

འབྲུག་གི་ཚོང་སྡེའི་བཅའ་ཁྲིམས་

༢༠༡༦ ཚན་མ།



THE COMPANIES ACT OF BHUTAN

2016



འབྲུག་གི་སྤྱི་ཚོགས་ལྷན་ཁང་།



PARLIAMENT OF BHUTAN



SPEAKER

ཨེན་ཨེ་མི་ཨེས་མི། ༡༡/༢༠༡༤/༡༥༤

སྤྱི་ཚོགས་ ༢༩-༠༧-༢༠༡༤ ལུ།

༣ མི་ཇེ་བསྟན་རྒྱལ་སྤོན་པོ་མཚོག་ལུ། དོན་འབྲས་ དེ་ནི་ སྤྱི་ཚོགས་གཉིས་པའི་ཚོགས་ཐེངས་ ༧ པའི་ནང་ སྤྱི་ཚོགས་
སྟན་བུལ་གས་ཐོག་ ཆ་འཛོག་གྲུབ་པའི་ འབྲུག་གི་ཚོང་སྲིད་བཅའ་ཁྲིམས་ ༢༠༡༤ ཚན་མ་འདི་ མི་དབང་མངའ་བདག་
འདི་ལྷན་པོ་ཚེ་ལེ་ལས་ལས་ རང་ལུགས་གནམ་ལོ་མོ་མོ་སྤྲེལ་ལོ་ གློ་ ༤ པའི་ཚོགས་ ༤ ལུ་འཇམ་ སྤྱི་ལོ་ ༢༠༡༤ གློ་ ༧
པའི་ཚོགས་ ༡༩ ལུ་ བསྟན་སྲོད་ཀྱི་བཀའ་ཐོབ་གནང་ཡོད་མི་དང་འབྲེལ་ དེ་བསྟན་ཁག་གི་རྟོངས་ལས་ དང་སྒྲངས་རྩལ་
མཐུན་མཛད་དགོས་བཅས། རང་ལུགས་གནམ་ལོ་མོ་མོ་སྤྲེལ་ལོ་ གློ་ ༤ པའི་ཚོགས་ ༡༩ ལུ།

(འཇིགས་མེད་བཟང་པོ་)
ཚོགས་དཔོན།

- འདྲ་ ༡. གཞུང་སྲོད་དབུ་ཁྲིད་པ་མི་ཇེ་སྤོན་ཚེན་མཚོག་ལུ། སྟན་སྲོན།
- ༢. དང་ཁྲིམས་སྟན་སྲིད་དབུ་ཁྲིད་པ་མི་ཇེ་འབྲུག་གི་ཁྲིམས་སྤྱི་སྤོན་པོ་མཚོག་ལུ། སྟན་སྲོན།
- ༣. རྒྱལ་ཡོངས་ཚོགས་སྲིད་མི་ཇེ་ཁྲི་འཛོན་མཚོག་ལུ། སྟན་སྲོན།
- ༤. མངའ་བདག་བྱུང་ཚེན་མཚོག་ལུ། སྟན་ལུ་འཛོན།
- ༥. རྒྱལ་ཡོངས་ཚོགས་འདུ་འཛོན་ལུ་བྱུང་ཚེན་ལུ།

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PREAMBLE

An Act to reform the law on incorporation, registration, conduct, reorganization, winding up and dissolution of companies; to provide for minority interest protection, enabling provision for corporate governance and corporate social responsibility, separation of ownership and management along with robust regulatory body in keeping with good standards of business ethics, securities regulation with an objective of fostering good governance, transparency, vibrant, free and fair market in the economy.

Parliament of the Kingdom of Bhutan hereby enacts the Companies Act of Bhutan, 2016 on the 24th Day of the 4th Month of the Fire Male Monkey Year of the Bhutanese Calendar corresponding to the 30th Day of May, 2016 as follows:

Chapter 1 Preliminary

Title, Commencement and Extent

1 This Act shall:

- (a) Be called the Companies Act of Bhutan, 2016.
- (b) Come into force with effect from the 9th day of the 6th month of the year Fire Male Monkey Year, of the Bhutanese calendar corresponding to the 13th Day of July 2016; and
- (c) Extend to the whole of Bhutan.

Application

2. This Act shall apply to every body corporate incorporated or registered by or under this Act.

Repeal

3. The Companies Act of the Kingdom of Bhutan, 2000 is repealed.

Chapter 2

Types of company

Provisions relating to all companies

4. Subject to sections 17 and 19, any one or more persons may, by subscribing to Articles of Incorporation and otherwise complying with the provisions of this Act in respect of incorporation, form an incorporated company for a lawful purpose.
5. Every company incorporated under this Act shall be limited by shares.
6. The liability of a shareholder of the company shall be limited to the amount, if any, unpaid on shares held by him.

7. A company may be incorporated as a public company or private company

Public companies

8. A public company is authorised by its Articles to offer its shares or other securities to the public.
9. If a public company offers its shares or other securities to the public, it shall do so in accordance with sections 106 and 107.
10. A public company:
 - (a) shall have a minimum allotted share capital of such amount as may be prescribed,
 - (b) shall have at least three directors,
 - (c) shall have a company secretary, and
 - (d) if it intends to offer its shares to the public, shall comply with such further requirements as may be imposed by the Regulatory Authority and the Securities Exchange.
 - (e) shall have clear divestment criteria and procedure for the public companies owned by the Government in the Rules and regulations prescribed by the Regulatory Authority.

Private companies

11. A private company:
 - (a) Is not permitted to offer its shares to the public; and
 - (b) Shall have at least two directors;

12. Where one person incorporates a company by subscribing to Articles of Incorporation prescribed by this Act, such company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its Article of Incorporation.

Government companies

13. A Government Company shall be incorporated as a public company.

Companies incorporated other than under this Act

14. A company which is incorporated by an Act of Parliament other than this Act or a previous Companies Act shall be registered under this Act.

15. If a company is registered in accordance with section 14:
- (a) a copy of the Act by which the company is incorporated shall be placed on the register maintained by the Registrar of Companies; and
 - (b) the provisions of section 35 regarding the issue of a Certificate of Incorporation shall not apply, but the Registrar shall issue a Certificate of Registration.
16. The Regulatory Authority may make regulations not applying or modifying any provisions of this Act relating to a company registered under section 15 or a Royal Charter, insofar as there is a corresponding provision in the Royal Charter or Act by which the company is incorporated.

Re-registration of private company as a public company

17. A private company may be re-registered as a public company if the company:
- (a) satisfies the requirements for a public company in sections 8 and 10;
 - (b) adopts Articles of Incorporation appropriate to a public company;
 - (c) passes a special resolution that it should be re-registered as a public company;

- (d) satisfies any further requirements that are prescribed in regulations made under this Act; and
 - (e) applies to the Registrar in the prescribed form for the company to be re-registered as a public company.
18. When a private company is re-registered as a public company in accordance with section 17, the Registrar shall issue a certificate of re-registration.

Re-registration of public company as a private company

19. A public company which is not listed on a Securities Exchange may be re-registered as private company if the company:
- (a) adopts Articles of Incorporation appropriate to a private company;
 - (b) passes a special resolution that it should be re-registered as a private company;
 - (c) satisfies any further requirements that are prescribed in regulations made under this Act; and
 - (d) applies to the Registrar in the prescribed form for the company to be re-registered as a private company

20. When a public company is re-registered as a private company in accordance with section 19, the Registrar shall issue a certificate of re-registration.

Chapter 3 **Articles of Incorporation**

Model Articles

21. The Regulatory Authority may prescribe Model Articles of Incorporation.
22. A company may adopt the Model Articles appropriate to the type of company as its Articles of Incorporation.

Other Articles

23. A company which chooses to not to adopt Model Articles shall have Articles of Incorporation which shall state:
- (a) the name of the company; and
 - (b) the regulations of the company.
24. The Regulatory Authority may prescribe minimum requirements for the regulations of a company.

25. Articles of Incorporation prepared in accordance with section 23 shall, so far as is practical, follow the format of the Model Articles.
26. Articles of Incorporation prepared in accordance with section 23 may include an objects clause.

Articles of existing companies

27. Articles of Incorporation adopted by a company prior to the commencement of this Act and which conform to the law in force at the time they were adopted:
 - (a) shall remain valid unless and until they are replaced or amended;
 - (b) may be amended or replaced by a special resolution of the shareholders; and
 - (c) if amended or replaced, may exclude specific details of any or all of:
 - (i) the registered office;
 - (ii) the objects;
 - (iii) the share capital; and
 - (iv) the subscribers
 - (d) and shall comply with the provisions of this Act and regulations made hereunder.

The Regulatory Authority shall determine appropriate time period for all existing companies to comply with the provisions of this Act.

Changes to the Articles

28. A company may change any provision in its articles through special resolution of the shareholders in general meeting and shall deliver a copy of the resolution and a copy of the Articles as amended to the Registrar, together with the prescribed fee within thirty days of passing the resolution.

Effect of restrictive provisions

29. If a company's Articles limit, restrict or qualify the purposes, powers or activities of the company:

- (a) no action of the company is void by reason only that:
 - (i) the action was prohibited by that limitation, restriction or qualification; or
 - (ii) as a consequence of that limitation, restriction or qualification, the directors had no authority to authorise the action by the company; and

- (b) in any legal proceedings, other than proceedings between the company or by any shareholder of the company against the present or former officers of the company, no person may rely on such limitation, restriction or qualification to assert that such an action is void.

Chapter 4 Incorporation

Application for incorporation

- 30. A subscriber to the Articles or person acting on their behalf shall deliver to the Registrar:
 - (a) An application in the prescribed form signed by the subscribers;
 - (b) Consent to act as directors by the first directors in the prescribed form;
 - (c) If the company is to adopt Articles of Incorporation other than the Model Articles, a copy of the company's Articles of Incorporation.

- 31. The documents shall be accompanied by the prescribed registration fee.

32. The Regulatory Authority may make regulations providing that an application under section 30 is also to be regarded as:
- (a) an application for registration of the company as a taxpayer; and
 - (b) an application for any licence that may be required for the conduct of the proposed business of the company.
33. The Registrar shall, share the information in the application with other Ministries or Agencies of the Government for the purposes of facilitating any registration or approval necessary for the conduct of the proposed business of the company.
34. The Registrar shall, convey to the person making the application under section 30 information received from other Ministries or Agencies of the Royal Government regarding any registration or approval given in respect of the proposed business of the company.

Certificate of Incorporation

35. If the Registrar is satisfied that all requirements for incorporation have been complied with, he shall issue the Certificate of Incorporation in the prescribed form.

36. From the date of incorporation mentioned in the Certificate of Incorporation, the company shall be a body corporate capable forthwith of exercising all the powers and functions of an incorporated company, having perpetual succession and with limited liability of its shareholders, including but not limited to the right:
- (a) to carry on its business, subject to any relevant requirement for a licence,
 - (b) to sue or to be sued;
 - (c) to buy, hold, sell or transfer property and assets of the company;
 - (d) to execute, endorse or deal with deeds, negotiable instruments, bills of exchange or promissory note;
 - (e) to enter into contract with any person.
37. A Certificate of Incorporation issued by the Registrar shall be conclusive evidence that all the requirements of this Act have been complied with respect to registration and the Articles shall bind the company and the shareholders.

Chapter 5

Company names

Company name to end in “Limited” or “Private Limited”

38. The name of a private company shall end with the words “Private Limited”.
39. The name of a public company shall end with the word “Limited”.
40. Any person who trades or carries on business under any name of which the word “Limited” or the words “Private Limited” forms a part, and the name is not that of a company registered under this Act, shall be liable for administrative penalty and shall correct the name.
41. The abbreviation for Public Limited is Ltd. and Private Limited is Pvt. Ltd.

Name to be distinct from existing names

42. The name of a company:
 - (a) shall not be the same as the name of a company already registered under this Act;
 - (b) shall not be similar to the name of a company already registered under this Act if, in the view of the Registrar, such similarity would be liable to confuse or mislead.

Name not to be misleading

43. A name shall not be registered:

- (a) if it suggests or implies a connection with the institution of monarchy unless consent in writing to the proposed name is duly obtained from the Privy Council;
- (b) if it suggests or implies a connection with the Government or of any Ministry, department, branch, bureau, service, agency or activity of the Government, unless consent in writing to the proposed name is duly obtained from the head of the Government body concerned;
- (c) if it suggests or implies a connection with a religious person or institution, a political party or a leader of a political party;
- (d) if it suggests or implies a connection with a university or a professional association recognised by the laws of Bhutan unless the university or professional association concerned consents in writing to the use of the proposed name;
- (e) if it misleadingly describes:

- (i) the business, goods or services in association with which it is proposed to be used;
 - (ii) the conditions under which the goods or services will be produced or supplied;
 - (iii) the persons to be employed in the production or supply of those goods or services; or
 - (iv) the place of origin of those goods and services;
- (f) if it is, in the opinion of the Registrar, for any reason objectionable, which needs to be fully justified and communicated in writing to the applicant.

