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**THE COMPANIES ACT OF THE
KINDOM OF BHUTAN
2000**

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Companies Act of the Kingdom of Bhutan, 2000

Preamble

Whereas in year 1989 the first Companies Act of the Kingdom of Bhutan was adopted to facilitate the creation of the companies as corporate entities and to regulate the operation of such entities to ensure that business and commerce would prosper in the Kingdom by widespread conduct of economic enterprise in the corporate form;

Whereas during the passage of over a decade since the adoption of the first Companies Act of Kingdom of Bhutan of 1989 a number of additional legal provisions relating to companies were adopted in separate regulations and furthermore many changes have also taken place in the internal and external economic environment in which companies have to function;

Whereas it is now necessary to consolidate the law relating to companies and to include new provisions in the law to regulate the activities of companies to take into account the above-mentioned additions and changes;

Whereas it is intended by the present Act to consolidate the law relating to companies and to repeal the Companies Act of the Kingdom of Bhutan, 1989;

Now, therefore, be it enacted by the Tshogdu Chenmo as follows:

PART - I

PRELIMINARY

1. Title, Commencement, Territorial Extent and Repeal

- (1) This Act may be called the Companies Act of the Kingdom of Bhutan, 2000.
- (2) It shall come into force with effect from 17th day of the fifth Bhutanese month of the Male Iron Dragon year, corresponding to 18th July, 2000.
- (3) It extends to the whole of the Kingdom of Bhutan and applies to every body corporate with share capital incorporated by or under this Act or the Companies Act of the Kingdom of Bhutan, 1989.
- (4) The Companies Act of the Kingdom of Bhutan, 1989 is repealed.

2. Definitions

(1) In this Act, unless the context otherwise requires:

- (i) **“Administrative Ministry”** means the Ministry to which a company is attached by the nature of its operations and the programme to which it pertains.
- (ii) **“Alter”** and **“Alteration”** shall include the making of additions and omissions.
- (iii) **“Articles”** means the Articles of Incorporation of a company as originally formed or as altered by special resolution.
- (iv) **“Authorised Share Capital”** shall mean the maximum amount of capital specified in the Articles within which the company is authorised to issue shares.
- (v) **“Board of Directors”** or **“Board”** in relation to a Company means directors collectively acting as the Board of directors of the Company.
- (vi) **“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.
- (vii) **“Capital”** means amounts contributed by shareholders towards the share capital of a company and includes capital contributed from retained earnings or other surplus accounts.
- (viii) **“Certificate of Incorporation”** means a Certificate issued by the Registrar of Companies in prescribed form.
- (ix) **“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.
- (x) **“Chairman”** means a director of the company appointed by the Board as Chairman of the Board of Directors and general meetings of shareholders.
- (xi) **“Company”** means a company limited by shares incorporated and registered under this Act or an existing company incorporated by or under the Companies Act of the Kingdom of Bhutan, 1989.

- (xii) **“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.
- (xiii) **“Depository”** means a depository for securities operating under the authority and direction of the Royal Monetary Authority of Bhutan.
- (xiv) **“Director”** means any person occupying the position of a director by whatever name called.
- (xv) **“Financial Institution”** shall have the meaning assigned by the Financial Institutions Act of Bhutan, 1992.
- (xvi) **“Foreign Company”** means a body corporate incorporated outside Bhutan.
- (xvii) **“Government”** means the Royal Government of Bhutan.
- (xviii) **“Government Company”** means a company in which one hundred percent of the paid up share capital is held by the Government
- (xix) **“Government Controlled Company”** means a company in which more than 50 per cent of the paid up share capital is held jointly or severally by the Government and/or Government controlled corporations, and includes a subsidiary of a Government Company.
- (xx) **“Holding Company”** means a company deemed to be a holding company of another by virtue of the latter being its subsidiary company.
- (xxi) **“Issued share capital”** means the value of shares which the company has issued in accordance with this Act.
- (xxii) **“Listed Company”** means a company whose shares or other securities are listed on the Royal Securities Exchange of Bhutan Limited.
- (xxiii) **“Ministry”** means the Ministry of Trade and Industry, Royal Government of Bhutan
- (xxiv) **“Paid up share capital”** means the capital as paid up and allotted to the shareholders of a company.
- (xxv) **“Person”** includes an individual, a company, un-incorporated association, 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.

(xxvi) “**Prescribed**” means prescribed by the regulations to this Act.

(xxvii) “**Private Company**” means a company which, by its Articles,

- (a) restricts the right to transfer its shares, if any; and
- (b) limits its members to such numbers as may be prescribed by the Royal Securities Exchange of Bhutan Limited but not including -

- (1) persons who are in the employment of the company, and
- (2) persons who having been formerly in the employment of the company and were members of the company while in that employment and have continued to be members after the employment ceased; and

- (c) prohibits any invitation to the public to subscribe for any securities of the company :

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member,

(xxviii) “**Public company**” means a company which is not a private company.

(xxix) “**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.

(xxx) “**Registrar**” means the Registrar of Companies appointed by the Ministry.

(xxxi) “**Royal Audit Authority**” means the Royal Audit Authority, Royal Government of Bhutan.

(xxxii) “**Securities**” include –

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or any body corporate;
- (ii) such other instruments as may be declared by the Government to be securities; and
- (iii) rights or interests in securities.

(xxxiii) “**Securities Exchange**” means the Royal Securities Exchange of Bhutan Limited having its registered office at Thimphu.

(xxxiv) “**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.

(xxxv) “**Shareholder**” or “member” in relation to a company, means -

- (a) the subscribers to the Articles of the company who shall be deemed to have agreed to become shareholders of the company and on its incorporation shall be entered as shareholders in the register of shareholders;
- (b) every other person who agrees in writing to become a shareholder of the company and whose name is entered in the register of shareholders; and
- (c) every other person holding equity share capital of the company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a shareholder of the concerned company :

Provided that a person cannot hold shares, who is -

- (i) less than 18 years of age;
- (ii) of unsound mind and has been declared so by a court in Bhutan;
- (iii) insolvent and has been declared so by a court in Bhutan;
- (iv) not a citizen of Bhutan :

Provided further that a person who is not a citizen of Bhutan or a foreign company may hold shares, by allotment or by transfer, in a company with the previous approval of the Government.

(xxxvi) “**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.

(2) Words importing the masculine gender also include the feminine gender.

(3) Words importing the singular number also include the plural number and vice versa.

(4) The Schedules to this Act forms part of this Act and have the same force and effect as though set out in full in this Act and terms used in a Schedule that are defined in this Act have the same meanings in the Schedule as are provided by this Act.

PART - II

**INCORPORATION OF A COMPANY AND MATTERS INCIDENTAL
THERE TO**

General Provisions

3. Mode of Incorporation

- (1) Any two or more persons, associated for any lawful purpose may, by subscribing their names to the Articles and otherwise complying with the provisions of this Act in respect of incorporation, form an incorporated company having the liability of its shareholders limited by the Articles to the amount, if any, unpaid on the shares held by them.
- (2) The requirement of a minimum number of persons shall not be applicable in case of Government Companies.
- (3) In case of a wholly owned subsidiary, the shares may be subscribed by the holding company and its nominees for and on behalf of the holding company.
- (4) No company shall be incorporated with a name which, in the opinion of the Registrar, is undesirable or is identical with, or too nearly resembles the name by which a company in existence has been previously registered.
- (5) The promoters shall, before filing documents for registration, obtain clearance of the proposed name of the company from the Registrar.

4. Requirements with respect to Articles

- (1) The Articles of every company shall state -
 - (a) the name of the company with “Limited” as the last word of the name in case of a public limited company and with “Private Limited” as the last words of the name in case of a private limited company;
 - (b) the place where the registered office of the company will be situated;
 - (c) the objects of the company comprising:
 - (i) the main objects to be pursued by the company on its incorporation;
 - (ii) objects incidental or ancillary to the attainment of the main objects; and
 - (iii) other objects of the company.
 - (d) the liability of its shareholders is limited
 - (e) the authorised share capital of the company
 - (f) the regulations of the company

- (g) the subscription to the effect that each subscriber agreed to take the number of equity shares in the capital of the company as stated therein.
- (2) The Articles of a company shall be in the form set out in Schedule I or as near thereto as circumstances admit.
- (3) A private or a Government company may adopt all or any of the regulations contained in Schedule I as admissible under the Act.
- (4) The Articles shall be printed, whether by letter press or in lithograph or by any electronic means, divided into paragraphs, numbered consecutively, and be signed by each subscriber, who shall add his name, description, address and occupation, if any, in the presence of at least one witness who shall likewise add his name, description, address and occupation, if any.

5. Registration of Company

- (1) There shall be presented for registration to the Registrar -
 - (a) Articles of Incorporation
 - (b) Names and addresses of first directors and the Chief Executive Officer
 - (c) Consent to act as directors by the first directors in the form set out in Schedule II.
 - (d) A declaration by one or more of directors that all the requirements of this Act have been complied with in respect of registration, in the form set out in Schedule III.
- (2) The aforesaid documents shall be accompanied by registration fees as prescribed in Schedule IV.
- (3) If the Registrar is satisfied that all requirements have been complied with by the company and it is authorized to be registered under this Act, he shall issue the Certificate of Incorporation in the form set out in Schedule V.
- (4) 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 common seal with limited liability of its shareholders, including but not limited to the right:
 - (a) to carry on its business as per its objects under the Articles;
 - (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.
- (5) Where an activity is undertaken by the company which is *ultra vires* its Articles, apart from punishment under the Act, all its directors shall be jointly and severally liable for the loss, if any, sustained by the company in this behalf.

- (6) 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.

6. Penalty for improper use of words “Limited” and "Private Limited”

If any person or persons trade or carry on business under any name of which the word “Limited” or the words “Private Limited” forms a part, the Registrar may impose on that person or each of those persons, unless duly incorporated under this Act, a fine which, may extend to Nu. 1000 and a further fine upto Nu. 50 per day till the default is rectified.

7. Alteration of Articles

A company shall not alter any provision contained in the Articles except with the approval of the company by special resolution and approval of the Registrar on payment of fee prescribed in Schedule IV.

