX - TRANSITIONAL AND CONSEQUENTIAL**

### **105. Construction with other laws**

(1) Where this Act or a regulation under it appears to conflict with the requirements of the Companies Act or another law, or a regulation under them, each of the provisions shall apply unless:

- (a) it is not possible to satisfy both provisions; or
- (b) the application of a provision of or regulation under another law would clearly disrupt the orderly functioning of the scheme of regulation established under this Act.

In such cases, the provisions of this Act or a regulation under it shall prevail.

(2) Licenses or approvals granted by the Authority under this Act are with respect to compliance with the provisions of this Act or regulations under it and, except in cases under the last sentence of subsection (1), do not imply immunity to other legal provisions applicable to the matter involved.

(3) However, no act or arrangement approved by the Authority in a matter where it is specifically required to consider impacts on competition, and no regulation adopted by the Authority, shall be the subject of any legal action under laws on monopolization or related conduct without the consent of the Authority.

### **106. Consequential and other amendments**

Schedule 1 provides for the consequential and other amendments that apply on the commencement of this Act or any relevant part thereof, and the enactments specified in that Schedule are amended in the manner set out.

### **107. Savings and transitional**

Schedule 2 provides for the savings and transitional arrangements that apply on the commencement of this Act or any relevant part thereof.

## SCHEDULE 1 - CONSEQUENTIAL AND OTHER AMENDMENTS

### ITEM 1. Companies Act of the Kingdom of Bhutan, 2000

#### AMENDMENT:

(a) In section 2(1) add before (i) –

“(ai) “**Account Holder**” means a person who has an account with a Depository either directly or through a Participant”.

(b) In section 2(1) repeal definition (xiii) and substitute–

“**Depository**” means a company licensed as a Depository under the Financial Services Act 200\_.”

(c) In section 2(1) add, after definition (xiii) –

“(xiv) “**Depository Portion of the Register**” means the record of securities held in a Depository in dematerialised form, maintained by the issuer.”

(d) In section 2(1) repeal definition (xv), and substitute–

“**Financial Institution**” shall have the meaning assigned by the Financial Services Act 200\_.”

(e) In section 2(1) add, after definition (xxi) –

“(xxii) “**Issuer**” means a company that issues securities to the public.”

(f) In section 2(1) repeal definition (xxii), and substitute–

“**Listed Company**” means a company whose shares or other securities are listed on a Securities Exchange licensed by the Authority.

(g) In section 2(1) add, after definition (xxiv) –

“(xxv) “**Participant**” means a person recognised as a Depository Participant in accordance with the Regulations made under the Financial Services Act 200\_.”

(h) In definition (xxvii) substitute for the introduction to paragraph (b) –  
“limits its members to 25 or such greater number as may be prescribed by the  
Royal Monetary Authority but not including –“

(i) In definition (xxxiii), delete “the Royal Securities Exchange of Bhutan Limited  
having its registered office in Thimphu” and substitute –  
“a Securities Exchange licensed under the Financial  
Services Act 200\_.”

(j) In definition (xxxv), delete paragraph (c) and substitute–  
“every other person whose name is entered in the records of the depository as an  
account holder holding equity share capital of the company shall be deemed to be  
a shareholder of the concerned company:”

(k) In section 10(3), delete the subsection and substitute–

“Any reduction of capital by a public company shall be notified by the company to the Royal Monetary Authority and any Securities Exchange on which the securities are listed, and the reduction shall take effect from the date of receipt by the company of a confirmation of the same from the Royal Monetary Authority that the reduction is fair to securities holders, any adverse action by the Authority subject to appeal under the Financial Services Act of 200\_.”

(l) Delete subsection 24(1), and substitute –

“(1) From the date of commencement of this Act, no public company shall issue a certificate in respect of new issues of shares. All such issues shall be made through a depository in accordance with the rules of the Securities Exchange on which the security is to be listed or of the Royal Monetary Authority under the Financial Services Act 200\_.”