Power to direct change of name

44. Where, through inadvertence or otherwise, a name is registered which contravenes section 42 and 43, the Registrar may direct the company concerned to change its name.
45. The change of name shall be effected in accordance with section 47.
46. If the company fails to change its name within thirty days of a direction under section 44, the Registrar may impose on the company such fine as may be prescribed.

Change of name

47. A company may change its name by:
- (a) passing a special resolution of shareholders for the change of name;
 - (b) making an application to the Registrar in the prescribed form; and
 - (c) if the company's name is specified in the Articles, delivering amended Articles to the Registrar.
48. The Registrar shall issue a Certificate of Incorporation upon Change of Name in the prescribed form and the change shall take effect from the date of the certificate.

Effect of change of name on rights and obligations of the company

49. A change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceeding which might have continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

Chapter 6

Shares and securities

Share ownership

50. Subject to the provisions of this chapter and the company's Articles:
- (a) a company may issue shares or securities to any person, and
 - (b) shares and securities in issue may be transferred to another person.
51. A company may not register a share in the name of a person who is less than 18 years of age, or is of unsound mind as declared by a Court of law, or for whom a guardian or trustee is acting in accordance with provisions of law, but may register the share in the name of the guardian or trustee, who may exercise any rights attaching to the share, including the right to transfer shares, provided that this is done in the interests of the beneficiary and in accordance with applicable law.
52. Share ownership and transfer, for foreign owners shall be registered only in the name of beneficial owner who shall be reviewed and registered by the Regulatory Authority in accordance with relevant laws and bylaws, and shall exercise its power to investigate.

53. The Regulatory Authority shall supervise inter-corporate investments in shares and debentures by adopting regulations.

Nature of shares

54. Shares are movable property.

Nomination

55. Every holder of shares in, or holder of debentures of, a company may, at any time nominate, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.

56. Where the nominee is a minor, it shall be lawful for the holder of shares or debentures making the nomination to appoint any person to hold the shares or debentures as guardian or trustee of the nominee until the nominee attains majority.

Equity shares and pre-emption rights

57. Every company shall issue equity shares.

58. Subject to section 60, equity shares shall contain rights as defined in the company's Articles or by a resolution establishing the class of shares, including a right:

- (a) to vote at general meetings of the company;
 - (b) to receive dividends declared and paid from distributable profits;
 - (c) to receive a return of capital upon winding-up.
59. Subject to any regulations or rules relating to the offer of shares to the public, a company's Articles or a shareholders' resolution establishing the class of shares may provide that the shares shall include a right to acquire newly issued equity shares before they are offered to any other person or entity.
60. If a company's Articles or a shareholders' resolution provide for equity shares to be issued as part of an employees' share scheme, the shares may be treated as a separate class with different terms, which need not include voting rights.

Preference shares

61. Subject to its Articles and any shareholders' resolution, a company may issue preference shares.

62. Preference shares shall include preferential rights as defined in the company's Articles or by a shareholders' resolution establishing the class of shares:
- (a) to receive dividends on a predetermined basis paid from distributable profits; and
 - (b) to receive a preferential right to return of capital upon winding-up.
63. Preference shares shall not include a right to vote at general meetings of the company, except that the Articles or a shareholders' resolution establishing the class of shares may provide for such a right in circumstances when payment of dividends is in arrears.
64. Preference shares may, if so provided in the company's Articles of Incorporation or in a resolution establishing the class of shares, include a right for dividends which have not been paid in any one year due to a lack of distributable profits to be paid in one or more subsequent years.

65. Preference shares shall be subject to redemption, at the instigation of the company or the shareholder, not more than ten years after their issue according to terms defined in the company's Articles or the shareholders' resolution establishing the class of shares.

Classes of shares

66. Subject to the provisions of sections 57 to 61 and the company's Articles, a company may issue such classes of shares as it considers appropriate and attach different rights and privileges to shares of different classes.

67. The issue and terms of any new class of shares shall be determined by an ordinary resolution of the shareholders following a recommendation from the directors.

Variation of class rights

68. The rights attached to a class of shares may only be varied:

- (a) if the company's articles do not prohibit such a variation, and
- (b) subject to the provisions of section 69.

69. The rights attached to a class of shares may only be varied:
- (a) in accordance with a provision in the company's articles for the variation of those rights, or
 - (b) where the company's articles contain no such provision, if the holders of shares of that class consent to the variation.
70. For the purposes of section 69, the consent of the holders of a class of a company's shares shall take the form of:
- (a) consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class or
 - (b) a special resolution passed at a separate general meeting of the holders of that class sanctioning the variation.
71. Any amendment of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights for the purposes of section 69.

Restrictions on the issue of shares

72. A company's Articles or the company in general meeting may determine the maximum number of shares in any given class which may be issued by the directors and the timescale in which such shares may be issued.

Uniform call on shares

73. Where calls on shares for unpaid share capital are made, such calls shall be made on a uniform basis for shares falling in the same class.
74. For purpose of section 73, shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the same class.

Changes to shares defined in the Articles

75. Where the classes of a company's shares are specified in the company's Articles of Incorporation, any change shall constitute a change to the Articles.
76. If the change is not specified in the Articles, notice of the issue of a new class of shares shall be delivered to the Registrar in the prescribed form within fifteen days of the passing of the shareholders' resolution.

Share certificates

77. Every private company shall issue each shareholder with a certificate in the prescribed form confirming his shareholding.
78. A share certificate issued under section 77 shall be prima facie evidence of the title of the shareholder to such shares and shall be delivered to the shareholder concerned within one month from the date of allotment.
79. All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board or a committee thereof. The blank forms shall be consecutively numbered and shall be kept in the custody of such person as the Board may appoint for the purpose.
80. The provisions of sections 77 to 79 shall apply to debenture certificates or as nearly thereto as circumstances admit.

Dematerialised shares

81. If a public company offers its shares to the public, the shares shall be in dematerialised form.

82. If the company does not offer its shares to the public, its shares may be in certificated or dematerialised form.

Debentures

83. If a company issues debentures, these shall be secured and shall not carry voting rights.

84. The issue of debentures shall be subject to regulations made by the Regulatory Authority.

Register of shareholders and debenture holders

85. Every company shall keep a register of its shareholders and debenture holders, which may be in any form which allows for information to be readily retrieved, and enter therein the following particulars:

- (a) the name and address of each shareholder and debenture holder;
- (b) the shares held by each shareholder, distinguishing each share by its number except where such shares are held with a depository, or debentures held by each holder, distinguishing each debenture by its number except where such debentures are held with a depository;

- (c) the date on which each person was entered in the register as a shareholder or debenture holder;
 - (d) the date on which any person ceased to be a shareholder or debenture holder; and
 - (e) person or persons nominated in the event of the death of shareholder or debenture holder.
86. A company may, after giving not less than seven days previous notice by advertisement in the newspaper, close the register of shareholders or debenture holders for any period or periods not exceeding in the aggregate thirty days in a year, but not exceeding fifteen days at any one time.
87. The register of beneficial owners 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.

Issue of shares at a premium

88. Pursuant to any regulations made by the Regulatory Authority, an existing company may, with the consent of the general meeting by special resolution, issue shares at a

premium and the amount of premium shall be transferred to an account to be called “the share premium account”.

89. The share premium account may be applied by the company:
- (a) in paying up unissued shares of the company to be issued to shareholders of the company as fully paid bonus shares;
 - (b) in writing off the preliminary expenses of the company;
 - (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares of the company; or
 - (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

Issue of shares at a discount

90. A company may issue, at a discount, shares of a class already issued if the following conditions are fulfilled:

- (a) the issue is authorised by a special resolution passed in the general meeting and sanctioned by the Regulatory Authority;

- (b) the company has filed its first audited annual accounts.
91. A company may apply to the Regulatory Authority on payment of the prescribed fee for an order sanctioning the issue of shares at a discount, and, on such application, the Regulatory Authority may, if it thinks proper having regard to all the circumstances, make an order sanctioning the issue on such terms and conditions as it thinks fit.
92. The company shall file with the Registrar a copy of the order of the Regulatory Authority and the particulars of shares issued at a discount within fifteen days of allotment thereof.

Transfer of shares and debentures

93. A company shall not register a transfer of shares in, or debentures of, the company unless an instrument of transfer in the prescribed form executed by or on behalf of the transferor and transferee has been delivered to the company along with:
- (a) in the case of a listed company, a trade confirmation note of the dealing broker confirming the relevant transaction;

- (b) in the case of any other company, the certificate relating to the share or debenture as the case may be.
94. Nothing in section 93 shall prejudice any power of the private company under its Articles to enforce the restrictions contained therein against the right to transfer the shares of such company.
95. Subject to the provisions of sections 93 and 94 and any regulations made by the Regulatory Authority in respect of foreign direct investment, the shares or debentures of a company shall be freely transferable.
96. The shares in, or debentures of, the company shall be transmitted on the death of the holder thereof to the nominee, failing which the Board may transmit the shares or debentures, as the case may be, in the name of the legal heirs on production of order of the Court.
97. If a company does not transfer the shares in, or debentures of, a company, within one month from the date of lodgement of the instrument of transfer and the certificate in respect of the share or debenture concerned or default is made, or unnecessary delay takes place in entering in the register of

shareholders the fact of any person having become, or ceased to be a shareholder, the person aggrieved, or any shareholder of the company, or the company itself may appeal to the Regulatory Authority on payment of the prescribed fee.

98. Where a person appeals to the Regulatory Authority in accordance with section 97, the Regulatory Authority, after hearing the parties, may either dismiss the appeal or by order:
- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with the order within ten days of the receipt of the order; or
 - (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by the aggrieved party.

Buy-back of own shares

99. No company shall have the power to buy its own shares except and subject to such restrictions or limitations specified in sections 102 and 103.
100. No company shall give loan or provide any financial assistance, directly or indirectly, for purchase or subscription of its shares.

101. Nothing in section 100 shall prohibit:

- (a) the lending of money by a financial institution in the ordinary course of its business; or
- (b) the provision by a company, in accordance with any scheme of money for purchase of fully paid up shares by its employees, including its Chief Executive Officer and other working directors holding salaried office.

102. A company shall have the right to buy back its own shares from out of its free reserves, share premium account or the proceeds of a prior issue made specifically for the purpose of buy-back under this section, if:

- (a) the company has authorised such buy-back by a special resolution in that behalf in general meeting;
- (b) the company shall, after completion of the buy-back have a debt-equity ratio not exceeding 2:1 or such higher ratio as may be prescribed.

103. The buy-back under section 102 may be:

- (a) from the existing shareholders on a proportionate basis;
or

- (b) from the open market; or
- (c) from odd lots, this is to say, where the lot of securities in a listed company is smaller than such market lot as may be specified by the Securities Exchange; or
- (d) by purchasing the securities issued to the employees of the company, pursuant to a scheme of stock option; or
- (e) in any other manner approved by the Regulatory Authority.

104. Before a company buys back its own shares, there shall be reasonable grounds for believing that:

- (a) the company is or, after the buy-back, would be able to pay its debts and liabilities as they become due; and
- (b) after the buy-back, the realisable value of the company's assets would not be less than the aggregate of its debts and liabilities.

105. The buy-back under section 102 is subject to the approval of the Regulatory Authority on payment of the prescribed fee.

Offer of shares and other securities to the public

106. If a public company intends to offer its shares or other securities to the public, the company shall apply to the Securities Exchange for listing of its securities at the Securities Exchange.
107. No offer of shares or other securities to the public shall be made until:
- (a) a prospectus setting out the terms of the offer has been approved by the Regulatory Authority; and
 - (b) a copy of the approved prospectus has been delivered to the Registrar.
108. No one shall publish or otherwise issue any form of application for securities of a company unless the form is accompanied by a prospectus or an abridged prospectus.