8. Change of name

- (1) Subject to sub-section (3) of section 3 and section 7, a company may change its name and the Registrar shall issue a fresh Certificate of Incorporation with the changed name in the form set out in Schedule V and shall also make necessary alteration in the Articles of the company.
- (2) The 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.

9. Increase or consolidation of share capital or conversion of shares into stock, etc.

(1) 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) converted any shares into stock;
- (d) re-converted any stock into shares;
- (e) sub-divided its shares or any of them;
- (f) redeemed any redeemable preference shares; or
- (g) cancelled any shares, otherwise than in connection with a reduction of share capital under section 10 ;

the company shall within thirty days after doing so, file certified copy of the ordinary resolution passed in the general meeting in this behalf with the Registrar, accompanied by the fee prescribed in Schedule IV who shall thereupon record the resolution and make any alterations which may be necessary in the Articles of the company.

10. Reduction of share capital

(1) Subject to the approval by the Ministry, 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, may -

- (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 may, if and so far as is necessary, alter its Articles by reducing the amount of its share capital and of its shares accordingly.

(2) The company shall file a petition with the Ministry for approval of a reduction of the share capital and the petition shall be heard by the Ministry in accordance with the procedure prescribed in the Regulations.

(3) 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.

11. Solvency test

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.

12. Transitional provisions as to existing private limited companies

A company which was a private limited company immediately before the commencement of this Act shall within one month from the date of such commencement alter its Articles under section 7 to incorporate the restrictions contained in section 2 (xxvii) and thereupon, the Registrar shall enter the word "Private" before the word "Limited" in the name of the company in the Certificate of incorporation and the Articles.

13. Conversion of private company into public company

- (1) If a private company alters its Articles in such a manner that it no longer includes the restrictions provided in section 2 (xxvii), the company shall cease to be a private company on the date of such alteration.
- (2) The company shall forthwith inform the Registrar that it has become a public company, and thereupon the Registrar shall delete the word “Private” before the word “Limited” in the name of the company in the Certificate of Incorporation and Articles of the company.

14. Service of documents on company

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.

15. Service of documents on shareholders

- (1) A letter, notice or document may be served by a company on any shareholder thereof either personally or by sending it by post to him at his registered address in Bhutan.
- (2) Where a document is sent by post, service shall be deemed to be effected at the expiration of four days after the same was posted.
- (3) Where a member 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.

16. Restriction on commencement of business

- (1) A company shall not commence its business after incorporation unless the company has obtained a licence in this behalf from the Ministry and copy thereof filed with the Registrar within seven days of its receipt.
- (2) No licence shall be granted by the Ministry under sub-section (1) unless the company has produced documentary evidence relating to purchase of property or assets, and operation of account in a bank in the name of the company.

PART - III

SHARE CAPITAL AND DEBENTURES

Shares and Share Capital

17. Nature of shares etc., and nomination

- (1) The shares, debentures or other interest of any member in a company shall be movable property transferable in accordance with the provisions of this Act.
- (2) Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that nothing in this section shall apply to shares held with a depository.

- (3) 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, notwithstanding anything contained in any other law for the time being in force, whether testamentary or otherwise.
- (4) 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 become entitled to shares or debentures of the company, in the event of his death during minority.

18. Kinds of share capital

- (1) The share capital of a company limited by shares, shall be of two kinds, namely :-
 - (a) Equity share capital; and
 - (b) Preference share capital.
- (2) "Preference share capital" means that part of the share capital of the company which fulfils both the following requirements, namely :-
 - (a) that as respects dividends, it carries a preferential right to be paid a fixed amount or an amount calculated at fixed rate; and
 - (b) that as respects capital, it carries on a winding up or repayment of capital, a preferential right to be repaid the amount of the capital paid-up.
- (3) "Equity share capital" means all share capital which is not preference share capital, and the expression "preference share" and "equity share" shall be construed accordingly.
- (4) Where the Articles of a company provides for one class of shares, such shares shall be referred to as "Equity shares".

19. Further issue of capital

- (1) Where it is proposed to increase the subscribed capital of the company by allotment of further shares, then,
 - (a) such further shares shall be offered to the persons who, at the date of the offer, are members holding equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid-up on those shares at that date;
 - (b) the offer aforesaid shall be made by notice containing terms of issue and specifying the number of shares offered and limiting a time, not being less than fifteen days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
 - (c) the offer aforesaid shall be deemed to include a right to renounce the shares offered in favour of any other person; and notice referred to in clause (b) shall contain a statement of this right;
 - (d) after the expiry of the time specified in the notice aforesaid, or on receipt of intimation from the person that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company.
- (2) Notwithstanding anything contained in sub-section (1), further shares may be offered to any person or persons whether or not those persons include the persons referred to in clause (a) of sub-section (1) in any manner whatsoever, if a special resolution to that effect is passed by the company in general meeting.
- (3) Nothing in this section shall apply to a private company and the Board of directors of such a company may issue further shares as they think most beneficial to the company.

Issue of Shares

20. Issue of shares at a premium

- (1) A 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".
- (2) The share premium account may be applied by the company -
 - (a) in paying up unissued shares of the company to be issued to members 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

21. Issue of shares at a discount

- (1) A company may issue, at a discount, shares of a class already issued if the following conditions are fulfilled, namely :-
 - (a) the issue is authorised by a special resolution passed in the general meeting and sanctioned by the Ministry;
 - (b) the company has filed its first audited annual accounts.
- (2) A company may apply to the Ministry on payment of fee prescribed in Schedule IV for an order sanctioning the issue of shares at a discount, and , on such application, the Ministry 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.
- (3) The company shall file with the Registrar a copy of the order of the Ministry and the particulars of shares issued at a discount within fifteen days of allotment thereof.

Issue of Preference Shares

22. Power to issue redeemable preference shares etc.

- (1) A company limited by shares may , if so authorised by Articles, issue preference shares which are, or at the option of the company, liable to be redeemed.

Provided that -

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.
 - (b) no such shares shall be redeemed unless they are fully paid-up;
 - (c) the premium, if any, payable on redemption shall have been provided out of profits of the company or out of company's share premium account before the shares are redeemed;
 - (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall be transferred out of profits which would otherwise have been available for dividend a sum equal to the nominal amount of the shares redeemed to a reserve fund to be called "the capital redemption reserve account".
- (2) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its share capital.
- (3) Notwithstanding anything contained in this section, no company limited by shares shall issue any preference share which is irredeemable or is redeemable after the expiry of ten years from the date of its issue.

- (4) Redeemable preference shares issued by a company shall be of two kinds, namely :-
- (a) Redeemable cumulative preference shares; and
 - (b) Redeemable non-cumulative preference shares.

“Redeemable cumulative preference shares” means the shares in respect of which the dividend payable at fixed rates remaining unpaid due to loss or inadequacy of profits shall be accumulated and become payable out of profits in the subsequent year or years. “redeemable non-cumulative preference shares” be construed accordingly.

23. Application for and allotment of shares

- (1) Every person intending to become a shareholder (other than a subscriber to the Articles) shall make an application for allotment of shares in writing along with the amount payable on the application within such time as may be prescribed by the company :

Provided that the amount payable on application shall not be less than twenty five per cent of the nominal amount payable on shares.

- (2) The Board of directors may allot the shares issued at par, or at premium or at a discount under the provisions of this Act.

Share Certificates

24. Public companies not to issue share certificates

- (1) From the date of commencement of this Act, no public company shall issue certificate of share or shares except a Global Share Certificate representing all outstanding shares and such global certificate shall be deposited with a depository in accordance with the Rules of the Securities Exchange.
- (2) The provisions of this section shall apply to debentures issued by public companies.

25. Issue of share certificates by private companies only

- (1) Only private companies shall issue certificate of any share or shares in the company:
- (i) in pursuance of a resolution passed by the Board or a committee thereof, and
 - (ii) on surrender to the company of its letter of allotment, if any, save in cases of issues against letters of acceptance or renunciation, or in cases of issue of bonus shares.

- (2) No certificate of any share or shares shall be issued in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, torn, worn out, or in which space for recording transfers have been duly utilised, unless the certificate in lieu of which it is to be issued is surrendered to the company :

Provided that the company may charge such fee, if any, not exceeding Nu. 10 per certificate issued on splitting or consolidation of share certificates or in replacement of share certificates that are defaced or torn, as the Board thinks fit.

- (3) No duplicate share certificate shall be issued in lieu of those that are lost or destroyed without prior consent of the Board or its committee thereof or without payment of such fee, if any, not exceeding Nu. 10 and on such reasonable terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence by issue of public notice or otherwise as the Board or its committee thinks fit.
- (4) Every share certificate shall be in the form prescribed in Schedule VI, and shall be issued under the seal of the company to be affixed in the presence of two directors, and the Chief Executive Officer.
- (5) A share certificate issued under this section shall be *prima facie* evidence of the title of the member to such shares and shall be delivered to the member concerned within one month from the date of allotment.
- (6) 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 machine-numbered and shall be kept in the custody of such person as the Board may appoint for the purpose.
- (7) The provisions of this section shall apply to debenture certificates or as nearly thereto as circumstances admit.

26. Voting rights, proxy and poll

- (1) Every equity shareholder shall have a right to vote on every resolution placed before the general meeting of the company where -
 - (a) on a show of hands, he shall have one vote; and
 - (b) on a poll he shall have as many votes as the number of shares held by him.
- (2) Every preference shareholder shall have the right to vote like an equity share holder only on resolutions placed before the general meeting of the company which directly affect the rights attached to his preference share, and on every resolution placed before the general meeting, if the dividend due on such capital has remained unpaid for two consecutive financial years.

- (3) No shareholder shall be entitled to vote at any general meeting unless all the calls or other sums presently payable by him in respect of shares in the company have been paid.
- (4) A shareholder may appoint another person as his proxy to attend and vote at any general meeting, but a proxy so appointed shall not have any right to speak at the meeting, and shall not be entitled to vote except on a poll. An instrument appointing a proxy shall be in the form set out in Schedule VII.
- (5) A poll may be ordered to be taken by the Chairman of the general meeting on his own motion or shall be ordered to be taken on demand -
 - (a) in case of a public limited company, by shareholder(s) present in person or by proxy holding ten percent of the total number of shares of the company;
 - (b) in case of a private limited company, by two shareholders present in person or by proxy.