(m) In section 29(4)(c), add in line 3, after “Securities Exchange” –

“on which the securities are listed”

(n) In section 29(5), in line 2, after “the facilities of”, delete “the” and substitute “a”. Add at the end of section 29(5) “unless exempted by regulations adopted by the Royal Monetary Authority under the procedures of the Financial Services Act 200\_ to otherwise assure fair access to the buy-back.”

(o) In section 30(1), delete the subsection and substitute–

“(1) A company shall not register a transfer of securities of the company for which a

certificate is in issue unless an instrument of transfer in the form specified in Schedule

VIII executed by or on behalf of the transferor and transferee has been delivered to the company along with:

(a) in the case of a public company the certificate and an authorisation for transfer from any Securities Exchange on which it is listed, unless otherwise provided in regulations adopted by the Royal Monetary Authority under the procedures of the Financial Services Act 200\_;

- (p)(i) In section 30, add a new subsection, after subsection (1) –  
“(2) Transfers to or from the depository portion of the register shall be effected on receipt, from the depository, of the certificate (in the case of a transfer to the depository portion) and a signed authorisation from the transferor for the transfer, subject to reasonable allowance for any necessary confirmation of the documents’ authenticity.”
- (ii) In section 30(5) replace “instrument of transfer and the trade confirmation note or certificate as the case may be” with “documentation required under this section”.
- (q) In section 31(3), in line 3, substitute for “the Securities Exchange” –  
“any Securities Exchange on which the debenture is to be listed.”
- (r) In section 32(3), delete the subsection and substitute–  
“(3) The register of account holders maintained by a depository shall be deemed to be a  
register of shareholders or debenture holders, as the case may be, for the purposes of this Act.”
- (s) In section 33(3), strike the words after “prescribed by” and substitute “the rules of any Securities Exchange on which the security is proposed to be listed.”
- (t) In section 34, replace “Registrar” in subsection (1) with “Royal Monetary Authority”; in subsection (2), drop the words after “to” and substitute “the Registrar and any securities exchange on which the security is proposed to be listed.”; add a new subsection (3) saying “The Royal Monetary Authority shall approve a prospectus complying with section 33 and shall have exclusive authority to exercise the role of the Ministry or Registrar under section 138 and Part XII of this Act with respect to rules, regulations and enforcement under or of this Part IV and may conduct investigations in respect of violations of this Part. Such investigations shall be governed by the procedures of the Financial Services Act of 200\_, including all provisions therein as to penalties for refusal to cooperate or providing false or incomplete information as would be applicable in an investigation under that Act.”
- (u) In section 37(1), in line 3, after “application to”, delete “the” and substitute “a”.

(v) In section 37(2), in line 2, after “made to”, insert “a Securities Exchange and give the name of”.

(w) In section 37(5), in line 2, after “granted by”, delete “the” and substitute “a”.

(x) In section 38(1), in line 2, after “authorised by”, delete “the” and substitute “a”.

(y)(i) In section 39(1)(a), in line 2, after “listed on”, delete “the” and substitute “a”.

(ii) In section 39(1)(a) after “Exchange” insert “(or other public company pursuant to regulations adopted by the Royal Monetary Authority under the Financial Services Act of 200\_)”.

(z) (i) In section 39 Explanation II (ii), after “is an official or”, delete “member of the” and insert “participant of a”, and after “Securities Exchange,” insert “or clearing house”.

(ii) In section 39(2), add to the end “Any person knowing that he has unpublished, price-sensitive information that has likely originated with an insider’s breach of a duty under subsection (1)(b) or (c) becomes subject to the insider’s duties under subsection (1) (except that he, as well as the insider, may make such information public unless constrained by other law) and to the provisions of this section for enforcement of such duties.”

(aa) Delete section 40 and substitute –

“40(1) All trading of securities issued to the public, unless otherwise approved or exempted by the rules of a Securities Exchange or regulations adopted by the Royal Monetary Authority under the Financial Services Act of 200\_, shall be carried through the facilities provided by an Exchange; an exempting regulation adopted by the Royal Monetary Authority may also extend to the requirements of section 37 regarding the need for permission to be dealt through an Exchange.