Content of prospectus and abridged prospectus

109. A prospectus or abridged prospectus shall contain such information as is prescribed by the Regulatory Authority.

Liability for misstatement in prospectus

110. Notwithstanding the approval of a prospectus by the Regulatory Authority, where a prospectus includes any untrue statement or any statement, promise or forecast is made which is false, deceptive or misleading or by any dishonest concealment of material facts, induces or attempts to induce any person to subscribe for shares in, or debentures of, a company and its directors and the Chief Executive Officer shall be liable according to the law of the land.
111. In case of untrue statement in the prospectus, a company, its directors and the Chief Executive Officer of the company shall be liable to pay compensation for the loss or damages suffered by an investor, as may be determined by the Royal Court of Justice on a petition made by an investor or jointly by the investors.
- 112 For purposes of sections 110 and 111:
- (a) a statement included in a prospectus shall be deemed to be untrue if the statement is misleading in the form and context in which it is included; and

- (a) where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

Insider trading

113. No insider shall:

- (a) either on his own behalf or on behalf of any other person, deal in securities of a company listed on the Securities Exchange on the basis of any unpublished price sensitive information;
- (b) communicate any unpublished price sensitive information to any person, with or without his request for such information, except as required in the ordinary course of business or under any law; or
- (c) counsel or instigate any other person to deal in securities of any company on the basis of unpublished price sensitive information.

114. For the purposes of section 113:

- (a) “insider” means any person who is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access, by virtue of such connection, to unpublished price sensitive information in respect of securities of the company, or who has received or has had access to such unpublished price sensitive information;
- (b) “connected person” shall have the meaning defined in regulations;
- (c) “unpublished price sensitive information” means any information which relates to the following matters or is of concern, directly or indirectly, to a company, and is not generally known or published by such company for general information, but which if published or known, is likely to materially affect the price of securities of that company in the market:
 - (1) financial results of the company;
 - (2) intended declaration of dividend, both interim or final;

- (3) issue or buy back of securities;
- (4) any major expansion plans or execution of new projects;
- (5) amalgamation, merger or takeover;
- (6) disposal of the whole or substantially the whole of the undertaking;
- (7) such other information as may affect the earnings of the company; and
- (8) any changes in policies, plans or operations of the company.

115. Any insider who deals in securities or communicates any information or counsels any person dealing in securities in contravention of section 113 shall be liable for value based sentencing or fine up to Nu.100 million or both.

116. Where the Regulatory Authority, on the basis of information in its possession, is of the opinion that it is necessary to investigate and inspect the books of account, other records and documents of an insider, it may appoint an Inspector or Inspectors, who shall carry out an investigation and report within seven days of the conclusion of the investigation.

117. On receipt of the report of investigation, the Regulatory Authority may communicate the findings of the report to the insider and call for its explanation or further information, if any, within such time as may be specified.
118. On receipt of further information or explanation from the insider, the Regulatory Authority may without prejudice to its right to initiate criminal prosecution under section 115, give such directions to protect the interest of investors and in the interest of the securities market and for due compliance of the provisions of this Act, as it deems fit for all or any of the following purposes:
- (a) directing the insider not to deal in securities in any particular manner;
 - (b) prohibiting the insider from disposing of any of the securities acquired in violation of section 113; or
 - (c) restraining the insider to communicate or counsel any person to deal in securities, and
 - (d) order removal of such insider from the company

Depositories

119. Where a person acquires shares or other securities which are traded at a Securities Exchange, those shares or other securities shall be held by a depository.
120. The Regulatory Authority may make regulations governing the operation of depositories.

Private placement of shares

121. A company may offer its shares or other securities to specific persons if the shares or other securities concerned are:
- (a) in issue but not listed; or
 - (b) not yet in issue

provided that the offer does not involve an offer to the public or to existing holders of the company's shares or other securities.

122. The placement of shares by a listed company shall be subject to rules of the Regulatory Authority.

Increase or consolidation of share capital

123. If a company having a share capital has:

- (a) increased its share capital beyond the authorised share capital;
- (b) consolidated and divided its share capital into shares of larger amount than its existing shares;
- (c) sub-divided its shares or any of them;
- (d) redeemed any redeemable preference shares; or
- (e) cancelled any shares, otherwise than in connection with a reduction of share capital under section 124;

The company shall within thirty days after doing so, deliver to the Registrar:

- (i) a certified copy of the special resolution passed in the general meeting, accompanied by the prescribed fee; and
- (ii) if the change necessitates a change in the Articles, a copy of the Articles as amended in accordance with section 28.

Reduction of share capital

124. Subject to the approval by the Regulatory Authority, a company limited by shares, may, if so authorised by its Articles, by special resolution, reduce its share capital in any way, and in particular and without prejudice to the generality of the foregoing power:

- (a) extinguish or reduce the liability of any of its shares in respect of share capital not paid-up;
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company; and
- (d) may, if and so far as is necessary, alter its Articles by reducing the amount of its share capital and of its shares accordingly.

125. The company shall file an application with the Regulatory Authority for approval of a reduction of the share capital and the petition shall be heard by the Regulatory Authority in accordance with the procedure prescribed in regulations.

126. Any reduction of capital by a public company shall be notified by the company to the Securities Exchange and the reduction shall take effect from the date of receipt by the company of a confirmation of the same from the Securities Exchange.
127. A company shall not take any action to extinguish or reduce its stated capital if there are reasonable grounds to believe that:
- (a) the company is or, after taking such action, would be unable to pay its liabilities as they become due; or
 - (b) after taking of such action, the realizable value of the company's assets could be less than the aggregate of its liabilities.

Protection of shareholders against unfair prejudice

128. A shareholder in a company may apply to the Regulatory Authority for an order on the ground:
- (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of shareholders generally or of some of its shareholders, including at least himself; or

- (b) that an actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be prejudicial to the interests of the shareholders.

129. If the Regulatory Authority is satisfied that a petition under section 128 is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

130. Without prejudice to the generality of section 129, the Regulatory Authority's order may:

- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company:
 - i. to refrain from doing or continuing an act complained of, or
 - ii. to do an act that the petitioner has complained it has omitted to do;
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the Regulatory Authority may direct;

- (d) require the company not to make any, or any specified, alterations in its articles without the leave of the Regulatory Authority;
- (e) provide for the purchase of the shares of any shareholders of the company by other shareholders or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

131. The Regulatory Authority shall assume primary responsibility for protection of minority shareholders.

132. In the event the shareholder is not satisfied with the decision of the Regulatory Authority, then the shareholder may apply to the Court for an order on the ground as per section 129-130.

Chapter 7

Directors

Number of directors

133. Every Board of Public Company shall have at least three directors and every private company, including One Person Company, shall have at least two directors.

134. In a Board of Public Company at least one-third of the directors shall be independent; to protect the interest and investment of all the shareholders and particularly the minority shareholders.
135. For the purposes of section 134, a director is not independent if he:
- (a) has been an employee of the company or group within the last one year;
 - (b) has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body corporate that has such a relationship with the company;
 - (c) has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a shareholder of the company's pension scheme;
 - (d) has close family ties with any of the company's advisers, directors or senior employees;

- (e) holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- (f) represents a shareholder;
- (g) has served on the board for more than nine years from the date of their first election,
- (h) holds securities of that company; or
- (i) is affiliated with suppliers or customers for the past five years.

136. An independent director shall secure an endorsement of the simple majority of the Annual General Meeting.

137. If directors are not nominated in the application for incorporation, the subscribers to the Articles who are individuals shall be deemed to be the directors of the company until the directors are duly appointed in the general meeting.

138. Unless the Articles or any other provision of law provides for retirement of all directors at every annual general meeting, not less than one-third of the total number of directors of a public company shall retire by rotation and the remaining

directors in case of such company shall, in default of and subject to any provision in Articles, also be appointed by the company in general meeting.

Additional directors

139. The Board of directors may appoint an additional director, as deemed fit, who shall hold office only up to the date of the next annual general meeting of the company provided that the total number of directors shall not exceed the maximum strength fixed for the Board by the Articles, if any.

Consent to act as directors

140. Every person, other than a director retiring by rotation, who has left at the office of the company a notice signifying his candidature for the office of the director or proposed as a candidate for the office of the director, shall sign and file his consent in writing to act as a director with the Registrar in the prescribed form within thirty days from the date of his appointment.

Certain persons not to be appointed as directors

141. No company shall appoint or continue the appointment of any person as a director who:

- (a) is an undischarged insolvent or has at any time been declared insolvent by a Court of competent jurisdiction;
- (b) is, or has been convicted by a Court of competent jurisdiction of a criminal offence whether or not involving moral turpitude;
- (c) is of unsound mind declared by a Court of competent jurisdiction;
- (d) has not paid any call in respect of shares of the company held by him;
- (e) is a director in more than three public companies.

Resignation by a director

142. A director may resign from his office by giving notice in writing to the Company and such resignation shall be effective:

- (a) in the case of a Chief Executive Officer or a salaried working director, from the date of its acceptance by the Board, and
- (b) in any other case, from the date of receipt of the resignation notice.

Removal of directors

143. A company may, by ordinary resolution, remove a director before the expiry of period of his office.
144. A notice signed by a shareholder at least fifteen days before the general meeting shall be required for proposing any resolution to remove a director under section 143 along with the reasons or grounds for such removal.
145. On receipt of notice under section 144, the company shall forthwith send a copy of the proposed resolution to the director concerned, who shall be heard on the resolution at the meeting.

Board Meeting

146. Every public company shall hold a meeting of its Board of directors at least once in every three months and at least four such meetings shall be held in every year.
147. Every private company shall hold a meeting of its Board of directors at least once in every six months and at least two such meetings shall be held in every year.

148. Notice of every meeting of the Board shall be given in writing to every director along with the business to be transacted thereat.
149. The quorum for a meeting of a Board shall be two-third of its total strength or two directors whichever is higher and in case the quorum is not present, the meeting shall stand adjourned to the next week.
150. The meeting of the Board may be conducted by electronic communication or one or more director may participate in a meeting by an electronic communication so long as the director is able to participate in a meeting effectively without an intermediary.
151. The decisions at the Board meetings shall be taken by majority of directors voting in favour of any resolution and, in case of equality of votes, the Chairperson of the Board of directors shall have a casting or second vote.

General Powers of the Board

152. Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers,

and to do all such acts and things, as the company is authorised to exercise and do.

153. The Board shall not exercise any power or do any act or thing which is directed or required, whether by this Act or by the Articles of the company or otherwise, to be exercised or done by the company in general meeting.
154. The Board of directors of a company shall exercise the following powers only by means of resolutions passed at meetings of the Board and in accordance with any relevant provisions in the company's Articles or special resolution passed by the shareholders:
- (a) the power to make calls on shareholders in respect of money unpaid on their shares ;
 - (b) the power to issue debentures ;
 - (c) the power to borrow money otherwise than on debentures;
 - (d) the power to invest the funds of the company ; and
 - (e) the power to make loans.
155. The Board may, by a resolution passed at a meeting, delegate its powers to committee of directors, the Chief Executive Officer or any principal officer of the company.

Restriction on powers of Board

156. The Board of directors of a public company shall not, except with the consent of such company in general meeting:

- (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company;
- (b) remit or give time for the repayment of any debt due by a director to the company;
- (c) borrow moneys where the moneys to be borrowed, together with the moneys already borrowed by the company, will exceed the aggregate of the paid up share capital and free reserves of the company, that is to say, reserves not set apart for any specific purpose.

No loans to directors

157. Except as otherwise provided in any other law, no company shall, directly or indirectly, make a loan to a director, or give any guarantee or provide any security in connection with a loan made by any other person to a director.

Conflict of interest

158. Except with the consent of the Board of directors of a company, a director of the company or his relative, a partnership firm in which such a director or his relative is a

partner, any other partner in such a firm, or a private company of which the director is a shareholder or director shall not enter into any contract with the company for the sale, purchase or supply of any goods, materials or services.

159. Every director of a company, who is in any way, directly or indirectly, concerned or interested in a contract or arrangement, shall disclose the nature of his concern or interest at a meeting of the Board of directors.
160. No director of a company, other than a private company, shall take part in the discussion or vote on any contract or arrangement entered into by the company in which he is concerned or interested; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote, and if he does vote, his vote shall be void. Any director who violates this section shall be liable for fine equivalent to the amount of loss incurred on the Company.

Standard of care required by directors

161. Every director of a company, in the exercise of his powers and discharge of his duties under the provisions of this Act or under the Articles, shall act honestly and in good faith in the best interests of the company and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
162. For the purposes of section 161, the best interests of the company shall take into account, among others the following:
- (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company's employees,
 - (c) the need to foster the company's business relationships with suppliers, customers and others,
 - (d) the impact of the company's operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between shareholders of the company.