Lien and Call on Shares

27. Lien on shares

- (1) The company shall have a first and paramount lien -
 - (a) on every share, not being a fully paid share, for all moneys (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and
 - (b) on all shares, not being fully paid shares, standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company:

Provided that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

- (2) The company's lien, if any, on a share shall extend to all dividends payable thereon.

28. Uniform call on shares

- (1) Where call on shares for further share capital are made, such calls shall be made on a uniform basis for shares falling in the same class.
- (2) For purpose of subsection (1), shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the same class.

Buy back of shares

29. Buy-back of own shares

- (1) No company shall have the power to buy its own shares except and subject to such restrictions or limitations specified in this section.
- (2) No company shall give loan or provide any financial assistance, directly or indirectly, for purchase or subscription of its shares.

Provided that nothing in this section 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.
- (3) 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.
- (4) The buy-back under this section 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 Government.

Provided further that there are reasonable grounds for believing that, -

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

Provided that the buy-back is subject to the approval of the Government on payment of fee as prescribed in Schedule IV.

- (5) The buy back of its shares by a public company shall be transacted through the facilities of the Securities Exchange.
- (6) Where a company buys back its own securities, it shall either cancel the securities so bought back or if it is proposed to re-issue such securities they shall not be re-issued before the expiry of a period of twenty four months from the date of the last buy back of securities :

Provided that no such restriction shall apply to securities bought under clauses (c), (d) or (e) of sub-section (4);

Provided further that no bought back shares will qualify for :-

- (a) any voting or dividend rights at any time;
 - (b) the issue of any bonus or rights shares after the expiry of the said period, but before they are re-issued.
- (7) Where a company completes a buy-back of its securities under this section, it shall not make further issue of securities within a period of twelve months, except by way of bonus issue or in the discharge of subsisting obligations such as conversion of preference shares into equity shares or debentures.
 - (8) If a company makes default in complying with the provisions of this section, the company and its directors shall be punishable with imprisonment according to the law of the land or with fine which may extend to Nu.10,000 or with both.

Transfer and Transmission

30. Transfer of shares and debentures

- (1) A company shall not register a transfer of shares in, or debentures of, the company unless an instrument of transfer in the form specified in Schedule VIII executed by or on behalf of the transferor and transferee has been delivered to the company along with:
 - (a) in the case of a public company, a trade confirmation note of the dealing broker confirming the relevant transaction;
 - (b) in the case of a private company, the certificate relating to the share or debenture as the case may be.
- (2) Nothing in this section 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.
- (3) Subject to the provisions of this section, the shares or debentures of a public company shall be freely transferable.

- (4) The shares in, or debentures of, the company shall be transmitted on the death of the holder thereof in the name of the nominee, failing which the Board may transmit the shares or debentures, as the case may be, in the name of the legal heir(s) on production of order of the court.

Provided that the Board may transmit the shares or debentures on production of indemnity bond, if so satisfied.

- (5) 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 trade confirmation note or certificate as the case may be 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 Ministry on payment of fee as prescribed in Schedule IV. The Ministry, 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.

Debentures

31. Provisions as to debentures

- (1) No company shall issue debentures which are not secured and which carries voting rights.
- (2) Any provision contained in the trust deed for securing an issue of debentures shall be void in so far as it would have the effect of exempting a trustee from, or indemnifying him against, liability for breach of trust, where he fails to show the degree of care and diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him powers, authorities or discretions.
- (3) Every trustee of a trust deed shall, in the case of debentures issued by a listed company, be subject to the rules and regulations made by the Securities Exchange.
- (4) The provisions relating to shares in this act shall apply *mutatis mutandis* to the debentures issued by a company or as nearly thereto as circumstances admit.

Register of Members

32. Register of shareholders and debenture holders

- (1) Every company shall keep in one or more books a register of its shareholders and a register of debenture holders, maintained in any manner which is capable also of being retrieved by electronic means, and enter therein the following particulars, namely :
 - (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.
- (2) 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.
- (3) 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.
- (4) No notice of any trust, express, implied or constructive, shall be entered on the register of shareholders or debenture holders and the shares held by a minor or a trust shall be held in the name of guardian or trustees, as the case may be.

PART IV

PROSPECTUS, LISTING AND OTHER MATTERS RELATING TO ISSUE OF SECURITIES

33. Matters to be stated in prospectus

- (1) A prospectus issued by or on behalf of a public company, or in relation to intended company, shall be dated and that date shall be taken to be the date of publication of the prospectus.
- (2) Every prospectus issued by or on behalf of a public company for issue of securities to the public, shall state such matters, set out such reports, and have effect subject to, such provisions as may be contained in Schedule IX.
- (3) Where any prospectus is published as a newspaper advertisement, or in any other manner, it shall be in the form of an abridged prospectus, as prescribed by the Securities Exchange.
- (4) No one shall issue any form of application for securities of a company unless the form is accompanied by a prospectus or an abridged prospectus.
- (5) A prospectus shall not include a statement by an expert, unless the expert is not, and has not been, engaged or interested in the promotion or management of the company.

34. Registration of prospectus

- (1) No prospectus shall be issued unless there has been delivered for registration to the Registrar a copy thereof signed by the Chief Executive Officer and other directors.
- (2) A copy of prospectus shall simultaneously be delivered by the company to the Securities Exchange.

35. Liability for mis-statement in prospectus

- (1) 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 for imprisonment according to the law of the land.
- (2) In case of untrue statement in the prospectus, the 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 High Court, on a petition made by an investor or jointly by the investors.

(3) For purposes of this section -

- (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
- (b) 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.

36. Private placement of shares

No offer or invitation shall be treated as made to the public under this Part and shall be treated as private placement of securities, if the offer or invitation can properly be so regarded, in all circumstances :

- (a) as not being calculated to result, directly or indirectly, in the securities becoming available for subscription or purchase by persons other than those receiving it; or
- (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

37. Prohibition of allotment

- (1) Every company, intending to offer securities to the public for subscription by the issue of prospectus shall, before such issue, make an application to the Securities Exchange for permission for the shares or debentures intending to be so offered to be dealt through the Exchange.
- (2) The Prospectus shall state that an application has been made to the Securities Exchange and any allotment made on an application in pursuance of such prospectus shall be void if the permission has not been granted and only on receipt of such permission, the allotment shall be made before the expiry of thirty days from the close of the subscription list.
- (3) No allotment shall be made unless the amount stated in the prospectus as minimum subscription which, in opinion of the Board of directors, must be raised by the issue of share capital has been subscribed.
- (4) All moneys received in pursuance to the prospectus shall be kept in a separate Bank account until the allotment is made.
- (5) Where permission has not been applied for or such permission has not been granted by the Securities Exchange, the company shall forthwith repay the moneys received from the applicants within thirty days from the date of close of the subscription list and in case of delay, the moneys shall be repaid with interest at the rate of fifteen percent per annum.
- (6) All moneys received from the applicants which are in excess of the application moneys relating to shares or debentures in respect of which allotment has been made, the company shall repay the moneys within forty five days from the date of close of subscription list and in case of delay, the moneys shall be repaid with interest at the rate of fifteen percent per annum.

38. Payment of commission

- (1) A company may pay commission to any person, authorised by the Securities Exchange, in consideration of his procuring subscription or for underwriting any shares in, or debentures of, the company if the following conditions are fulfilled, namely :
 - (i) the payment is authorised by the Articles;
 - (ii) the commission payable does not exceed in case of shares, five percent of the price at which the shares are issued and in the case of debentures, two percent of the price at which the debentures are issued.
 - (iii) the amount or rate percent of the commission payable is disclosed in the prospectus filed with Registrar and a copy of the contract in this behalf is also filed with the Registrar along with the prospectus.

INSIDER TRADING AND TRADING OF SECURITIES

39. Insider trading

- (1) 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 procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.

Explanation - For purposes of this section -

- I. “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.
- II. “person is deemed to be a connected person” if such person -
 - (i) is a holding or subsidiary company;
 - (ii) is an official or a member of the Securities Exchange, or a depository;
 - (iii) is a member of the Board of directors, or an employee of any financial institution;

(iv) is a relative of any of the aforesaid persons;

III. “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 -

- (i) financial results of the company;
- (ii) intended declaration of dividend, both interim or final;
- (iii) issue of shares by public, rights or bonus issue;
- (iv) any major expansion plans or execution of new projects;
- (v) amalgamation;
- (vi) disposal of the whole or substantially the whole of the undertaking;
- (vii) such other information as may affect the earnings of the company; and
- (viii) any changes in policies, plans or operations of the company.

- (2) Any insider who deals in securities or communicates any information or counsels any person dealing in securities in contravention of sub-section(1) shall be punishable with imprisonment according to the law of the land or with fine which may extend to Nu.10,000 or both.
- (3) Where the Government, 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 to submit his report within seven days of the conclusion of the investigation.
- (4) On receipt of the report of investigation, the Government 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.
- (5) On receipt of further information or explanation from the insider, the Government may without prejudice to its right to initiate criminal prosecution under sub-section (2), 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, namely :-
 - (i) directing the insider not deal in securities in any particular manner;
 - (ii) prohibiting the insider from disposing of any of the securities acquired in violation of this section;
 - (iii) restraining the insider to communicate or counsel any person to deal in securities.

40. Trading of securities issued to public

- (1) All trading of securities issued to the public, unless otherwise approved or exempted by the Securities Exchange, shall be carried through the facilities provided by the Exchange.

- (2) The company, which has issued securities to the public, shall abide by the rules and regulations of the Securities Exchange.

Part V

RIGHTS AND OBLIGATION OF DEPOSITORIES, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

15. Services of Depository

- (1) Any person may open a securities account directly with a depository or sub-account with the participant for availing its services, as may be specified by the securities Exchange.
- (2) A participant, may enter into agreement or memorandum of understanding, as may be specified by the securities Exchange, with a depository for availing its services.
- (3) A depository shall have one or more participants or members as its agent.
- (4) Any person, who has already opened securities account but holds physical share certificate in the depository shall surrender the physical certificate to the issuer for cancellation.
- (5) The issuer, on receipt of a certificate of security under subsection (4), shall cancel the certificate and substitute in its record the name of the depository as the registered owner in respect of that security and shall issue a '**Global Share Certificate**' to the depository, as may be specified by the depository.
- (6) The issuer during its public offer, shall issue a "**Letter of Certificate**" representing a global certificate for that issue, to the depository with such details of shares offered to public , and shall deposit the global share certificate within thirty days from the date of allotment.