(2) The company, which has issued securities to the public, shall make its best efforts to abide by the rules and regulations of any Securities Exchange on which it is listed and be subject to such consequences as provided therein should it fail to satisfy them.

(3) All transfers of ownership of securities, which are by way of gift, inheritance or are for other non-commercial reasons shall be subject to the approval of any Securities Exchange on which they are listed to assure that the transfer is in fact non-commercial, subject to such regulations as the Royal Monetary Authority may adopt under the procedures of the Financial Services Act of 200\_.”

(bb) Delete Part V and substitute:

**“Part - V**

**Rights and Obligations of Depositories Participants, Issuers and Account Holders**

**41. Services and regulation of a Depository**

(1) Any person may open an account directly with a Depository or through a participant in accordance with the rules of that Depository.

(2) The Royal Monetary Authority shall have exclusive authority, notwithstanding any other provisions of this Act, to:

- (i) adopt regulations implementing this Part V, as specifically provided in this Part and otherwise, including regulations governing the relations of issuers and account holders with a depository and the means for establishing pledges of securities therein; and
- (ii) exercise the powers of the Ministry to enforce this Part.

**42. Securities to be held with the depository**

- (1) All securities listed on a Securities Exchange shall be eligible for holding in the related Depository. Others may be eligible as provided in the rules of a depository.

(2) Once a security has been dematerialized it may not be rematerialised except with the permission of the Royal Monetary Authority or according to such regulations as it may adopt under the Financial Services Act of 200\_.

#### **43. Securities to be dematerialised**

(1) Notwithstanding the provisions of any law, all securities held by a Depository shall be in dematerialised form and shall be fungible.

(2) No company shall issue certificates in respect of securities held in the Depository Portion of the Register.

#### **44. Dematerialisation**

(1) On receipt of certificates from participants, a Depository shall send them to the issuer.

(2) On receipt of certificates from a Depository, the issuer shall -

- (i) transfer the record of the title to such securities to the Depository Portion of the Register;
- (ii) advise the Depository that such transfer has been made in accordance with the rules of the Depository and any Securities Exchange on which the securities are listed; and
- (iii) reconcile the balance held in that Portion with the records held by the Depository in accordance with the rules of the Depository.

#### **45. Rights of depositories and account holders**

- (1) A Depository shall not be a member of any issuer.
- (2) The account holders recorded in the Depository records and supplied to the issuer in accordance with Regulations made under the Financial Services Act 200\_ shall be the registered owners of the securities.
- (3) Every Depository shall maintain a record of account holders and the quantity of each security that they hold.
- (4) Every Depository shall furnish to the issuer information about the account holders and the quantity of securities that they hold at such intervals and in such manner as may be specified by Regulations made under the Financial Services Act 200\_.
- (5) The issuer shall, in respect of a member of a company, rely upon the information provided by the Depository under subsection (4).
- (6) Every issuer shall make available to the Depository copies of the register in accordance with the rules of the Depository and any Securities Exchange where the securities are listed.

#### **46. New Issues of Securities**

- (1) Where an issuer, in relation to any holdings in the Depository Portion of the Register makes a bonus issue or issues securities pursuant to a rights issue or the conversion of any debt securities, the issuer shall notify the Depository of the identity of the allottees in accordance with Regulations made under the Financial Services Act 200\_.

(2) The Depository shall then credit the accounts of the allottees with the securities.

(3) Where an issuer issues securities pursuant to an exercise of any option to acquire securities in the share capital of the issuer, the issuer shall notify the Depository of the identity of the allottees in accordance with Regulations made under the Financial Services Act 200\_.

(4) The Depository shall then credit the securities to the accounts of the allottees.

#### **47. Pledging**

(1) Where an account holder wishes to pledge securities in its account to any person, a Depository shall, on receipt of an instruction from the pledgor:

- (i) provide confirmation statements to the pledgor and to the pledgee; and
- (ii) hold the relevant securities to the order of the pledgee.