Code of Conduct

163. The Regulatory Authority shall establish a Code of Conduct for the governance of companies which shall promote those conditions that will enable the pursuit of Gross National Happiness in accordance with Article 9, section 2 of the Constitution of the Kingdom of Bhutan.
164. A Code of Conduct for Companies should have policies on business ethics, auditing, risk management, good corporate governance ownership and the human resource management and corporate social responsibility.
165. All companies shall maintain Corporate Social Responsibility fund, which shall be administered by the respective Company Board in line with the regulations issued by the Authority.
166. A Code of Conduct established under section 163 shall constitute guidance for the directors of every company and, for the avoidance of doubt, failure to comply with the Code:
- (a) shall not of itself constitute an offence, but
 - (b) may be taken into account if such non-compliance:
 - (i) contributes towards a specific offence, or
 - (ii) is relevant in the context of proceedings between the company or any shareholder of the company and the present or former officers of the company.

Derivative proceedings

167. A shareholder in a company may apply to the Regulatory Authority for leave to bring proceedings in the name and on behalf of the company in respect of an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.
168. An application under section 167 shall:
- (a) specify the cause of action, and
 - (b) summarise the facts on which the derivative proceedings are to be based.
169. If it appears to the Regulatory Authority that the application and the evidence produced by the applicant in support of it do not disclose a prima facie case for granting it, the Regulatory Authority:
- (a) shall refuse the application, and
 - (b) may make any consequential order it considers appropriate.
170. If the application is not refused under section 169:

- (a) the applicant shall serve the application on the company, and
- (b) the Regulatory Authority:
 - (i) may make an order requiring evidence to be produced by the company, and
 - (ii) may adjourn the proceedings on the application to enable the evidence to be obtained, and
- (c) the company is entitled to take part in the further proceedings on the application.

171. On hearing the application, the Regulatory Authority may:

- (a) accept the application on such terms as it thinks fit,
- (b) reject the application, or
- (c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

172. The Regulatory Authority shall refuse leave to raise or continue derivative proceedings if satisfied:

- (a) that a person acting in accordance with section 161 would not seek to raise or continue the proceedings, as the case may be,

- (b) where the cause of action is an act or omission that is yet to occur, that the act or omission has been authorised by the company, or
- (c) where the cause of action is an act or omission that has already occurred, and that the act or omission :
 - (i) was authorised by the company before it occurred, or
 - (ii) has been ratified by the company since it occurred.

173. In considering whether to grant leave to raise or continue derivative proceedings, the Regulatory Authority shall take into account, in particular:

- (a) whether the shareholder is acting in good faith in seeking to raise or continue the proceedings, as the case may be,
- (b) the importance that a person acting in accordance with section 160 would attach to raising or continuing them, as the case may be,
- (c) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be:

- (i) authorised by the company before it occurs, or
 - (ii) ratified by the company after it occurs,
- (d) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company,
- (e) whether the company has decided not to raise proceedings in respect of the same cause of action or to persist in the proceedings, as the case may be,
- (f) whether the cause of action is one which the shareholder could pursue in his own right rather than on behalf of the company.

174. In considering whether to grant leave to raise or continue derivative proceedings, the Regulatory Authority shall have particular regard to any evidence before it as to the views of shareholders of the company who have no personal interest, direct or indirect, in the matter.

175. In the event the shareholder is not satisfied with the decision of the Regulatory Authority, then the shareholder may appeal to the Court.

Shadow directors

176. If the directors are accustomed to act in accordance with the directions or instructions of some other person, that person shall be treated as a director for the purposes of:

- (a) Insider trading under section 113;
- (b) No loans to directors under section 157;
- (c) Conflict of interest under sections 158 to 160;
- (d) Derivative proceedings under section 163 to 165;
- (e) Inspection of books of account, etc., of companies under section 238;
- (f) Statement of affairs to be made to liquidator under section 343;
- (g) Power of Registrar to strike off defunct company under section 367; and
- (h) Penalty where no specific penalty is provided under section 405,

but shall not be treated as a director for the purposes of:

- (a) Execution of documents under section 226;
- (b) Financial statements prepared under section 244;
- (c) Board's report as per section 249; and
- (d) Annual return under section 267.

Chapter 8

General meetings

Annual General Meeting

177. Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notice calling it.
178. Every Annual General Meeting shall be convened on or before 30th April in case of listed company and on or before 30th June in case of any other Company for transacting the following business, among others:
- (a) Consideration of audited accounts for the financial year ended 31st December of the previous year, auditor's report and directors' report;
 - (b) Declaration of dividend, if any;
 - (c) Appointment and retirement of directors;
 - (d) Remuneration of the Chief Executive Officers and Directors.
 - (e) Any other business delivered by the shareholders within seven days prior to the date of the meeting.

179. In the case of a Government company, the business to be transacted in an Annual General Meeting may be conducted in a Board meeting within the time frame prescribed above. Notice calling the meeting shall refer it as Board cum Annual General Meeting.

Extraordinary general meeting

180. The Board of directors may convene an extraordinary general meeting to transact any special business which may not wait till the annual general meeting is due to be held.

181. The board of directors shall, on the requisition of shareholders holding ten percent of the paid-up capital of the company, forthwith proceed duly to call an extraordinary general meeting of the company.

182. The requisition shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists; and shall be deposited with the registered office of the company.

183. If the Board does not, within twenty one days from the date of receipt of valid requisition, proceed duly to call a meeting on a day not later than forty five days from the date of deposit

of the requisition, the meeting shall be called by the requisitionists themselves at the registered office of the company or at the place where the registered office is situated, in the same manner, as nearly as possible, as that in which meetings are to be called by the Board.

184. All reasonable expenses incurred by the requisitionists in calling and holding the meeting shall be repaid by the company.

Notice for calling general meetings by public companies

185. A general meeting of a public company may be called by giving not less than twenty one day's notice in writing.
186. A general meeting of a public company may be called after giving shorter notice than that specified in section 185, if the consent is accorded by at least two third of the shareholders of the company.
187. Notice of every meeting of a public company shall be given to every shareholder and the auditor or auditors of the company through widely circulated public media.

188. The accidental omission to give notice to, or the non-receipt of notice by any shareholder shall not invalidate the proceedings at the meeting.
189. Where any item, other than the items specified in section 178, is to be transacted, there shall be annexed to the notice of the meeting an Explanatory statement setting out all material facts concerning such item of business, including in particular the nature of the concern or interest, if any, therein of any shareholder.

Chairperson

190. The Chairperson of the Board of directors shall be elected from among the directors excluding the Chief Executive Officer and also be the Chairperson of general meetings.
191. If, for any reason, the Chairman of the Board of directors does not chair the general meeting, the shareholders present at the meeting shall elect one of themselves to be the Chairperson of the meeting by show of hands.

Representation of corporations at meetings

192. A body corporate if it is a shareholder of a company may by resolution of its board of directors authorise a person as it thinks fit to act as its representative at any meeting of the company.

Ordinary and special resolutions

193. A resolution shall be an ordinary resolution when at a general meeting, the votes cast, whether on a show of hands or on a poll, in favour of resolution by shareholders who vote in person or by proxy, exceed the votes, if any, cast against the resolution by shareholders so entitled and voting.

194. A resolution shall be a special resolution when:

- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting; and
- (b) the votes cast in favour of the resolution by shareholders being entitled so to do, vote in person or by proxy, are not less than three times the number of the votes, if

any, cast against the resolution by shareholders so entitled and voting.

Minutes of general meetings and of Board

195. Every company shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its Board of directors or of every committee of the Board, to be kept by making within thirty days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered.
196. Each page of every such book shall be initialled or signed at the last page of the minutes and shall be dated:
- (a) in case of minutes of the Board meetings or a committee thereof, by the Chairperson of the said meeting or the Chairperson of the next succeeding meeting;
 - (b) in case of minutes of a general meeting, by the Chairperson of the same meeting within the aforesaid period of thirty days.
197. In the case of a meeting of the Board of directors or a committee of the Board, the minutes shall contain the names of the directors present at the meetings and the names of

directors, if any, dissenting from or not concurring in, the resolution.

198. Minutes of the meetings kept under the section 195 shall be evidence of the proceedings recorded therein and unless the contrary is proved, the meetings shall be deemed to have been duly called and held.

Declaration and payment of dividend

199. No dividend shall be paid by a company for any financial year, except out of the distributable profits of the company for that year arrived at after providing for depreciation or out of the accumulated profits for any previous financial year or years.
200. Distributable profits for this purpose shall mean accumulated realised profits so far as previously not utilised, by way of dividend or capitalisation, less accumulated realised losses so far as not previously written off. Unrealised profits, that is, surplus on revaluation of fixed assets and related additional depreciation amount shall not be included to arrive at the amount of distributable profits.

201. For the purpose of section 200, depreciation shall be as prescribed by the Accounting and Auditing Standards Board of Bhutan.
202. No dividend shall be paid except in cash, cheque and warrant.
203. Section 202 does not prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid up bonus shares.
204. The dividend shall be paid to the shareholders within 30 days from the date of its declaration in the Annual General Meeting of the company.
205. Where a dividend is declared and not paid within thirty days to any shareholder entitled to the payment, interest @ of 15% p.a. shall be paid to the shareholder for the period of delay.
206. If there is default in meeting the requirements of section 205, every director of the company shall, if he is knowingly a party to the default, be liable to contribute towards payment of interest.

207. Where dividend could not be paid due to uncertainty of the address of the shareholder, such dividends shall be administered by the Government through regulations.
208. A public company shall not pay a dividend if it would reduce its net assets below the aggregate amount of its paid-up share capital and undistributable reserves.
209. For the purposes of section 208, undistributable reserves are:
- (a) share premium account ;
 - (b) capital redemption reserve ;
 - (c) unrealised profits, less unrealised losses unless previously written off ; and
 - (d) any other reserves which the company is prohibited from distributing by any statute or by its articles of incorporation.

Chapter 9

Management and Administration

Chief Executive Officer

210. Every company shall appoint a Chief Executive Officer for a term not exceeding five years at a time, for not more than two consecutive terms, with the approval of the company in general meeting.
211. No company shall appoint or continue the appointment of any person as a Chief Executive Officer who:
- (a) is an undischarged insolvent or has at any time been declared insolvent by Court;
 - (b) is, or has been convicted of a criminal offence and sentenced to imprisonment;
 - (c) is of unsound mind declared by a Court; or
 - (d) has not paid any call in respect of shares of the company held by him.
212. A person appointed as Chief Executive Officer of a company shall not be the Chief Executive Officer of another company.

Company secretary

213. The directors of every listed company and every other company having a paid-up share capital of over Nu. 100,000,000 shall appoint a company secretary.

214. The company secretary shall:

- (a) provide support and advice to the board of directors;
- (b) ensure the effective maintenance of the statutory registers in accordance with section 228 of this Act and their availability for inspection in accordance with section 229 of this Act;
- (c) ensure the effective maintenance of books of account in accordance with section 232 of this Act;
- (d) ensure effective communication with shareholders of the company;
- (e) ensure the timely delivery to the relevant authority of any return, account or other document required under the provisions of this Act or any other law;
- (f) ensure all legal compliance by the company.

215. It is the duty of the directors of every company required by section 213 to have a company secretary to take all reasonable steps to secure that the secretary of the company is a person

who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

216. The Regulatory Authority shall make regulations regarding the qualifications appropriate for a company secretary.

Registered office

217. A company shall have a registered office to which all communications and notices may be addressed.

218. A letter, notice or document may be served on the company or any director thereof by sending it to the company or director at the registered office of the company by registered post or by leaving it at its registered office.

219. The directors may change the registered office by giving notice to the Registrar in the prescribed form.

220. Any change of registered office shall take effect from the day it is registered by the Registrar.

Publication of name by company

221. Every company:

- (a) shall paint or affix its registered name and the address of its registered office on the outside of every office or place in which its business is carried on, in a conspicuous place, in letters easily legible in Dzongkha and English language;
- (b) shall have its name engraved on its seal, if any; and
- (c) shall have its name and the address of its registered office mentioned in all its business letters, bills, invoices, letter paper, notices, documents and other official publications.

Service of documents on shareholders

222. A letter, notice or document may be served by a company on any shareholder thereof either personally or by sending it to him:

- (a) by post at his registered address in Bhutan; or
- (b) if he has provided an electronic address for the purpose, by electronic means.

223. Service in accordance with section 222 shall be deemed to be effected:

- (a) where a document is sent by post, at the expiration of ten working days after the same was posted; and
- (b) where a document is transmitted by electronic means, at the expiration of five working days after its transmission.

224. Where a shareholder has intimated to the company in advance that notice or document should be sent to him by registered post or by any other means of communication and has deposited with the company a sum sufficient to defray the expenses thereof, service shall not be deemed to be effected unless it is sent in the manner intimated by the shareholder.