16. Registration of transfer with depository

Every depository shall, on receipt of the intimation from a participant, register the transfer of security in the name of the transferee.

17. Securities to be held with depository

- (1) Every person subscribing to securities offered by an issuer shall hold securities with a depository. The depository shall send confirmation statements to the beneficial owner from time to time.

- (2) Where a person holds a securities account with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its record the name of the allottee as the beneficial owner of that security.

18. Securities to be in fungible form

- (1) All securities held by a depository shall be dematerialised and shall be in fungible form in such manner as may be prescribed by the Securities Exchange.
- (2) The depository shall, for the dematerialisation of securities, send all the physical certificate of the securities to the issuer.
- (3) The issuer on receipt of such securities shall enter in its record the depository as the registered owner and shall issue a “global share certificate” as under section 41(5) as often as may be required by the depository.

19. Rights of depositories and beneficial owners

- (1) A depository shall be deemed to be the registered owner for the purpose of effecting transfer of ownership of security on behalf of a beneficial owner.
- (2) Save as otherwise provided in subsection (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.
- (3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by the depository.
- (4) Every depository shall maintain a book entry in the Register of Beneficial Owners.
- (5) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the Securities Exchange.
- (6) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.
- (7) The payment by the issuer to the depository of any dividend payable to the beneficial owner shall, to the extent of the payment made, discharge the company from any liability in respect of that payment.

- (8) Where an issuer, in relation to any deposited security :
- (i) Makes a bonus issue, or issues securities pursuant to a rights issue or the conversion of any debt securities;
 - (ii) Issues securities pursuant to an exercise of any right or option to acquire securities in the share capital of the issuer, the issuer shall notify the depository of the names of the allottees together with such particulars as may be required by the depository for the purpose of making appropriate entries in the depository of the beneficial owners.

20. Option to opt out in respect of any security

- (1) Where a beneficial owner seeks to pledge his securities with any financial institution for availing loan or credit facilities, or for margin financing, the depository shall provide confirmation statements to beneficial owner and the financial institution.
- (2) The depository shall, on receipt of intimation under sub-section (1), make appropriate entries in its records and put a lien on such security until the liquidation of such loan is intimated to the depository. Transaction of any collateral securities shall require a letter of undertaking from the financial institutions.

21. Depository to indemnify loss

- (1) Any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.
- (2) Where the loss due to the negligence of the participant under sub-section (1), is indemnified by the depository, the depository shall have the right to recover the same from such participant.

PART VI

REGISTRATION OF CHARGES

48. Register of charges to be maintained by Registrar

- (1) The Registrar shall maintain a Register of Charges and shall issue certificate of charges as per its record.
- (2) The particulars of the charges shall be in the Form specified in Schedule XI.

49. Registration of Charges

- (1) Particulars of all mortgages and charges created by a company or any modification or satisfaction thereof shall be filed with the Registrar in the Form specified in Schedule X together with the instrument creating the charge, in duplicate, within thirty days thereof or such extended time as the Registrar may allow.
- (2) 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.
- (3) The Registrar shall on receipt of the prescribed particulars of the charge, after giving any notice to the company if required, register the same by affixing stamp on the relative form and accompanying instrument of charge under his signatures with date and copy thereof shall be returned to the company or the person who files the documents in this behalf.
- (4) This section shall apply to all types of mortgages and the following types of charges –
 - (a) a charge on any immovable property of a company ;
 - (b) a charge, including a pledge or hypothecation, on any movable property of a company;
 - (c) a floating charge on the undertaking or any property of a company, including stock-in-trade ;
 - (d) a charge on any other property or right of a company.

50. Charges not registered to be void against creditors

- (1) Mortgages and charge created on the property and assets of the company shall be void against any creditor, including a liquidator, unless the particulars of the same are registered in the manner provided in section 49.
- (2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

- (3) When a charge becomes void under this section, the money secured thereby shall immediately become payable.

51. Modification of charge

Whenever the charge is modified, it shall be duty of the company to file with the Registrar the particulars of such modification in the form prescribed in Schedule X and the provisions of section 49 as to registration of charge shall apply to such modification of the charge.

52. Satisfaction of charge

- (1) The company shall intimate to the Registrar of the payment or satisfaction in full, of any charge with prescribed particulars set out in Schedule X within thirty days from the date of such payment or satisfaction.
- (2) The Registrar shall, on receipt of such intimation, cause a notice to be sent to the charge holder calling upon him to show cause within forty days, as to why payment or satisfaction should not be registered. If cause is shown and in the opinion of the Registrar the satisfaction cannot be registered, the Registrar shall inform the company accordingly. If no cause is shown within the prescribed period, the Registrar shall register the satisfaction of charge and the provisions of section 49 as to registration of charge shall apply to the registration of the satisfaction of charge.

53. Condonation of delay by Government

The Government, on being satisfied that the delay in filing the charge, modification or satisfaction thereof with the Registrar was accidental, or due to inadvertence or due to some other sufficient cause, may on the application of the company or any person interested, direct that the filing of the particulars aforesaid shall be extended, on payment of fee not exceeding Nu. 2000 as it thinks fit.

PART VII
MANAGEMENT AND ADMINISTRATION

GENERAL PROVISIONS

22. Registered Office of company

- (1) A company shall have a registered office to which all communications and notices may be addressed.
- (2) Notice of every change in the situation of the registered office shall be intimated to the Registrar within thirty days after the date of such change is approved by the Board of directors.

55. Publication of name by company

Every company -

- (a) shall paint or affix its 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; 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.

56. Financial year of companies

- (1) Every company shall have a uniform financial year ending on 31st December, every year, being the period to which its balance sheet and profit and loss account shall relate.
- (2) 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:

Provided that it may extend to eighteen months where special permission has been granted in that behalf by the Ministry on payment of fee prescribed in Schedule IV.

57. Annual return

- (1) 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 particulars specified in Schedule XII.

- (2) Every listed company shall file the annual return with the Registrar on or before 31th 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 balance sheet and profit & loss account for the year ended 31st December, auditors report and directors report duly authenticated by at least one director and the Chief Executive Officer.

58. Annual General Meeting

- (1) 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.
- (2) 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, audit report and directors report ;
 - (b) Declaration of dividend, if any;
 - (c) Appointment of directors;
 - (d) Appointment of, and the fixing the remuneration of auditors.
- (3) In the event Annual General Meeting cannot be held on time, permission of the Registrar shall be obtained. However, the Annual General Meeting shall not be postponed beyond 30 days.
- (4) 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.

59. Extraordinary general meeting

- (1) Board of directors may convene an extra general meeting to transact any special business which may not wait till the annual general meeting is due to be held.
- (2) The board of directors shall, on the requisition of ten percent of the shareholders, forthwith proceed duly to call an extra ordinary general meeting of the company.
- (3) 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.
- (4) 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.

- (5) All reasonable expenses incurred by the requisitionists in calling and holding the meeting shall be repaid by the company.

60. Notice for calling general meetings

- (1) A general meeting of a company may be called by giving not less than twenty one day's notice in writing.
- (2) A general meeting may be called after giving shorter notice than that specified in sub-section (1) if the consent is accorded by at least ninety five percent of the shareholders of the company.
- (3) Notice of every meeting of the company shall be given to every shareholder and the auditor or auditors of the company.
- (4) The accidental omission to give notice to, or the non receipt of notice by any shareholder shall not invalidate the proceedings at the meeting.
- (5) Where any item, other than the items specified in sub-section (2) of section 58, 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 director.

61. Chairman of meeting

The Board of directors of the company shall appoint a director as chairman of the Board of directors, who shall also be the chairman of general meetings, failing him, the shareholders present at the meeting shall elect one of themselves to be the chairman of the meeting by show of hands.

62. Saving provision

Nothing in sections 60 and 61 shall apply to a private company unless otherwise specified in the Articles in this behalf.

63. Representation of corporations at meetings

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.

64. Ordinary and special resolutions

- (1) 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.

- (2) 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.

65. Minutes of general meetings and of Board

- (1) 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.
- (2) Each page of every such book shall be initialed or signed at the last page of the minutes of each meeting shall be dated and signed -
 - (a) in case of minutes of the Board meetings or a committee thereof, by the Chairman of the said meeting or the Chairman of the next succeeding meeting;
 - (b) in case of minutes of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days.
- (3) 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.
- (4) Minutes of the meetings kept under the section 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.

66. Declaration and payment of dividend

- (1) 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 profits for any previous financial year or years.
- (2) 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 i.e., surplus on revaluation of fixed assets and related additional depreciation amount shall not be included to arrive at the amount of distributable profits.

- (3) For the purpose of this section, depreciation shall be as prescribed by the Department of Revenue and Customs, Ministry of Finance, Royal Government of Bhutan.
- (4) No dividend shall be paid except in cash, cheque and warrant.

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid up bonus shares.

- (5) The dividend shall be paid to the shareholders within thirty(30) days from the date of its declaration in the Annual General Meeting of the company.
- (6) 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. Every director of the company shall, if he is knowingly a party to the default, be liable to contribute towards payment of interest.

This sub-section shall not apply where dividend could not be paid due to uncertainty of the address of the shareholder.

- (7) A public company shall not pay a dividend if it would reduce its net assets below the aggregate amount of its called-up share capital and undistributable reserves. 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.

67. Books of Account to be kept by company

- (1) Every company shall keep at its registered office 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 :

Provided that all or any of the books of account aforesaid may be kept at such other place in Bhutan as the Board of directors may decide and when the Board of directors so decides, the company shall, within seven days of the decision intimate the Registrar giving the full address of that other place.

- (2) Where the company has a branch office, whether in or outside Bhutan, the company shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised 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 sub-section (1).
- (3) For the purposes of sub-sections (1) and (2), 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.
- (4) The books of account and other books and papers shall be open to inspection by any director during business hours.
- (5) 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.