(2) Notwithstanding the provisions of any law, the ownership of securities that are held in a Depository may, subject to Regulations made under the Financial Services Act 200\_, be transferred without a written instrument.

(3) Participants shall only instruct the Depository to transfer securities if they have instructions from the account holder or his representative to the extent permissible under any Regulations made under the Financial Services Act 200\_.

(4) A sell order is deemed to be an instruction to transfer securities from the account holder in satisfaction of the resulting sale.

(5) A Depository, subject to applicable rules, shall act in accordance with instructions received from a Participant.

(6) When any security is transferred through the book entry system the said transfer shall be effective when the Depository updates its records, as provided under the Financial Services Act 200\_.”

(cc) In section 87, add in line 1, after “public company”, “(except a bank on terms permitted in regulations adopted under the Financial Service Act 200\_,”)

(dd) In section 88, add in line 1, after “holding company”, “or a financial institution licensed under the Financial Service Act 200\_”.

(ee) In section 137, replace the period at the end with a comma and add “except insofar as alteration of such Schedules is committed to the Royal Monetary Authority under the Financial Services Act of 200\_.”

(ff) In Schedule IX, Part III, paragraph 22, in line 3 of the Declaration, before “Securities Exchange” replace “the” with “any”, and after “Securities Exchange” add “on which the securities are to be listed”.

(gg) In Schedule XIV, Reporting, add to paragraph (2)

– “iv) Except that in the case of a company licensed under the Financial Services Act 200\_, the Auditors’ Report to be submitted to the members shall consist of the matters set out in paragraph (i) above, and the matters set out in paragraphs (ii) and (iii) above shall be contained in a letter to the board of the company, with a copy forwarded to the Royal Monetary Authority, but shall also be provided to the members to the extent provided in regulations adopted by that Authority.”

## **ITEM 2. Income Tax Act of the Kingdom of Bhutan 2001**

### **AMENDMENT**

In section [ ], add a sentence “Trades executed through the facilities of a licensed securities exchange or exempted under section 40 of the Companies Act from the requirement to trade on an exchange are exempt from tax, including stamp duty and capital gains tax.”

In section 25, delete “Financial Institutions Act 1992” and substitute “Financial Services Act 200\_”

**ITEM 3. Penal Code of Bhutan**

**AMENDMENT**

In section 309, delete paragraph (e) and re-letter the remaining paragraphs accordingly.

## **SCHEDULE 2 - SAVINGS AND TRANSITIONAL**

1. The Financial Institutions Act 1992 is hereby repealed.
2. A company or a person which, immediately prior to the commencement of this Act, is licensed under the Financial Institutions Act 1992 (the “1992 Act”) of Bhutan to provide any of the financial services specified in article 1.a. of the 1992 Act, shall thereupon be deemed to be licensed under this Act to conduct business as permitted by its licence.
3. An insurance company previously licensed by the Authority to operate as both a life and general insurer, shall thereupon be deemed to be licensed shall thereupon be deemed to be licensed under this Act to conduct business as permitted by its licence.
4. A person, who, immediately prior to the commencement of this Act, is registered with Royal Securities Exchange of Bhutan Limited as a salesman or trader, shall be deemed to be registered under this Act as securities broker representative.
5. The Royal Securities Exchange of Bhutan Limited shall be deemed to be licensed under this Act to operate a securities exchange, a securities clearing house and a depository.
6. Rules, regulations, orders, directions or proceedings in force under the 1992 Act at the time this Act becomes effective shall remain in force to the extent consistent with this Act as if made under it. Except as provided in section 2 of this schedule, licensees under the 1992 Act whose financial or organisational structure requires revision to conform with this Act shall have one year to do so except to the extent earlier conformity is required in regulations adopted by the Authority. The same shall apply with respect to persons carrying on a lawful employment or activity who become subject to a registration requirement by virtue of this Act.
7. A reference in any law, document or instrument relating to the 1992 Act or a provision of that Act shall, on and after the coming into operation of this Act, unless the context or circumstances indicate otherwise, be construed as a reference to this Act or to the corresponding provision of this Act.