Execution of Documents

225. A company may have a common seal.

226. A document is executed by a company:

- (a) by affixing its common seal, or
- (b) by the signature and/or digital signature of:
 - (i) two directors of the company or
 - (ii) one director and the Chief Executive Officer, or
 - (iii) a director or Chief Executive Officer who signs in the presence of a witness who attests the signature.

227. A document signed in accordance with section 233(b) and expressed, in whatever words, to be executed by the company has the same effect as if executed under the common seal of the company.

Statutory record and inspection

228. Every company shall keep at its registered office the following registers, besides the register of shareholders and debenture holders, and enter therein the relevant particulars within seven days of the happening of the event concerned:

- (a) Register of buy-back of shares with particulars as to:
 - (i) securities bought under section 102;
 - (ii) the consideration paid for the securities bought back;
 - (iii) the date of buy back;
 - (iv) re-issue of securities, if any, with particulars thereof and the date of re-issue.

- (b) Register of transfers with particulars as to:
 - (i) Name of the transferor;
 - (ii) Name of the transferee;
 - (iii) date of transfer approved by the Board of committee thereof; and

- (iv) date of delivery of certificate as to share or debenture to the transferee;
- (c) Register of charges with particulars as to:
 - (i) short description of the property charged;
 - (ii) the amount of the charge;
 - (iii) the names of persons entitled to the charge;
 - (iv) modification of charge, if any,
 - (v) the date of full satisfaction of the charge.
- (d) Register of inter-corporate loans etc. with particulars as to:
 - (i) the name of the body corporate to which loan made;
 - (ii) the amount of the loan;
 - (iii) the date on which the loan has been made;
 - (iv) the date on which the guarantee has been given or security has been provided in connection with a loan made by any other person to, or to any other person by, any body corporate.
- (e) Register of inter-corporate investments with particulars as to:
 - (i) the name of the body corporate in which the investment has been made;
 - (ii) the date on which the investment has been made;

- (iii) amount of investment and the particulars of securities in which investment has been made.
- (f) Register of contracts in which directors are interested with particulars as to:
 - (i) the date of the contract or arrangement;
 - (ii) the names of the parties thereto;
 - (iii) the principal terms and conditions thereof;
 - (iv) the date on which the contract or arrangement covered by section 159 was placed before the Board meeting;
 - (v) the names of directors voting for and against the contract or arrangement and the names of those remaining neutral.
- (g) Register of directors with particulars as to:
 - (i) the name, his father's name or where the individual is a married woman, the husband's name, full residential address and the nationality;
 - (ii) the date of appointment;
 - (iii) the date of cessation.
- (h) Register of directors' share-holding with particulars as to:
 - (i) name of the director;
 - (ii) the number, description and amount of shares in, or debentures of, the company or any other

body corporate, being the company's subsidiary or holding company.

Inspection of statutory registers etc.

229. The statutory registers, register of shareholders and debenture holders and minutes of general meetings maintained by a company under this Act shall be open for inspection, during business hours, to the shareholders and debenture holders free of charge, or to any member of the public on payment of the prescribed fee.
230. Any person shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a certified copy of the documents referred to in section 236 on payment of the prescribed fee.
231. If any inspection required under section 229 is refused, or if any copy required under section 230 is not furnished within the time specified therein, the Registrar may, by order, compel an immediate inspection or direct that the copy required shall forthwith be sent to the person requiring it and in default the company and its Chief Executive Officer shall be liable for administrative penalty.

Chapter 10

Financial Statements and Audit

Books of account to be kept by company

232. Every company shall keep at its registered office or such other place as is notified in accordance with section 233, proper books of accounts with respect to:

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;
- (b) all sales and purchases of goods by the company;
- (c) the assets and liabilities of the company.

233. If the Board of directors decides that the company's books of account shall be kept at place in Bhutan other than the registered office, the company shall, within seven days of the decision, notify the Registrar giving the full address of that other place.

234. Where the company has a branch office, whether in or outside Bhutan, the company shall be deemed to have complied with the provisions of section 232 if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns, made up

to dates at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in section 233.

235. For the purposes of sections 232 and 234, proper books of account shall not be deemed to be kept with respect to the matters specified therein:
- (a) if such books are not kept as are necessary to give a true and fair view of the state of the affairs of the company or branch office, as the case may be, and to explain its transactions; and
 - (b) if such books are not kept on accrual basis and according to the double entry system of accounting.
236. The books of account and other books and papers shall be open to inspection by any director during business hours.
237. The books of account of every company relating to a period of not less than five years immediately preceding the current year together with the vouchers relevant to any entry in such books of account shall be preserved in good order.

Inspection of books of account, etc., of companies

238. The books of account and other books and papers and statutory records of every company shall be open to inspection during business hours:

- (a) by the Registrar, or
- (b) by such officer as may be authorised by the Regulatory Authority in this behalf.

239. It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under section 238, all such books of account and other books and papers of the company in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify.

240. If default is made in complying with the provisions of section 238, the Chief Executive Officer and every director of the company shall be liable to an administrative penalty or prosecution.

Financial year of companies

241. Every company shall have a uniform financial year ending on 31st December, every year, being the period to which its complete set of financial statement shall relate.

242. Subject to section 243, the first financial year of the company shall relate to the period beginning from the date of incorporation of the company and ending on 31st December thereafter, and may be less or more than a calendar year, but it shall not exceed fifteen months.
243. The first financial year of a company may be extended to eighteen months where special permission has been granted in that behalf by the Regulatory Authority on payment of the prescribed fee.

Financial statements

244. At every Annual General Meeting, the Board of Directors of a company shall lay before the meeting, a financial statement for the year ended 31st December, every year.
245. A Complete set of financial statement shall be prepared so as to give a true and fair view of state of affairs of the company as at the financial year end, of its profit or loss and movement of liquid resources for the year ended 31st December, every year and shall conform to the relevant accounting standards prescribed by the Accounting and Auditing Standards Board of Bhutan.
246. The annual financial statements of a company shall be approved by the Board of Directors and shall be authenticated by not

less than one director and the Chief Executive Officer on behalf of the Board of Directors.

Filing of financial statements

247. After the financial statement, duly audited unless exempted from audit by regulations, has been laid before the Annual General Meeting, a copy thereof as well as Directors' report shall be filed with the Registrar along with annual return under section 267.

248. The provisions of section 247 may be modified by regulation insofar as they relate to small or medium-sized companies or to dormant companies.

Board's report

249. There shall be attached to the annual accounts laid before the annual General meeting, report of its Board of Directors, with respect to:

- (a) the state of company's affairs;
- (b) the amount, if any which it proposes to transfer to any reserves;
- (c) the amount, if any, recommended for payment of dividend;

- (d) explanation or information on every reservation, qualification or adverse remark contained in the auditor's report; and
- (e) policy on corporate governance and Corporate Social Responsibility.

250. The Board's report shall be signed by the Chairperson of the Board of directors and in his absence the same shall be signed by the director or directors authorised in this behalf by the Board.

Appointment and removal of Auditors

251. The Royal Audit Authority shall maintain a panel of auditors and may appoint an auditor to the panel and may remove an auditor so appointed.

252. Subject to section 253, every company shall, at each Annual General Meeting appoint auditors or joint auditors, out of the panel of auditors maintained by the Royal Audit Authority, to hold office from the conclusion of that meeting to until the conclusion of next Annual General Meeting.

253. The provisions of section 252 may be modified by regulation insofar as they relate to small or medium-sized companies or to dormant companies.

254. The same auditor shall not be appointed for more than three consecutive financial years, except with the previous written approval of the Royal Audit Authority.
255. In case of a Government company, the Auditor General of Bhutan shall be the ex-officio auditor. The auditor or joint auditors shall be appointed or re-appointed by the Royal Audit Authority who may designate its own auditors to conduct the audit. The Royal Audit Authority shall have power:
- (a) to direct the manner in which the company's accounts shall be audited by the auditor so appointed and to give instructions in regard to any matter relating to the performance of his functions as such;
 - (b) to conduct a supplementary or test audit of company's accounts by such person or persons as it may authorise on its behalf;
 - (c) to fix remuneration and other expenses of auditors;
 - (d) to remove the auditor appointed by it before the expiry of his term;
 - (e) to issue Minimum Audit Examination Requirement wherever necessary to be complied by the auditors in addition to Auditing Standards prescribed by the Accounting and Auditing Standards Board of Bhutan.

256. Where at an Annual General Meeting, no auditors are appointed or re-appointed, the company shall give notice of this fact to the Regulatory Authority within seven days of the meeting, whereupon the Regulatory Authority in consultation with the Royal Audit Authority shall appoint the auditors and fix their remuneration.
257. The first auditors of the company shall be appointed out of panel of auditors maintained by the Royal Audit Authority and their remuneration shall be fixed by the Board of Directors and shall hold office until the conclusion of the first Annual General Meeting.
258. An auditor appointed under section 252 in the general meeting can be removed before the expiry of his term only by the company in general meeting by a special resolution and with the prior approval of the appointing authority and the company shall notify the Registrar of the removal of the auditor within 15 days of the passing of resolution.
259. The auditor proposed to be removed shall have the rights to:
- (a) receive special notice of general meeting at which resolution is to be put up to the shareholders relating to

his proposed removal from office; and

- (b) make written representation, to deliver it to the company and to circulate them to the shareholders prior to the general meeting.

Resignation of auditor from office

260. An auditor wishing to resign during his term of office shall give notice in writing and deliver it to the registered office of the company.
261. Resignation takes effect from the date of deposit of his resignation letter to the company unless a later date is specified and shall be accompanied by one or two statements, either a statement of circumstances leading to his resignation which the auditor wishes to bring to the attention of the shareholders or appointing authority or positive statement that there are no such circumstances.
262. In the case of former the auditor can additionally request the company to convene an extraordinary general meeting with

a minimum of 14 days' notice to discuss the circumstances leading to his resignation.

Powers and duties of auditors

263. Every auditor of a company shall have right of access at all times to the books of accounts and records of the company, and shall be entitled to require from the officers of the company such information and explanation as the auditor may think necessary for the performance of his duties as auditor.
264. The auditor shall make a report to the shareholder(s) of the company on the financial statements examined by and on every other document declared by this Act to be part of or annexed to the Complete set of Financial Statement, which are laid before the company in general meeting during his tenure of office, and the report shall state as to whether, in his opinion the financial statements present fairly in all material respects:
- (a) the financial position of the company as at the end of its financial year;
 - (b) its financial performance; and
 - (c) its cash flows for the year then ended.

in accordance with the Accounting Standards prescribed by the Accounting and Auditing Standards Board of Bhutan.

265. The auditor shall also state:

- (a) whether he has obtained all the information and explanations to the best of his knowledge and belief, were necessary, for the purposes of his audit;
- (b) whether, in his opinion, proper books of accounts have been kept by the company so far as it appears from his examination of those books, proper returns adequate for the purposes of his audit have been received from the branches not visited by him;
- (c) whether the company's are in agreement with the books of accounts and returns; and
- (d) whether the company has complied with other legal and regulatory requirements.

Auditing Standards

266. The auditor shall conduct the audit in accordance with the auditing standards prescribed by the Accounting and Auditing Standards Board of Bhutan, and the General Terms of reference for Auditors and minimum audit reporting requirements prescribed by Royal Audit Authority.

Annual return

267. Every company shall prepare and file with the Registrar an annual return for the period relating to the financial year ended on 31st December, every year, containing the prescribed particulars.
268. Every listed company shall file the annual return with the Registrar on or before 31st May, and the other companies, namely, the unlisted public companies and private companies shall file the annual return with the Registrar on or before 31st July, every year, along with the financial statements for the year ended 31st December, auditor's report where applicable and directors' report duly authenticated by at least one director and the Chief Executive Officer.

Chapter 11

Registration of charges

Regulations regarding registration of charges

269. The Regulatory Authority may make regulations specifying categories of charge which shall be subject to the provisions of this Chapter.

Notice of registration of a charge

270. If a company creates a charge over property to which this Chapter applies:

- (a) prescribed particulars of the charge; and
- (b) the instrument creating the charge, together with a copy thereof shall be delivered to the Registrar for registration.

271. The requirements of section 270 shall be completed within 30 days of the date of creation of the charge

Register of charges to be maintained by Registrar

272. The Registrar shall maintain a Register of Charges for each company which has delivered particulars of a charge for registration.

273. The Register which shall include details of all charges for which prescribed particulars have been delivered in accordance with section 270.