68. Inspection of books of account, etc., of companies

- (1) The books of account and other books and papers and statutory records of every company shall be open to inspection during business hours -
 - (i) by the Registrar, or
 - (ii) by such officer of Government as may be authorised by the Government in this behalf.
- (2) it shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under sub-section (1), 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.
- (3) If default is made in complying with the provisions of this section, the Chief Executive Officer and every director of the company, shall be punishable with imprisonment according to the law of the land and fine which shall be not less than Nu.5000.

69. Annual Accounts and balance sheet, etc.

- (1) At every Annual General Meeting, the Board of Directors of a company shall lay before the meeting, a balance sheet as at the financial year end, profit & loss account and cash flow statement for the year ended 31st December, every year.

- (2) Every balance sheet, profit & loss account and cash flow 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 in the formats as set out in Schedule XIII A and XIII B
- (3) The annual accounts 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.

70. Filing of balance sheet etc. with the Registrar

- (1) After the balance sheet, profit & loss account and cash flow statement duly audited, have 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 57.

71. Board's report

- (1) 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.
- (2) The Board's report shall be signed by the Chairman of the Board of directors and in his absence the same shall be signed by the director or directors, including Chief Executive Officer, authorised in this behalf by the Board.

72. Appointment and removal of Auditors

- (1) 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.

Provided that 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.

- (2) In case of a government and government controlled company, the Auditor General of Bhutan shall be the ex-officio auditor. The auditor/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 persons 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.
- (3) Where at an Annual General Meeting, no auditors are appointed or re-appointed, the company shall give notice of this fact to the Ministry within seven days of the meeting, whereupon the Ministry in consultation with the Royal Audit Authority shall appoint the auditors and fix their remuneration.
 - (4) 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.
 - (5) An auditor appointed under this section 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.
 - (6) 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) Right to make written representation, to deliver it to the company and to circulate them to the shareholders prior to the general meeting.

73. Resignation of Auditor from Office.

- (1) An auditor wishing to resign during his term of office must give notice in writing and deliver it to the registered office of the company.
- (2) Resignation takes effect from the date of deposit of his resignation letter to the company unless a latter date is specified and must be accompanied by one or two statement 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.
- (3) 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.

74. Powers and duties of auditors

- (1) 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.
- (2) The auditor shall make a report to the member(s) of the company on the accounts examined by him (viz., balance sheet, profit and loss account and cash flow statement) and on every other document declared by this Act to be part of or annexed to the balance sheet, profit and loss account and cash flow 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 and to the best of his information and according to the explanation given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view -
 - (a) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;
 - (b) in the case of profit and loss account, of the profit or loss for the financial year; and
 - (c) in the case of cash flow statement, of the movement of cash during the financial year.
- (3) 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; and
 - (c) whether the company's balance sheet, profit & loss account and cash flow statement are in agreement with the books of accounts and returns.

75. Auditing Standards

The auditor shall conduct the audit in accordance with the generally accepted auditing standards and in keeping with the “*General Terms of Reference and Minimum Audit Examination and Reporting Requirements*” issued by the Royal Audit Authority, annexed hereto as Schedule XIV, and as may be revised and circulated by the said Authority from time to time.

DIRECTORS AND THEIR POWERS

76. Number of directors

- (1) Every public company shall have at least three directors and every private company shall have at least two directors.
- (2) 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.
- (3) Unless the Articles provide 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.

77. Additional directors

The Board of directors may appoint an additional director, as deemed fit, who shall hold office only upto 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.

78. Consent to act as directors

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 form set out in Schedule II within thirty days from the date of his appointment.

79. Certain persons not to be appointed as directors

No company shall appoint or continue the appointment of any person as Chief Executive Officers or director who -

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

80. Resignation by a director

A director may resign from his office by giving notice in writing to the Company and such resignation shall be effective from the date of receipt thereof.

Provided that resignation by a Chief Executive Officer or a salaried working director shall be effective from the date of its acceptance by the Board.

81. Removal of Directors

- (1) A company may, by ordinary resolution, remove a director before the expiry of period of his office.
- (2) 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 this section along with the reasons or grounds for such removal.
- (3) On receipt of notice under sub-section (2), 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.

82. Board meetings

- (1) Every 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.
- (2) Notice of every meeting of the Board shall be given in writing to every director along with the business to be transacted thereat.
- (3) The quorum for a meeting of a Board shall be one-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 same day and time and place in the next week.
- (4) The decisions at the Board meetings shall be taken by majority of directors voting in favour of any resolution.

Provided that in case of equality of votes, the Chairman of the Board of directors shall have a casting or second vote.

83. General Powers of the Board

- (1) 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.

Provided that 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.

- (2) The Board of directors of a company shall exercise the following powers only by means of resolutions passed at meetings of the Board –
 - (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.
- (3) 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.

84. Restriction on Powers of Board

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.

85. Appointment of Chief Executive Officer

Every company shall appoint a Chief Executive Officer for a term not exceeding five years at a time with the approval of the company in general meeting.

Provided that a person appointed as Chief Executive Officer of a public company shall not be the Chief Executive Officer of another company.

86. Appointment of selling or buying agents

No company shall appoint a selling or buying agent, who is not a citizen of Bhutan or any foreign company or party, except with the previous approval of the Government on payment of fee prescribed in Schedule IV.

87. No loans to directors etc.

No public company shall, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, -

- (a) any director of the lending company;
- (b) any partnership firm in which any such director or his relative is a partner;
- (c) any body corporate at a general meeting of which not less than twenty five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors.

88. Inter-corporate loans and investments

No public company, not being a holding company, shall -

- (a) make any loan to any body corporate ;
- (b) give any guarantee, or provide any security, in connection with a loan made by any other person to, or to any other person by, any body corporate ;
- (c) acquire, by way of subscription, purchase or otherwise the shares or convertible debentures, whether fully or partly, of any other body corporate,

exceeding thirty per cent of its paid up share capital and free reserves, which ever is more, unless previously approved by the Ministry on payment of fee prescribed in Schedule IV.

89. Contracts in which directors are interested

- (1) 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.
- (2) 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.
- (3) 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 not, his vote shall be void.

90. Companies to have secretaries

Every listed company and every other company having a paid-up share capital of over Nu. 100,000,000 shall appoint a secretary having such qualifications and experience, as may be prescribed by the Ministry, to ensure compliance of the provisions of this Act.

91. Standard of care required of directors

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.

PART VIII

**COMPROMISES, ARRANGEMENTS, RECONSTRUCTIONS AND
AMALGAMATIONS**

92. Power to compromise or make arrangements with creditors and members

- (1) Where a compromise or arrangement is proposed -
- (a) between a company and its creditors or any class of them; or
 - (b) between a company and its members or any class of them;

the court may, on the application of the company or of any creditor or member of the company, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be held and conducted in such manner as the court directs.

- (2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members as the case may be, present and voting at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors and members and also the company.
- (3) An order made by the court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

93. Information as to compromises or arrangements

- (1) Where a meeting of creditors or of members is called under section 92 -
- (a) with every notice given not less than twenty one clear days before the date fixed for calling the meeting which is sent to a creditor or member, there shall also be sent the scheme of compromise or arrangement; and
 - (b) the chairman of the meetings appointed by the Court shall submit his report to the Court after the meetings within fourteen days from the date of convening the meetings.

94. Provision for facilitating construction and amalgamation of companies

- (1) Where an application is made to the court under section 92 for the sanctioning of a compromise or arrangement and it is shown to the court :
- (a) that the compromise or arrangement 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 dissolution, without winding up, of any transferor company;
 - (v) the provision to be made person, who dissent from the compromise or arrangement; and
 - (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.
- (2) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

95. Notice to the Registrar of application under sections 92 & 94

The court shall give notice of every application made to it under section 92 or 94 to the Registrar, and shall take into consideration the representation, if any, made to it by the Registrar before passing any order.

96. Power of Government to provide for amalgamation of Government companies in public interest

- (1) Where the Government is satisfied that it is essential in the public interest that two or more Government companies should amalgamate, then notwithstanding anything contained in section 94, the Government may, by order, provide for the amalgamation of those companies into a single company.
- (2) The order aforesaid may provide for matters specified in sub-section (1) of section 94 which in the opinion of the Government be necessary to give effect to the amalgamation.
- (3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

PART IX

STATUTORY RECORD AND INSPECTION

97. Statutory record and inspection

Every company shall keep at its registered office the following registers, besides the register of shareholders and debenture holders under 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 29;
 - (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 charges;
 - (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 89 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 etc. 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.

98. Inspection of statutory registers etc.

- (1) 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 such sum as prescribed in Schedule IV.
- (2) 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 sub-section (1) on payment of such sum as prescribed in Schedule IV.
- (3) If any inspection required under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the Government 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 punishable with fine which may extend Nu.5,000 in respect of each offence.

PART X

WINDING UP

VOLUNTARY WINDING UP

99. Circumstances in which company may be wound-up voluntarily

- (1) A company may be wound-up voluntarily -
 - (a) when 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;
 - (b) if the company passes a special resolution that the company be wound-up voluntarily.
- (2) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution, give notice of the resolution by advertisement in the newspaper circulating in the district where the registered office of the company is situated.
- (3) 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 :

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

100. Appointment of liquidator

- (1) 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.
- (2) On the appointment of a liquidator, all the powers of the Board of directors and of the Management shall cease.
- (3) 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.
- (4) 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.

101. Powers of liquidator

The liquidator 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;
- (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;

102. Power of court to assess damages against delinquent directors, etc.

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 member, 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.

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

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 or such longer period as the Government may allow; 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.

104. Final meeting and dissolution

- (1) As soon as the affairs of the company are fully wound-up, the liquidator shall:
 - (a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and
 - (b) call a general meeting of the company for the purpose of laying the audited accounts before it, and giving any explanation thereof.
- (2) The meeting shall be called by notice to the members specifying the time, place and object of the meeting, along with copy of audited accounts.
- (3) Within one week after the meeting, the liquidator shall send to the Registrar a copy of the accounts.

WINDING UP BY COURT

105. Circumstances in which company may be wound up by court

- (1) 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 does not commence its business within a year from the date of its incorporation or suspends its business for a whole year;
 - c) the number of its shareholders is reduced below 2;
 - d) the company is unable to pay its debts;
 - e) the court is of the opinion that it is just and equitable that the company be wound up.
- (2) Where a petition for winding up is founded on Section 105 (1) d), a company shall be deemed to be unable to pay its debts if it commits an act of bankruptcy as defined in Section 10. (1) – (6) of the Bankruptcy Act of the Kingdom of Bhutan, 1999, and the winding up of the company shall be governed by the provisions of that act.

106. Application for winding up

An application to the court for winding up shall be by petition presented either by –

- (i) the company; or
- (ii) the directors; or
- (iii) any creditor or creditors; or
- (iv) the Registrar of Companies; or
- (v) the administrative Ministry; or

by all or any of them together or separately.

107. Advertisement of petition

Unless the court otherwise directs, every petition for winding up shall be advertised in a national newspaper for not less than 7 clear days (excluding Saturdays, Sundays and public holidays) after it has been served on the company and not less than 7 clear days before the day fixed for the hearing.

108. Commencement of winding up by court

- (1) Winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.
- (2) 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.

109. No disposition of property, etc.

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.

110. Restraint of suit or proceeding against company

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 106, stay any suit or proceeding against the company.

111. Avoidance of attachments, etc

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.

112. Hearing of petition for winding up and powers of court

- (1) 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.
- (2) 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.

113. Order for winding up to be communicated

Where the court makes an order for winding up, the court shall forthwith cause intimation thereof to be sent to the Registrar of Companies and the Liquidator.

114. Order for winding up to be filed

On the making of a winding-up order, it shall be the duty of the petitioner and the company to file a certified copy of the order with the Registrar of Companies within 15 working days of the date of the order.

115. Appointment of liquidator

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.

116. Appointment of provisional liquidator and his powers

- (1) 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.
- (2) 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.
- (3) A provisional liquidator shall cease to hold office when a liquidator is appointed by the court on a winding-up order being made.

117. Custody of company's property

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.

118. Powers of liquidator

- (1) The liquidator in a winding up by the court shall have the power, with the sanction of the court -
 - (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 requisite;
 - (e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

- (2) The liquidator in a winding up by the court shall have power -
 - (a) 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;
 - (b) to inspect the records and returns of the company on the files of the Registrar without payment of any fee;
 - (c) 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; and
 - (d) 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;

119. Duties of liquidator

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.

120. Functions of liquidator

The functions of the liquidator of a company which is being wound up by the court 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) the liquidator or the provisional liquidator, as the case may be, shall take into his custody all the properties and effects of the company to which the company is or appears to be entitled;

- (c) as soon as practicable after receipt of a statement under section 121 and not later than 6 months from the date of the order for winding up (or such extended period as the court may allow) 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 of 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 to the liquidator that for all practicable purposes the winding up of a company is complete, the liquidator shall 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, the liquidator shall by giving a public notice of not less than one month summon a final general meeting of the company and a meeting of the creditors to receive the liquidator’s account of the winding up ;
- (f) within one week of the general meeting of the or the meeting of the creditors whichever is later at which the liquidator presents his final account of the winding up, the liquidator shall send a notice that the winding up is complete together with a copy of the final account to the court and the Registrar of Companies ;

121. Statement of affairs to be made to liquidator

- (1) Where a liquidator (or provisional liquidator) has been appointed by the court, 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 subsection (2) within 21 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.
- (2) The persons who are referred to in subsection (1) 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;

- (3) If any person required under this section to submit a statement fails to comply, without reasonable excuse, with the obligation imposed under this section, he shall be liable to fine and, for continued contravention to a daily default fine.
- (4) In this section “relevant date” means:
 - (a) in case where a provisional liquidator is appointed, the date of appointment ;
 - (b) in case where no such appointment is made, the date of the winding-up order.“employment” shall include employment under contract for services.

122. Removal of liquidator

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

123. Books to be maintained by liquidator

- (1) 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.
- (2) Any creditor or contributory may subject to control of the court inspect such books, accounts or other records.

124. Audit of liquidator

- (1) 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.
- (2) The court shall cause the accounts to be audited in such manner as it thinks fit.
- (3) 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.

125. Stay of winding up proceedings

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

126. Examination of officers of company

- (1) 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.
- (2) On receipt of an application under subsection (1), 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.

127. Fixing list of contributories

- (1) 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.
- (2) 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.

128. Calls on contributories

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

129. Dissolution of company

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.

130. Power to defer dissolution or declare it void

- (1) 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:
 - (i) deferring the date at which dissolution of a company is to take effect ;or
 - (ii) declare the dissolution to be void.
- (2) Thereupon such proceedings may be taken as might have been taken as if the company had not been dissolved.

131. Winding up of insolvent companies

Winding up of a company by the Court where the company is unable to pay its debts shall be governed by the provisions of the Bankruptcy Act of the Kingdom of Bhutan, 1999.

DEFUNCT COMPANY

132. Power of Registrar to strike off defunct company

- (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by registered post a letter inquiring whether the company is carrying on business or in operation.
- (2) 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 sending the second letter receive any answer, he may send to the company and its directors by registered post, 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.
- (3) At the expiry of the time mentioned in the notice referred to in sub-section (2) the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off and shall display notice on its notice board from that date, and the company shall stand dissolved.

Provided that the liability, if any, of every director or other officer who has exercised any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved.

PART XI

GENERAL

Collection of Information and statistics from companies

133. Power of Government to direct companies to furnish information or statistics

The Government 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.

Modification in respect of Government Companies

134. Power to modify Act in relation to Government companies

The Government may, by general or special order direct that any of the provisions of this Act shall not apply to a Government company or with such modification as deemed fit.

135. Power of Ministry to accord approval, etc., subject to conditions

Where the Ministry is required or authorised by any provision of this Act, -

- (a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter;
- (b) to give any direction in relation to any matter; or
- (c) to grant any exemption in relation to any matter, then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Ministry may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, 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, sanction, consent, confirmation, recognition, direction or exemption.

136. Condonation of delays in certain cases

Notwithstanding anything contained in this Act,

- (a) where any application required to be made to the Ministry under any provision of this Act in respect of any matter is not made within the time specified therein, the Ministry, for reasons to be recorded in writing, condone the delay;
- (b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Ministry may, for reasons to be recorded in writing, condone the delay on payment of such fee as specified in the order.

137. Power to alter Schedules

The Ministry may, by order alter any of the regulations, rules, tables, forms and other provisions contained in any of the Schedules to this Act.

138. Power of Ministry to make rules

In addition to the powers conferred by section 136, the Ministry may, make rules -

- (a) for all or any of the matters which by this Act are to be, or may be, prescribed by the Government; and
- (b) generally to carry out the purposes of this Act.

139. Inspection, production and evidence of documents kept by Registrar

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 such fees as prescribed in Schedule IV.
- (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 such fee as prescribed in Schedule IV.

PART XII

PROSECUTION AND PENALTIES

140. Penalty where no specific penalty is provided

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. 5,000 and where the contravention is a continuing one, with a further fine which may extend to Nu. 500 for every day after the first during which the contravention continues.

141. Jurisdiction to try offences

- (1) The Royal Court of Justice shall try any offence under this Act on a complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Government in that behalf.
- (2) The Royal Court of Justice imposing any fine under this Act may direct that the whole or any part hereof 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.

142. Composition of certain offences

- (1) 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 Ministry on payment of such sum as the Ministry may specify :

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

- (2) Every application for the compounding of an offence shall be made by the company and the directors to the Registrar who shall forward the same, together with his comments thereon, to the Ministry.
- (3) Where any offence is compounded before the institution of any prosecution before the Court, no prosecution shall be instituted in relation to such offence so compounded.
- (4) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought to the notice of the Court by the Registrar and the accused person shall be discharged.

PART XIII

SCHEDULE I

(see section 4)

ARTICLES OF INCORPORATION

(name of the company)

I. Name

The name of the company is Private
Limited/Limited

II. Registered Office

The Registered Office of the company will be situated at

.....

III. Object

- a. The main objects to be pursued by the company on its incorporation are :
 - i.
 - ii.
 - iii

- b. The above objects incidental or ancillary to the attainment of the above objects are :
 - i
 - ii
 - iii

- c. The other objects for which the company is established are :
 - i
 - ii
 - iii

IV. Limited Liability

The liability of the members is limited.

V. Capital

The authorised share capital of the company is ----- Ngultrum divided into Equity (or ordinary) shares of ----- Ngultrums each and ----- Preference shares ----- Ngultrums each.

VI. Regulations

Share Capital and Variation of Rights

1. Any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

- 2.(1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

(2) To every such separate meeting, the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class in question.

3. The rights conferred upon the holders of the shares of any class issued with preferred or other right shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.

4.(1) The company may exercise the powers of paying commission conferred by section 38, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section.

(2)The company may also, on any issue of shares, pay such brokerage as may be lawful.

(5) (1) Every person whose name is entered as a member in the register of members shall be entitled to receive within one month after allotment or after the application for the registration of transfer (or within such other period as the conditions of issue shall provide) -

(a) one certificate for all his shares without payment; or

(b) several certificates, each for one or more of his shares, upon payment of Nu..... for every certificate after the first.

(2) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid-up thereon.

(3) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

Lien

6. (1) The company shall have a first and paramount lien –

(a) on every share, not being a fully-paid share, for all moneys (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and

(b) on all shares, not being fully paid shares, standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company :

Provided that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(2) The company's lien, if any, on a share shall extend to all dividends payable thereon.

7. The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien :

Provided that no sale shall be made –

- (a) unless a sum in respect of which the lien exists is presently payable; or
 - (b) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.
8. (1) To give effect to any such sale, the Board may authorize some person to transfer the shares sold to the purchaser thereof.
- (2) The purchaser shall be registered as the holder of the shares comprised in any such transfer.
- (3) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on shares

9. (1) The Board may, from time to time, make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times :

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

- (2) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares.
 - (3) A call may be revoked or postponed at the discretion of the Board.
10. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by installments.
11. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
12. (1) if a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at five per cent per annum or at such lower rate, if any, as the Board may determine.
- (2) The Board shall be at liberty to waive payment of any such interest wholly or in part.

13. The Board -

- (a) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him; and
- (b) upon all or any of the moneys so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, six per cent per annum, as may be agreed upon between the Board and the member paying the sum in advance.