Registration of charges

274. The filing of mortgages and charges with the Registrar may be done either by the company or any interested person and where it is done by a person other than the company, the Registrar shall give notice of the particulars of the mortgages or charges to the company before registering the same in the Register.

275. The Registrar shall on receipt of the prescribed particulars of the charge, after giving any notice to the company if required:

- (a) register the same by affixing official seal on the relative form and accompanying instrument of charge under his signatures with date and copy thereof, and
- (b) issue a certificate of registration of the charge,

which shall be returned to the company or the person who files the documents on its behalf.

Charges not registered to be void against creditors

276. If a company creates a charge to which section 270 applies, the charge is void against any creditor, including a liquidator, unless the provisions of the section concerned have been complied with.

277. Nothing in section 276 shall prejudice any contract or obligation for the repayment of the money secured by the charge and, when a charge becomes void under this section, the money secured thereby shall immediately become payable.

Modification or satisfaction of charge

278. Whenever a registered charge is:

- (a) modified, or
- (b) satisfied, in part or in full,

the company shall deliver particulars of the modification or satisfaction to the Registrar in the prescribed form.

279. The Registrar may cause a notice to be sent to the charge holder calling upon him to show cause within forty days, as to why the modification or satisfaction should not be registered and, in the absence of such cause, shall register the modification or satisfaction.

Chapter 12

Compromises and Amalgamations

COMPROMISES WITH CREDITORS

Proposal for compromise

280. If there is reason to believe that a company is or will be unable to pay its debts, a proposal for a compromise between the company and its creditors may be proposed by:

- (a) the Board of directors of the company; or
- (b) subject to leave of the Court, a creditor or shareholder of the company.

281. The proposal for a compromise may include:

- (a) cancelling all or part of a debt of the company; or
- (b) varying the rights of its creditors or the terms of a debt.

List of creditors

282. The person making the proposal shall compile, in relation to each class of creditors of the company, a list of creditors who would be affected by the proposed compromise, setting out:

- (a) the amount owing or estimated to be owing to each of them; and
- (b) the number of votes which each of them is entitled to cast on a resolution approving the compromise.

283. Where the Court grants leave to a creditor or shareholder to propose a compromise, the Court may make an order directing the company to supply to the creditor or shareholder, within such time as may be specified, details of the company's creditors and such information as may be specified to enable the creditor or shareholder to propose a compromise.

Notice of proposal

284. The person making the proposal shall give to the company, each known creditor and the Registrar:

- (a) notice of the intention to hold a meeting of creditors for the purpose of voting on the resolution, and;
- (b) a statement including:
 - (i) the name and address of the person making the proposal and the capacity in which he is acting;
 - (ii) the address and telephone number to which inquiries may be directed during normal business hours;

- (iii) the terms of the proposed compromise and the reasons for it;
 - (iv) the reasonably foreseeable consequences for creditors of the company of the compromise being approved;
 - (v) the extent of any interest of a director in the proposed compromise;
 - (vi) notice that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors will, if approved, be binding on all creditors, or on all creditors of that class; and
 - (vii) details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval; and
- (c) a copy of the list or lists of creditors referred to in section 282.

Conduct of meeting

285. The Regulatory Authority may make regulations regarding the conduct of a meeting of creditors to consider a proposal for a compromise.

Effect of compromise

286. A compromise, including any amendment, approved by creditors or a class of creditors of a company in accordance with this chapter is binding on the company and on:

- (a) all creditors; or
- (b) if the compromise relates to a specific class of creditors, on all creditors of that class, to whom notice of the proposal was given under section 284.

287. If a resolution proposing a compromise, including any amendment, is put to the vote of more than one class of creditors, it is to be presumed, unless the contrary is expressly stated in the resolution, that the approval of the compromise, including any amendment, by each class is conditional on the approval of the compromise, including any amendment, by every other class voting on the resolution.

288. The person making the proposal shall give written notice of the result of the voting to each known creditor, the company and the Registrar.

Variation of compromise

289. A compromise approved by creditors or a class of creditors of a company in accordance with this chapter may be varied either:

- (a) in accordance with any procedure for variation incorporated in the compromise as approved; or
- (b) by the approval of a variation of the compromise in accordance with this chapter which, for that purpose, shall apply with such modifications as may be necessary as if any proposed variation were a proposed compromise.

290. The provisions of this chapter shall apply to any compromise that is varied in accordance with this section.

Powers of the Court

291. The person making the proposal may apply to the Court for an order that, during a period specified in the order, beginning not earlier than the date on which notice was given of the proposed compromise and ending not later than ten working days after the date on which notice was given of the result of the voting on it:

- (a) proceedings in relation to a debt owing by the company be stayed; or

- (b) a creditor refrain from taking any other measure to enforce payment of a debt owing by the company.

292. Nothing in section 291 affects the right of a secured creditor during that period to take possession of, realise, or otherwise deal with, property of the company over which that creditor has a charge.

293. If the Court is satisfied, on the application of a creditor of a company who was entitled to vote on a compromise, that:

- (a) insufficient notice of the meeting was given to that creditor;
- (b) there was some other material irregularity; or
- (c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs, the Court may order that the creditor is not bound by the compromise or make such other order as it thinks fit.

294. An application under section 393 shall be made not later than ten working days after the date on which notice of the result of the voting was given to the creditor.

Costs of compromise

295. Unless the Court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise shall be met by the company.

AMALGAMATION

Amalgamation proposal

296. Two or more companies may amalgamate and continue as one company, which may be either:

- (a) one of the amalgamating companies (a takeover or acquisition), or
- (b) a new company (a merger).

297. An amalgamation proposal shall include the prescribed information.

298. The board of each amalgamating company shall resolve that:

- (a) in their opinion the amalgamation is in the best interest of the company; and
- (b) they are satisfied on reasonable grounds that, immediately after the amalgamation becomes effective:
 - (i) the company will be able to pay its debts as they become due in the normal course of business; and
 - (ii) the value of the company's assets will be greater than the value of its liabilities, including contingent liabilities.

299. The board of each amalgamating company shall, not less than twenty working days before the amalgamation is proposed to take effect,:

- (a) send to each shareholder of the company a copy of the amalgamation proposal and such other information as may be prescribed;
- (b) send a copy of the amalgamation proposal to every secured creditor of the company;
- (c) send a copy of the amalgamation proposal to the Registrar and, if any amalgamating company is a listed company, to the Regulatory Authority for confirmation; and
- (d) give public notice of the proposed amalgamation.

300. The amalgamation proposal shall be approved by special resolutions passed by the shareholders of each amalgamating company.

Powers of Court in respect of an amalgamation proposal

301. If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a shareholder or creditor of a amalgamating company or a person to whom a amalgamating company is under an obligation, it may, on the application, made at any time before the date on which the amalgamation becomes effective, of that person or the Regulatory Authority, make any order it thinks fit in relation to the proposal, and may, without limiting the generality of this section, make an order:

- (a) directing that effect shall not be given to the proposal;
- (b) modifying the proposal in such manner as may be specified in the order;
- (c) directing the company or its board to reconsider the proposal or any part of it.

302. An order may be made under section 301 on such conditions as the Court thinks fit.

Court order for amalgamation

303. Where an application is made to the Court under section 280 for the sanctioning of a compromise and it is shown to the Court:

- (a) that the compromise has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies; and
- (b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company in the scheme (referred to as a “transferor company”) is to be transferred to another company (referred to as “transferee company”);

the Court may by order make provision for all or any of the following matters:

- (i) the transfer to the transferee company of the properties, assets or liabilities of the transferor company;
- (ii) the allotment or appropriation by the transferee company of any shares which, under the scheme, are to be allotted or appropriated by that company to or any person;
- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

- (iv) the provision to be made for any persons, who dissent from the compromise or arrangement; and
- (v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

304. Within thirty days after the making of an order under section 303, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

Notice to the Registrar of application under section 280 or section 303

305. The Court shall give notice of every application made to it under section 280 or section 303 to the Registrar, and shall take into consideration the representation, if any, made to it by the Registrar before passing any order.

Registration of amalgamation proposal

306. For the purpose of effecting an amalgamation there shall be delivered to the Registrar for registration:

- (a) the approved amalgamation proposal; and
- (b) such other information as may be prescribed.

Certificate of amalgamation

307. On receipt of:

- (a) an order made by the Court under section 265 sanctioning a compromise or arrangement which includes the amalgamation of companies; or
- (b) an amalgamation proposal and other documents required by section 296.

the Registrar shall:

- (i) if the amalgamated company is the same as one of the amalgamating companies, issue a certificate of amalgamation; or
- (ii) if the amalgamated company is a new company, enter particulars of the company on the register and issue a certificate of amalgamation together with a certificate of incorporation.

308. If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of amalgamation, and

any certificate of incorporation shall be expressed to have effect on the date specified in the amalgamation proposal.

309. Any amalgamating company other than the amalgamated company shall be deemed dissolved with effect from the date specified in the certificate of amalgamation as being the date on which the amalgamation is to become effective.

Effect of amalgamation

310. On the date shown in the certificate of amalgamation:

- (a) the amalgamation is effective;
- (b) if it is the same as a name of one of the amalgamating companies, the amalgamated company has the name specified in the amalgamation proposal;
- (c) the amalgamated company succeeds to all the property, rights, powers, and privileges of each of the amalgamating companies;
- (d) the amalgamated company succeeds to all the liabilities and obligations of each of the amalgamating companies;
- (e) proceedings pending by, or against, an amalgamating company may be continued by, or against, the amalgamated company;

- (f) a conviction, ruling, order, or judgment in favour of, or against, a amalgamating company may be enforced by, or against, the amalgamated company; and
- (g) any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their terms.

311. The presentation to any person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company:

- (a) executed or purporting to be executed by the amalgamated company; and
- (b) relating to any property held immediately before the amalgamation by a amalgamating company; and
- (c) stating that property has become the property of the amalgamated company by virtue of this Chapter,

shall, in the absence of evidence to the contrary, be sufficient evidence that the property has become the property of the amalgamated company.

Chapter 13

Winding up, striking off and dissolution

VOLUNTARY WINDING UP

Circumstances in which company may be wound-up voluntarily

312. A company may be wound-up voluntarily if the directors have made a declaration of solvency in accordance with section 313 and:

- (a) the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound-up voluntarily; or
- (b) the company passes a special resolution that the company be wound-up voluntarily.

Statutory declaration of solvency

313. Where it is proposed to wind up a company voluntarily, the directors may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay

its debts in full within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

314. A declaration under section 313 shall:

- (a) be made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
- (b) include a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

315. A director making a declaration under section 313 without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified is liable to administrative penalty.

316. If the company is wound up in pursuance of a resolution passed within five weeks after the making of the declaration, and its debts are not paid or provided for in full within the period specified, it is to be presumed, unless the contrary is shown, that the director did not have reasonable grounds for his opinion.

Insolvency

317. If the directors form the opinion that the company will not be able to pay its debts in full, the winding up of company shall be governed by the provisions of the Bankruptcy Act of the Kingdom of Bhutan.

Delivery to the Registrar and publication

318. When a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution:

- (a) deliver a copy of the resolution together with the declaration of solvency to the Registrar; and
- (b) give notice of the resolution by advertisement in the newspaper circulating in the district where the registered office of the company is situated.

319. If the copy of the resolution and the declaration of solvency are not delivered to the Registrar as required by section 318, the company and every officer in default is liable to an administrative penalty.

Commencement of winding up

320. A voluntary winding up shall be deemed to commence at the time when the resolution for voluntary winding up is passed and from that date the company shall cease to carry on its

business, except so far as may be required for the beneficial winding up of such business.

321. Notwithstanding section 320, the corporate state and corporate powers of the company shall continue until it is dissolved.

Appointment of liquidator

322. The company in general meeting shall:

- (a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company; and
- (b) fix the remuneration, if any, to be paid to the liquidator or liquidators.

323. On the appointment of a liquidator, all the powers of the Board of directors and of the Management shall cease.

324. If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

325. The company shall give notice to the Registrar of the appointment of a liquidator or liquidators made by it and of

every vacancy occurring in the office of liquidator, and of the name of the liquidator or liquidators appointed to fill every such vacancy.

WINDING UP BY COURT

Circumstances in which company may be wound up by Court

326. A Company may be wound up by the Court if:

- (a) the company has by special resolution resolved that the company be wound up by the Court;
- (b) the company is unable to pay its debts;
- (c) the Court is of the opinion that it is just and equitable that the company be wound up.