Transfer of shares

14. (1) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.
- (2) the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.
15. The Board may, subject to the right of appeal conferred by section 30, decline to register –
- (a) the transfer of a share, not being a fully paid share, to a person of whom they do not approve; or
 - (b) any transfer of shares on which the company has a lien.
16. Subject to the provisions of section 30, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine :

Provided that such registration shall not be suspended for more than fifteen days at any one time or for more than thirty days in the aggregate in any year.

Transmission of shares

- 17.(1) On the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.
- (2) Nothing in clause (1) shall release the estate of a deceased joint holder from any liability in respect of any share that had been jointly held by him with other persons.

18. (1) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time, properly be required by the Board and subject as hereinafter provided, elect, either –
- (a) to be registered himself as holder of the share; or
 - (b) to make such transfer of the share as the deceased or insolvent member could have made.
- (2) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.
19. (1) If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.
- (2) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.
 - (3) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.
20. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company :

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share, until the requirements of the notice have been complied with.

Forfeiture of shares

21. If a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.

22. The notice aforesaid shall -

- (a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
- (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

23. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

24. (1) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.

- (2) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms, as it thinks fit.

25. (1) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.

- (2) The liability of such person shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

Conversion of shares into stock

26. The company may, by ordinary resolution, -

- (a) convert any paid-up shares into stock; and
- (b) reconvert any stock into paid-up shares of any denomination.

27. The holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit :

Provided that the Board may, from time to time, fix the minimum amount of stock transferable, so however that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

28. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.
29. Such regulations of the company (other than those relating to share warrants), as are applicable to paid-up shares shall apply to stock and the words “share” and “shareholder” in those regulations shall include “stock” and “stockholder” respectively.

Alteration of capital

30. The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.
31. The company may, by ordinary, resolution, -
- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (b) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the articles;
 - (c) cancel any shares which, at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
32. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by the Act, -
- (a) its share capital;
 - (b) any capital redemption reserve account; or
 - (c) any share premium account.

General meetings

33. All general meetings other than annual general meetings shall be called extraordinary general meetings.
34. (1) The Board may, whenever it thinks fit, call an extraordinary general meeting.

- (2) If at any time there are insufficient number of directors present in the country to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at general meetings

35. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business
- (2) Save as herein otherwise provided, five members present in person (in the case of a public company - two members present in person, in the case of a private company) shall be a quorum.
36. The chairman, if any, of the Board shall preside as chairman at every general meeting of the company.
37. If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.
38. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.
39. (1) The chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (3) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
40. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

Votes of members

41. Subject to any rights or restrictions for the time being attached to any class or classes of shares, -

- (a) on a show of hands, every member present in person shall have one vote; and
- (b) on a poll, the voting rights of members shall be as laid down in section 26.

42. In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

43. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

44. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

45. An instrument appointing a proxy shall be in the form in Schedule VII to the Act or a form as near thereto as circumstances admit.

46. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given :

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Board of directors

47. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

48. (1) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day to day.

(2) In addition to the remuneration payable to them in pursuance of the Act, directors may be paid all travelling, hotel and other expenses properly incurred by them -

(a) in attending and returning from meetings of the Board of directors or any committee thereof or general meeting of the company; or

(b) in connection with the business of the company.

49. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by such director and in such manner as the Board shall from time to time by resolution determine.
50. Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.
51. (1) The Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.
- (2) Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

Proceedings of Board

52. (1) The Board of directors may meet for the despatch of business, adjourn and otherwise regulate its meetings, as it thinks fit.
- (2) A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of the Board.
53. (1) Save as otherwise expressly provided in the Act, question arising at any meeting of the Board shall be decided by a majority of votes.
- (2) In case of an equality of votes, the chairman of the Board, if any, shall have a second or casting vote.
54. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.
55. (1) The Board may elect a chairman of its meetings and determine the period for which he is to hold office.
- (2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

56. (1) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body, as it thinks fit.
- (2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
57. (1) A committee may elect a chairman of its meetings.
- (2) if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.
58. (1) A committee may meet and adjourn as it thinks proper.
- (2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.
59. All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more such directors or of any person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.
60. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effectual as if it had been passed at a meeting of the Board or committee, duly convened and held.

The seal

61. (1) The Board shall provide for the safe custody of the seal.
- (2) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Dividends and reserve

62. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.

63. The Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.
64. (1) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks proper as reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, think fit.
- (2) The Board may also carry forward any profits, which it may think prudent not to divide, without setting them aside as a reserve.
65. (1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.
- (2) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.
- (3) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
66. The Board may deduct from any dividend payable to any member all sums of money if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.
67. (1) Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.
- (2) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.
68. Delayed dividend shall bear interest against the company.

Accounts

69. (1) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

- (2) No member (not being a director) shall have any right of inspecting any accounts or books or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

Capitalisation of profits

70. (1) The company in general meeting may, upon the recommendation of the Board, resolve -
- (a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution; and
 - (b) that such sum be accordingly set free for distribution in the manner specified in clause (2) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.
- (2) the sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (3), either in or towards -
- (i) paying up any amounts for the time being unpaid or any shares held by such members respectively;
 - (ii) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions aforesaid; or
 - (iii) partly in the way specified in sub-clause (I) and partly in that specified in sub-clause (ii).
- (3) A share premium account and a capital redemption reserve account may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.
- (4) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.

Winding up

71. (1) If the company shall be wound-up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide among the members, in specie or kind, the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.
- (2) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

- (3) the liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

72. Every officer or agent for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted.

Restrictions as to a private company

73. The company is a private limited company and the right to transfer its shares is restricted in the following manner: -
- (a) the number of its shareholders shall not exceed twenty five, excluding the persons who are or were in the employment of the company;
 - (b) the company is prohibited from inviting from the public to subscribe for any shares in or debentures of, the company.

VII. Subscription

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of these Articles of Incorporation, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names: -

| Sl. No. | Name, address, description and occupation of subscribers | No. of shares taken by each subscriber : | Signature |
|---------|--|--|-----------|
| 1. | AB, son of | Merchant | |
| 2. | CD wife of | Housewife | |
| 3. | EF daughter of | Student | |
| 4. | GH son of | Executive | |
| 5. | IJ son of | Govt. Servant | |
| 6. | KL son of | Landlord | |
| 7. | MN son of | Agriculture | |
| | Total shares taken | | |

Place :

Dated the day of 2000

Witness to the above signatures :

Signature :

Name of Witness :

Address of Witness :

Occupation of Witness :

SCHEDULE II

Consent to act as Director

(See Section 5)

Name of Company Private Limited/Limited
Presented by

To,

The Registrar of Companies
Thimphu, Bhutan.

I, the undersigned, having consented to act as director of the company,
.....

..... Private Limited/limited and certify that I have not been
disqualified to act as a director under section 79 of the Companies Act of the Kingdom of
Bhutan, 2000.

Name and surname in full

and father's name.

Address

Occupation

Date of birth

Nationality

Place :

Signature

Dated :

SCHEDULE III

Declaration of Compliance

(See section 5)

Name of CompanyPrivate Limited/Limited
Presented by

I/We of
..... do solemnly and sincerely declare that
I/We am /are..... who is engaged in
the formation of the company as named in the Articles as a director, and that all the
requirements of the Companies Act of the Kingdom of Bhutan, 2000 in respect of matters
precedent to the incorporation of the said company have been complied with, and I make
this solemn declaration conscientiously believing the same to be true.

Place :

Signature

Date :

Witness :

Name.....

Address

Signature

SCHEDULE IV

Registration fee etc.

(See sections 5, 7, 9, 21, 29, 30, 53, 56, 86, 88, 98 and 139)

Registration fee under sections 5, 7 and 9

1. Registration fee for incorporation of a company and at the time of increase of authorised share capital under the Act :

- | | |
|---|----------|
| (i) On an authorised share capital not exceeding Nu. 1,000,000 | Nu. 1000 |
| (ii) On an authorised share capital exceeding Nu. 1,000,000 | Nu. 1500 |
| (iii) On an authorised share capital exceeding Nu. 2,000,000 and above. | Nu. 2000 |

Approval of Government/Ministry under sections

7, 21, 29, 30, 53, 56, 86, 88, 98 and 139

2. In respect of matters requiring approval/condonation of delays by Government under the Act

- | | |
|--|---------------|
| (i) For companies with authorised share capital not exceeding Nu. 2,000,000 | Nu. 500 |
| (ii) For companies with authorised share capital exceeding Nu. 2,000,000 and above | Nu. 750 |
| (iii) For condonation of delay under section 53 | Upto Nu. 2000 |

(3) Inspection and issue of certified copies by a company under section 98

- (i) Inspection of statutory records etc. by any member of public. Nu. 20
- (ii) Issue of certified copy of any document to any member of public. Nu. 10 per page
- (iii) Issue of certified copy of any document to any member of the company Nu.10 per page

(4) Inspection and issue of certified copies by the Registrar under section 139

| | |
|---|----------------|
| (i) Inspection of documents of a company | Nu. 20 |
| (ii) Issue of certified copy of documents | Nu.10 per page |

SCHEDULE V

1. CERTIFICATE OF INCORPORATION

(See section 5)

No. -----

I hereby certify that ----- Private Limited/Limited [name of company] is this day incorporated under the Companies Act of the Kingdom of Bhutan, 2000.

Given under my hand at Thimphu, this ----- year ----- month and ----- day.

Registrar of Companies

**2. FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON
CHANGE OF NAME**

[see section 8]

No. -----

I hereby certify that ----- Private Limited/Limited
[name of company] was incorporated on ----- day of -----
20 ----- and has changed its name to -----
Private Limited/Limited.

Given under my hand at Thimphu this ----- day of -----, 20 -----.

Registrar of Companies

SCHEDULE - VI

FORM OF SHARE CERTIFICATE

(See section 25)

Certificate No.

No. of Shares :

Transfer No.

Register Folio :

[Name of the Company]

[Incorporated under the Companies Act of Kingdom of Bhutan, 2000]

AUTHORISED SHARE CAPITAL Nu.....Divided into.....Shares of
Nu. each

This is to certify that(Name of Shareholder) of
..... (address of Shareholder) is the Registered Holder of
.....(number of shares) each with distinctive Nos., issued subject to the
Articles of Incorporation of the company and that there has been paid up on each of the
said shares the sum endorsed herein below.