327. Where a petition for winding up is founded on section 326(b), a company shall be deemed to be unable to pay its debts if it commits an act of bankruptcy as defined in the Bankruptcy Act of the Kingdom of Bhutan, and the winding up of the company shall be governed by the provisions of that Act.

Application for winding up

328. An application to the Court for winding up shall be by petition presented either by:

- (a) the company;
- (b) the directors;
- (c) any creditor or creditors;
- (d) the Registrar;
- (e) the Regulatory Authority; or
- (f) all or any of them together or separately.

Advertisement of petition

329. Unless the Court otherwise directs, every petition for winding up shall be advertised in a national newspaper for not less than seven working days after it has been served on the company and not less than seven working days before the day fixed for the hearing.

Commencement of winding up by Court

330. Winding up of a company by the Court is deemed to commence at the time of the presentation of the petition for winding up.

331. If, before the presentation of a petition for winding up by the Court, a resolution for voluntary winding up has been passed by a company, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court, on proof of fraud or

mistake, directs otherwise, all proceedings in the voluntary winding up shall be deemed to be valid.

No disposition of property, etc.

332. After commencement of winding up by the Court and before a winding-up order is made, any disposition of the company's property, any transfer of shares, and any alteration in the status of the company's shareholders shall, unless the Court orders otherwise, be void.

Restraint of suit or proceeding against company

333. After commencement of winding up and before a winding-up order is made, the Court may, on the application of any of the parties mentioned in section 317, stay any suit or proceeding against the company.

Avoidance of attachments, etc

334. Where a company is being wound up by Court, any attachment or execution put in force against the company's property after the commencement of the winding up is void.

Hearing of petition for winding up and powers of Court

335. On hearing a winding-up petition, the Court may:

- (a) dismiss the petition with or without costs ; or

- (b) adjourn the hearing conditionally or unconditionally ;
or
- (c) make any interim order that it thinks fit ; or
- (d) make any other order that it thinks fit ; or
- (e) make an order for winding up with or without costs.

336. Where the petition for winding up is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up if the Court is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Order for winding up to be filed

337. On the making of a winding-up order, it shall be the duty of the petitioner and the company to deliver a certified copy of the order to the Registrar of Companies within fifteen working days of the date of the order.

Appointment of liquidator

338. Where a winding up order is made by the Court, a liquidator shall be appointed by the Court at the time when the order is made.

Appointment of provisional liquidator and his powers

339. At any time after the presentation of a petition for winding up and before the making of a winding-up order, the Court may appoint a liquidator provisionally.

340. Where a provisional liquidator is appointed by the Court, the Court may restrict his powers by the order appointing him or by a subsequent order; otherwise he shall have the same powers as a liquidator.

341. A provisional liquidator shall cease to hold office when a liquidator is appointed by the Court on a winding-up order being made.

Custody of company's property

342. In a winding up, if and so long as there is no provisional liquidator or liquidator appointed all the property of the company is deemed to be in the custody of the Court.

Statement of affairs to be made to liquidator

343. Where a liquidator is acting, unless the Court orders otherwise, there shall be made out and submitted to the liquidator a statement of affairs of the company containing the following particulars by one or more of the persons required to submit it under section 344 within twenty one days from the date of notice of requirement given to them by the liquidator:

- (a) particulars of company's assets and liabilities ;
- (b) the names and addresses of the company's creditors ;
- (c) the securities held by them respectively ;
- (d) the dates when the securities were respectively given ;and
- (e) such other information as may be required by the liquidator.

344. The persons who are referred to in section 343 are:

- (a) those who are or have been officers of the company ;
- (b) those who have taken part in the formation of the company at any time within one year before the relevant date ;
- (c) those who are in the employment of the company or who have been in the employment of the company within that year and are, in the opinion of the liquidator, capable of giving any information required.

345. If any person required under section 344 to submit a statement fails to comply, without reasonable excuse, with the obligation imposed under section 343, he shall be liable to prosecution.

346. In section 344:

(a) “relevant date” means:

(i) in case where a provisional liquidator is appointed, the date of appointment;

(ii) in case where no such appointment is made, the date of the winding-up order; and

(b) “employment” shall include employment under contract for services.

Removal of liquidator

347. The Court may remove a liquidator and fill any vacancy occasioned by the removal, or by death or by resignation of a liquidator.

Fixing list of contributories

348. Upon making a winding-up order, the Court shall settle a list of contributories and shall cause the company’s assets to be collected and applied in the discharge of its liabilities.

349. Where it appears to the Court that it will not be necessary to make calls or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

Calls on contributories

350. The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability, for payment of any money.

Books to be maintained by liquidator

351. The liquidator shall keep proper books, accounts and other records in which he shall make entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

352. Any creditor or contributory may, subject to control of the Court, inspect such books, accounts or other records.

Audit of liquidator

353. The liquidator shall present, at least twice in each year during his tenure, to the Court an account of his receipts and payments as liquidator.
354. The Court shall cause the accounts to be audited in such manner as it thinks fit.
355. When the account has been audited, one copy shall be kept in the Court and another copy delivered to the Registrar for filing; and each copy shall be open to inspection of any creditor, contributory or person interested.

Stay of winding up proceedings

356. The Court may on the application of a liquidator or any creditor or contributory stay the proceedings under a winding-up order.

Examination of officers of company

357. Where a company is being wound up by the Court, the liquidator may at any time before the dissolution of the company apply to the Court for examination of:

- (a) any person who is or has been an officer of the company;
or
- (b) any person who is or has been concerned, or has taken part, in the promotion, formation or management of the company.

358. On receipt of an application under section 357, the Court shall fix a date for examination of the person to whom the application relates and shall direct that person to attend and be examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

Power of Court to assess damages against delinquent directors, etc.

359. If in due course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company:

- (a) has misapplied, or retained, or become liable or accountable for, any money or property of the company;
or
- (b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Court may, on the application of the liquidator, or of any creditor or shareholder, made in that behalf, examine into the conduct of the person, director, or officer aforesaid, and compel him to repay or restore the money or property or any part thereof, respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

DUTIES, POWERS AND FUNCTIONS OF LIQUIDATORS

Duties of liquidator

360. In winding up a company it shall be the duty of the liquidator to act honestly and in good faith and he shall be responsible to the Court in properly carrying out the proceedings of the winding up.

Powers of liquidator

361. The liquidator of a company shall have power:

- (a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

- (b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;
- (c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels;
- (d) to raise on the security of the assets of the company any money required;
- (e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
- (f) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal, if any.
- (g) to inspect the records and returns of the company on the files of the Registrar without payment of any fee;
- (h) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

- (i) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.

Functions of liquidator

362. The functions of the liquidator of a company are:

- (a) to secure that the assets of the company are got in, realized and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it;
- (b) to take into his custody all the properties and effects of the company to which the company is or appears to be entitled;
- (c) in the case of a winding up by the Court, as soon as practicable after receipt of a statement under section 331 and not later than six months from the date of the order for winding up (or such extended period as the Court may allow) to submit a report to the Court :
 - (i) as to the amount of capital issued, subscribed and paid up, and the estimated amounts of assets and liabilities ;

- (ii) if the company has failed, the cause or causes of failure ; and
 - (iii) whether in his opinion, further enquiry should be conducted as to any matter relating to the promotion, formation or failure of the company, or the conduct of its business.
- (d) where it appears that for all practicable purposes the winding up of a company is complete, to make a final account of the winding up showing how the winding up has been conducted and the property of the company disposed of ;
- (e) after preparing the final winding-up account, to give public notice of not less than one month to summon in all cases, a final general meeting of the company and in the case of a winding up by the Court, a meeting of the creditors to receive his account of the winding up ;
- (f) within one week of the general meeting of the company or a subsequent meeting of the creditors, if applicable, at which he presents his final account of the winding up, to send a notice that the winding up is complete together with a copy of the final account to the Registrar of Companies and, in the case of a winding up by the Court, to the Court.

Duty of liquidator to call general meeting at the end of each year

363. In the event of the winding up continuing for more than one year, the liquidator shall:

- (a) call a general meeting of the company at the end of the first year from the commencement of the winding up, and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year; and
- (b) lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement of receipts and expenses duly audited, and position of, the liquidation.

DISSOLUTION FOLLOWING WINDING UP

Dissolution of company

364. Where the Registrar has received a copy of the final account of winding up of a company from the liquidator, he shall register the account; and on the expiration of 3 months from the registration of the account the company is deemed to be dissolved.

Power to defer dissolution or declare it void

365. The Court may on application of the liquidator or any other person who appears to the Court, to be interested, make an order, on such terms and conditions as it thinks fit:

- (a) deferring the date at which dissolution of a company is to take effect; or
- (b) declaring the dissolution to be void.

366. Following the making of an order under section 365, such proceedings may be taken as might have been taken as if the company had not been dissolved.

DEFUNCT COMPANY

Power of Registrar to strike off defunct company

367. Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall inquire whether the company is carrying on business or in operation.

368. If the Registrar does not receive a reply to his inquiry under section 374, he shall make further inquiry stating that he has received no reply to his first inquiry.

369. If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after his second inquiry receive any answer, he may send to the company and its directors and publish in a national newspaper, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off and the company will be dissolved.
370. At the expiry of the time mentioned in the notice referred to in section 369, the Registrar may, unless cause to the contrary is previously shown by the company or by any person affected by the proposed striking off, strike its name off the register, shall publish notice of the striking off in a national newspaper and shall display notice on its notice board from that date, and the company shall stand dissolved.
371. Notwithstanding the dissolution of a company under section 370, the liability, if any, of every director or other officer who was exercising any power of management, and of every shareholder of the company, shall continue and may be enforced as if the company had not been dissolved.

Application for striking off

372. Subject to section 373, the directors of a company may apply to the Registrar for the name of the company to be struck off the register and for the company to be dissolved.

373. An application under section 372 shall be in the prescribed form and shall include a statement that notice of the application has been given to every person who is:

- (a) a shareholder in the company,
- (b) an employee of the company,
- (c) a creditor of the company,
- (d) a director of the company, or
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company and shall be accompanied by the prescribed fee.

374. A notice given under section 373 shall state that any person may show cause why the company should not be struck off the register.

375. On receiving an application under section 372, the Registrar shall:

- (a) acknowledge the application;
- (b) publish a notice that, at the expiration of three months from the date of that notice, the name of the company

mentioned therein will, unless cause is shown to the contrary, be struck off and the company will be dissolved;

- (c) unless cause is shown to the contrary, at the expiration of three months from the date of publication of the notice, strike the name of company off the register; and
- (d) publish a further notice stating that the name of the company has been struck off the register and that the company has been dissolved.

376. The company shall be dissolved with effect from the date of the notice published under section 375.

377. No application shall be made under section 372, if:

- (a) an application has been made to the Court under section 280 for the sanctioning of a compromise or arrangement:
 - (i) between the company and its creditors or any class of them; or
 - (ii) between the company and its shareholders or any class of them; and the matter has not been finally concluded; or

- (b) a petition has been presented to the Court under section 326 for the winding up of the company and the petition has not been dismissed.

Property of dissolved company

378. When a company is dissolved, all property and rights vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for another person) shall vest in the Government and be administered by the Ministry of Finance.

Application for restoration to the register

379. If a company has been struck off the register and dissolved, a person who was a director or shareholder of a company at the time of its dissolution may apply to the Registrar for the company to be restored to the register if :

- (a) the company was carrying on business or in operation at the time of its striking off; or
- (b) a property or right previously vested in or held on trust for the company has vested in the Government.

380. An application under section 379 shall be in the prescribed form and shall be made within six years of the date of dissolution.
381. If a property or right has vested in the Government, the applicant shall apply to the Ministry of Finance for consent to the restoration of the company to the register and a copy of the consent, if given, shall accompany the application to the Registrar.
382. If the Registrar is satisfied that the provisions of sections 379, 380 and 381 have been complied with, he may consent to the restoration of the company to the register, subject to:
- (a) delivery to the Registrar of such documents relating to the company as are necessary to bring up to date the records kept by the Registrar, and
 - (b) payment of any penalties due in respect of the late delivery of such documents; and
 - (c) payment of the fee prescribed for restoration of the company.
383. Sections 379, 380 and 381 shall not apply to a company which has been dissolved pursuant to an order of the Court or following a voluntary winding-up.

Restoration to the register

384. If the Registrar consents to the restoration of a dissolved company to the register, he shall:
- (a) note the public file of the company accordingly;
 - (b) give notice to the applicant;
 - (c) publish notice of the restoration in a national newspaper and on his website.
385. The company is restored to the register from the date of the Registrar's decision, which shall be stated in the notices given under section 384.
386. With effect from the date of the Registrar's decision that a company shall be restored to the register, the company is deemed to have continued in existence as if it had not been struck off or dissolved.

Chapter 14

The Regulatory Authority

The Regulatory Authority and Appointment of Registrar

387. The Office of the Registrar under this Act is hereby established as an autonomous Regulatory Authority. The Regulatory Authority shall be independent in exercise of its powers and functions prescribed under this Act or any other Act, and shall exercise such power and functions without fear, favour or prejudice.
388. The Regulatory Authority shall be presided by a board comprising of seven members from relevant organizations excluding the company registrar who shall be the member secretary.
389. The board shall consist of the following representatives:
- (a) The Secretary of Ministry of Economic Affairs, Chairman
 - (b) One representative from the Ministry of Finance
 - (c) One representative from Royal Monetary Authority
 - (d) One representative from Corporate sector appointed by the Ministry
 - (e) One representative from the Royal University of Bhutan
 - (f) One representative from professional bodies including Accounting and Auditing Standards Board of Bhutan, and

- (g) One independent Board Member with accounting, auditing, business or law knowledge.
390. The members of the Board, having been entrusted with sacred responsibility to serve Tsa-wa-sum shall not:
- (a) Indulge in such conduct that impinges on the performance of their official duties or tarnishes the image of the Authority or the country;
 - (b) Misuse their official positions.
391. The Board shall adopt a code of conduct for its Board members, executives, and the Authority's officers and staff which, among other things, shall require regular periodic disclosure to the Board of each person's holdings and transactions in listed securities and those of his/her spouse and immediate family members.
392. The Authority shall constitute a Dispute Settlement Committee for conducting hearings and issuing of orders against companies and company officials including directors, Chief Executive Officer, principal officers or any other persons on cases of violations not involving imprisonment as penalty, under this law and any other laws prescribing offences related to companies and securities. The appeal from Dispute Settlement Committee shall lie to the Court for judicial review of the decision.

Annual Report

393. The Authority shall prepare and submit to the Government an Annual Report on its activities during its financial year. It shall also publish the said report on its website and in such other manner and at such time as the Authority deems fit.

Register of Companies

394. The Registrar shall maintain a register of companies containing:

- (a) the information contained in documents delivered to him under any law, and
- (b) the certificates issued by him under the provisions of this Act;

395. Information contained in documents delivered to the Registrar may be recorded and kept in any form the Registrar thinks fit, provided it is possible to inspect it and produce a copy of it.

Delivery of documents to the Registrar

396. Subject to the provisions of any law requiring the delivery of a document to the Registrar to be in a prescribed form, the Registrar may:

- (a) require the contents of the document to be in a standard form;
- (b) impose requirements for the purpose of enabling the document to be scanned or copied.

397. The Registrar:

- (a) may, at his discretion, or
- (b) shall, if so required by regulations,

accept information in electronic form as satisfying a requirement of this Act for the delivery of a document if the information provided is equivalent to that required in the document.

398. In the case of a document which is delivered in electronic form, the Registrar may specify:

- (a) the format to be used;
- (b) the means of authentication;
- (c) the electronic address (if any) to be used for delivery;
- (d) the software to be used;
- (e) technical requirements relating to such matters as protocol, security, anti-virus protection or encryption.

399. Where the Registrar specifies requirements relating to the form of a document other than a document in electronic form,

he shall publish details of those requirements in a national newspaper and on his website.

400. Where the Registrar specifies requirements for delivery of a document in electronic form, he shall publish those requirements on his website and provide copies of the requirements in electronic form upon request.
401. The Registrar may refuse to register any document or information which has been presented for registration if it:
- (a) fails to satisfy any requirement published in accordance with sections 399 or 400 as regards form or content; or
 - (b) fails to comply with the requirements of this Act, or any other law under which it is purported to be delivered, as regards accuracy, completeness and authentication and any such document shall be deemed not to have been delivered.

Communications by the Registrar

402. When the Registrar sends a notice or other communication to a company he may, if the company has notified an electronic address to be used for that purpose, use that address.

403. In the absence of information to the contrary, a communication sent in accordance with section 402 is deemed to have been received by the company within two days of its despatch.

Inspection, production and evidence of documents kept by Registrar

404. Any person may:

- (a) inspect any documents kept by the Registrar being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of the prescribed fees;
- (b) require a certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of the prescribed fee.

Chapter 15

Prosecution and penalties

Penalty where no specific penalty is provided

405. If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act, the company and every director shall be punishable with fine which may extend to Nu.1000,000 and where the contravention is a continuing one, with a further fine which may extend to Nu.10,000 for every day after the first fine is imposed. The fine shall also be imposed on individuals who are other than officials of a company, who violate the provisions of this Act.

Jurisdiction to try offences

406. The Royal Court of Justice shall try any offence under this Act.

407. The Royal Court of Justice imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards the payment of costs of the proceedings, or in or towards rewarding the person on whose information or at whose instance the fine is recovered.

Composition of certain offences

408. Any offence punishable under this Act, not being an offence with imprisonment only, or with imprisonment and also with fine, may be compounded by the Regulatory Authority on payment of such sum as the Regulatory Authority may specify, which shall not exceed the maximum amount of the fine which may be imposed for the offence so compounded.
409. Every application for the compounding of an offence shall be made by the company and the directors to the Registrar.

Chapter 16

Powers and Functions of the Regulatory Authority

410. Regulatory Authority shall be vested with following powers and functions:
- (a) the incorporation or registration of Corporate entities and supervision of all corporate entities including listed companies.
 - (b) Issuing directives, rules and Regulations on all matters covered under this Act, and any other related laws in the area of corporate regulation, capital market supervision and securities.
 - (c) Advising the government on matter covered under this Act or any law to be enforced by the Government.

- (d) The Regulatory Authority may levy fees in respect of any matter under this Act.
- (e) Making provisions for the resolution of disputes within or between companies in relation to the provisions of this Act or regulations hereunder.
- (f) Making provisions for officials, staff, services and facilities to support the Regulatory Authority.

Power of Regulatory Authority to direct companies to furnish information or statistics

411. The Regulatory Authority may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

Power of Regulatory Authority to accord approval, etc., subject to conditions

412. Where the Regulatory Authority is required or authorized by provisions of this Act:

- (a) to accord approval or consent to or in relation to, any matter;

(b) to give any direction in relation to any matter,

the Regulatory Authority may grant such approval, consent or direction subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, consent or direction.

Power to make regulations

413. The Regulatory Authority may make regulations for all or any of the matters which by this Act are to be, or may be, prescribed by the Regulatory Authority.

414. The Regulatory Authority may make regulations-

- (a) prescribing forms to be used for the purposes of this Act;
- (b) prescribing fees to be paid in respect of any function of the Registrar;
- (c) prescribing procedures in respect of provisions of this Act; and
- (d) generally for the purposes of this Act.

415. Fees prescribed in regulations made under section 414 may include additional fees to be paid if a document is not delivered within the time stated in this Act or in regulations.

Chapter 17

Definitions

Definitions

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

- (1) “**Alter**” and “**Alteration**” shall include the making of additions and omissions.
- (2) “**Appointed day**” means the day appointed for commencement of Part VI of the Movable and Immovable Property Act of the Kingdom of Bhutan, 1999.
- (3) “**Articles**” means the Articles of Incorporation of a company as originally adopted or as altered by special resolution.
- (4) “**Attachment or execution**” is the legal process of seizing property to ensure satisfaction of a judgment. The document by which a Regulatory Authority orders such a seizure may be called an order of attachment.

- (5) “**Authorised Share Capital**” shall mean the maximum amount of capital within which the directors of a company are authorised to issue shares.
- (6) “**Board of Directors**” or “**Board**” in relation to a Company means directors collectively acting as the Board of directors of the Company.
- (7) “**Body Corporate**” means any body corporate with or without share capital and whether or not it is a company to which this Act applies, and includes a company incorporated outside Bhutan.
- (8) “**Capital**” means amounts contributed by shareholders towards the share capital of a company and includes capital contributed from retained earnings or other surplus accounts.
- (9) “**Certificate of Incorporation**” means a Certificate issued by the Registrar of Companies in prescribed form.
- (10) “**Chief Executive Officer**” means a full-time manager, by whatever name called, appointed by the Board with the approval of the company in general meeting to

manage the day to day affairs of the company or as otherwise determined by the Board, or the Articles or shareholders in general meeting.

- (11) “**Chairperson**” means a director of the company appointed by the Board as Chairperson of the Board of Directors and general meetings of shareholders.
- (12) “**Company**” means a company incorporated under this Act, any other legislative provision of the Kingdom of Bhutan or by Royal Charter and which is included in the register of companies maintained under section 401.
- (13) “**Debenture**” means a debt instrument acknowledging indebtedness to a person or persons with or without interest and of specified maturity period, and constituting a charge on the assets of the company.
- (14) “**Depository**” means a depository for securities operating under the authority and direction of the Regulatory Authority.
- (15) “**Derivative proceedings**” means law suit brought on behalf of a corporation by one or more of its shareholders against its Directors and/or officers to

seek redress for a breach of fiduciary duty, gross negligence, mismanagement or other serious matter.

- (16) “**Director**” means any person occupying the position of a director by whatever name called.
- (17) “**Electronic address**” means any address or number used for the purpose of sending or receiving documents or information by electronic means;
- (18) “**Electronic form**” shall include any medium that is created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic, optical or by any other means that has capabilities for creation, recording, transmission or storage similar to those means;
- (19) “**Financial Institution**” shall have the meaning assigned by the Financial Services Act of Bhutan, 2011.
- (20) “**Foreign Company**” means a body corporate incorporated outside Bhutan
- (21) “**Government**” means the Royal Government of Bhutan.
- (22) “**Government Company**” means a public company in which more than 50 per cent of the allotted capital is held by the Government, and includes a subsidiary of a Government Company;

- (23) “**Holding Company**” means a company deemed to be a holding company of another by virtue of the latter being its subsidiary company.
- (24) “**Independent director**” means a director other than a director defined as not independent by section 135.
- (25) “**Issued share capital**” means the value of shares which the company has issued in accordance with this Act.
- (26) “**Listed Company**” means a company whose shares or other securities are listed on a Securities Exchange licensed by the Regulatory Authority.
- (27) “**Minority Shareholder**” is a person who is not a substantial shareholder.
- (28) “**Model Articles**” means the Model Articles of Incorporation prescribed in regulations under this Act.
- (29) “**One Person Company**” means a company which has only one person as a member and a limited liability.
- (30) “**Paid up share capital**” means the capital paid up and allotted to the shareholders of a company.

- (31) “**Person**” includes an individual, a company, government agency, a natural person in his or her capacity as a legal representative and any body of persons recognized as a separate legal entity.
- (32) “**Prescribed**” means prescribed by the regulations to this Act.
- (33) “**Private Company**” means a company other than a public company.
- (34) “**Public company**” means a company which is authorised by its Articles to offer its shares to the public.
- (35) “**Prospectus**” means any document described or issued as a prospectus, and includes any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.
- (36) “**Registrar**” means the Registrar of Companies appointed by the Regulatory Authority.
- (37) “**Regulatory Authority**” means an autonomous Authority established under chapter 14 of this Act.
- (38) “**Securities**” include:
- (i) shares, scrips, bonds, debentures, debenture stock or other marketable securities of a like

nature in or of any incorporated company or anybody corporate;

(ii) such other instruments as may be declared by the Regulatory Authority to be securities; and

(iii) rights or interests in securities.

(39) “**Securities Exchange**” means a Securities Exchange licensed under the Financial Services Act, 2011.

(40) “**Shadow director**” has the meaning given in section 176.

(41) “**Share**” means a share in the share capital of a company, and includes stock, except where a distinction between stock and share is expressed or implied.

(42) “**Shareholder**” includes:

(i) a person whose name is entered in the share register as the holder for the time being of one or more shares in the company;

(ii) a person named as a shareholder in an application for incorporation and who has not relinquished his entitlement to one or more shares; and

- (iii) a person who is entitled to have his name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company.
- (43) “**Subsidiary Company**” means company deemed to be a subsidiary company of another where:
- (i) that other holds more than fifty per cent in value of its paid up equity share capital; or
 - (ii) that other can control the composition of its Board of Directors by the exercise of any power at its discretion without the consent or concurrence of any other person to appoint or remove a majority of the directors.
- (44) “**Substantial Shareholder**” means is a person who either acting alone or through or in concert with one or more other person 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 Regulatory Authority.

417. Words importing the masculine gender also include the feminine gender.
418. Words importing the singular number also include the plural number and vice versa.