Given under the common Seal of the Company

This Year Month day

(seal)

Chief Executive Officer/Authorised Signatory

The following sums have been paid on each of the shares comprised herein :

| Date of payment | Amount paid/shares | Total per share |
|-----------------|--------------------|-----------------|
|-----------------|--------------------|-----------------|

Verified by

No transfer of any of the shares comprised in this certificate will be registered until this certificate has been delivered at the Company's Registered office.

SCHEDULE - VII

FORM OF PROXY

(See section 26)

.....Private Limited/Limited
(Name of the Company)

I of being a
(Name) (address)
shareholder of the above-named Company hereby appoint

..... of or failing him
(Name) (address)

..... of as my proxy to vote
(Name) (address)

for me on my behalf at the annual general meeting/general meeting of the Company to be held on

the year month Day and at any adjournment thereof.

I hold shares of Nu. each in the Company.

Signed this yearmonth day.

Signature of shareholder

SCHEDULE VIII

FORM OF TRANSFER

(See section 30)

FOR THE CONSIDERATION STATED BELOW the “Transferor” named do hereby transfer to the “Transferee” named, his executors, administrators and assigns the shares specified below subject to the conditions on which the said shares are now held by the Transferor and the Transferee do hereby agree to accept and hold the said shares subject to the conditions aforesaid :

Full name of company

Number of shares No. in Figures Distinctive Nos. No. in Words
Ordinary/Preference shares

TRANSFER FROM

Name in full

CONSIDERATION Ngultrums (in words)..... Signature

TRANSFER TO Occupation

Name in full

Father's/Husband's name

Address of the Transferee

Signature

**PARTICULARS OF
NOMINEE**

Name of the Nominee

Address of the Nominee

Occupation of the Nominee

PARTICULARS OF TRANSFER

Date of Transfer Transfer No..... Registered Folio No.....In Favour
Of

Transfer Verified By

SCHEDULE IX

Matters to be specified in prospectus and reports to be set out therein

[See section 33]

PART I

I. General information

- (a) Name and address of registered office of the company
- (b) Licence granted by the Government.
- (c) Name of regional stock exchange and other stock exchanges where application made for listing of present issue.
- (d) Statement/declaration about refund of the issue if minimum subscription of 90% is not received.
- (e) Declaration about the issue of allotment letters/share certificates/refunds.
- (f) Date of opening of the issue.
Date of closing of the issue.
Date of earliest closing of the issue.
- (g) Name and address of auditors.
- (h) Name and address of trustee under debenture trust deed (in case of debenture issue)
- (i) Underwriting of the issue

(Name and addresses of the underwriters and the amount underwritten by them)
(Declaration by board of directors that the underwriters have sufficient resources to discharge their respective obligations)

II. Capital structure of the company

- (a) Authorised, issued, subscribed and paid-up capital.
- (b) Size of present issue giving separately reservation for preferential allotment to promoters and others.
- (c) Paid-up capital
 - (i) after the present issue
 - (ii) after conversion of debentures (if applicable)

III. Terms of the present issue

- (a) Terms of payments.
- (b) Rights of the instrument holders

- (c) How to apply – availability of forms, prospectus and mode of payment.
- (d) Any special tax benefits for company and its shareholders.

IV. Particulars of the issue

- (a) Objects
- (b) Project cost
- (c) Means of financing (including contribution of promoters)

v. Company, management and Project

- (a) History and main objects and present business of the company
- (b) Subsidiary(ies) of the company, if any.
(For financial date, refer to auditor's report in Part II).
- (c) Promoters and their background.
- (d) Names, addresses and occupation of manager, Chief Executive Officer and other directors including nominee-directors, whole-time directors (giving their directorships in other companies).
- (e) Location of project.
- (f) Plant and machinery, technology, process, etc.
- (g) Collaboration, any performance guarantee or assistance in marketing by the collaborators.
- (h) Infrastructure facilities for raw materials and utilities like water, electricity, etc.
- (i) Schedule of implementation of the project and progress made so far, giving details of land acquisition, civil works, installation of plant and machinery, trial production, date of commercial production, etc.
- (j) The products :
 - (i) Nature of the product(s) - consumer/industrial and end-users.
 - (ii) Approach to marketing and proposed marketing set up.
 - (iii) Export possibilities and export obligations, if any (in case of a company providing any "service" particulars, as applicable, be furnished).
- (k) Future prospects - expected capacity utilisation during the first three years from the date of commencement of production, and the expected year when the company would be able to earn cash profits and net profits.

Stock market data for shares/debentures of the company (high/low price) in each of the last three years and during the last six months (where applicable).

VI. Following particulars in regard to the company and its holding or subsidiary company which made any capital issue during the last three years :

Name of the company

Year of issue

Type of issue

(Public/rights/composite)

Amount of issue

Date of closure of issue

Date of completion of delivery of share/debenture certificates.

Date of completion of the project, where object of the issue was financing of a project

Rate of dividend paid

VII. (a) Outstanding litigation pertaining to -

- (i) matters likely to affect operation and finances of the company including disputed tax liabilities of any nature; and
- (ii) criminal prosecution launched against the company and the directors for offences under the Companies Act of Kingdom of Bhutan, 2000.

(b) Particulars of default, if any, in meeting statutory dues, institutional dues, and towards instrument holders like debentures, fixed deposits, and arrears on cumulative preference shares, etc. (also give the same particulars about the companies promoted by the same private promoters and listed on stock exchanges).

(c) Any material development after the date of the latest balance sheet and its impact on performance and prospects of the company.

VIII. Management perception of risk factors (e.g., sensitivity to foreign exchange rate fluctuations, difficulty in availability of raw materials or in marketing of products, cost/time overrun, etc.

PART II

A. General Information

1. Consent of directors, auditors, solicitors/advocates, managers to the issue, Registrar of issue, bankers to the company, bankers to the issue and experts.
2. Expert opinion obtained, if any.
3. Change, if any, in directors and auditors during the last three years, and reasons thereof.
4. Authority for the issue and details of resolution passed for the issue.

5. Procedure and time schedule for allotment and issue of certificates.
6. Names and addresses of the company secretary, legal adviser, lead managers, co-managers, auditors, bankers to the company, bankers to the issue and brokers to the issue.

B. Financial information

Reports to be set out

1. A report by the auditors of the company with respect to -
 - (a) profits and losses and assets and liabilities, in accordance with sub-clause (2) or (3) of this clause, as the case may require; and
 - (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company for each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years, and, if no accounts have been made up in respect of any part of the period of five years ending on a date of three months before the issue of the prospectus, containing a statement of that fact (and accompanied by a statement of the accounts of the company in respect of that part of the said period up to a date not earlier than six months of the date of issue of prospectus indicating the profit or loss for that period and the assets and liabilities position as at the end of that period together with a certificate from the auditors that such accounts have been examined and found correct by them. The said statement may indicate the nature of provision or adjustments made or are yet to be made).
2. If the company has no subsidiaries, the report shall –
 - (a) so far as regards profits and losses, deal with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the issue of the prospectus; and
 - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.
3. If the company has subsidiaries the report shall -
 - (a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by sub-clause (2) and in addition deal either –
 - (i) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the company; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;

or, instead of dealing separately with the company's profits or losses deal as a whole with the profits or losses of the company, and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by sub-clause (2) and in addition, deal either :-

(c) (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities, or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

4. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly -

(a) in the purchase of any business; or

(b) in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith; the company will become entitled to an interest as respects either the capital or profits and losses or both, in such business exceeding fifty per cent, thereof.

A report made by accountants (who shall be named in the prospectus) upon -

i. the profits or losses of the business for each of the five financial years immediately preceding the issue of the prospectus; and

ii. the assets and liabilities of the business at the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus.

5. (i) If -

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company;

a report made by accountants (who shall be named in the prospectus) upon -

i. the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and

ii. the assets and liabilities of the other body corporate at the last date to which its accounts were made up.

(ii) The said report shall -

- (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with for holders of other shares, if the company had at all material times held the shares to be acquired; and
- (b) where the other body corporate as subsidiaries deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-clause (2) above in relation to the company and its subsidiaries.

6. Principal terms of loan and assets charged as security.

C. Statutory and other information

1. Minimum subscription
 2. Expenses of the issue giving separately fee payable to :
 - (a) Advisers
 - (b) Registrars to the issue
 - (c) Managers to the issue
 - (d) Trustees for the debenture holders
 3. Underwriting commission and brokerage
 4. Previous issue for cash
 5. Previous public or rights issue, if any : (during last five years)
 - (a) Date of allotment : Closing date

 - Date of refunds :

 - Date of listing on the stock exchange :
 - (b) If the issue(s) at premium or discount and the amount thereof.
 - (c) The amount paid or payable by way of premium, if any, on each share which had been issued within the two years preceding the date of the prospectus or is to be issued, staging the dates or proposed dates of issue and, where some shares have been or are to be issued at a premium and other shares of the same class at a lower premium, or at par or at a discount, the reasons for the differentiation and how many premiums received have been or are to be disposed.
6. Commission or brokerage on previous issue.
7. Issue of shares otherwise than for cash.

8. Debentures and redeemable preference shares and other instruments issued by the company outstanding as on the date of prospectus and terms of issue.
9. Option to subscribe
10. Purchase of property :-
 - (i) As respects any property to which this clause applies -
 - (a) the names, addresses, descriptions and occupations of the vendors;
 - (b) the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill.
 - (c) the nature of the title or interest in such property acquired or to be acquired by the company;
 - (d) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.
 - (ii) the property to which sub-clause (1) applies is a property purchased or acquired by the company for proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, other than property -
 - (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
 - (b) as respects which the amount of the purchase money is not material.
 - (iii) for the purpose of this clause, where a vendor is a firm, the members of the firm shall not be treated as separate vendors.
 - (iv) If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has been carried on.
11. (i) Details of directors, whole-time directors, their remuneration, appointment and remuneration of Chief Executive Officers, interest of directors, their borrowing powers and qualification shares.

Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter or officer and consideration for payment of giving of the benefit.

- (ii) The dates, parties to, and general nature of -
 - (a) every contract appointing or fixing the remuneration of a Chief Executive Officer or manager whenever entered into, that is to say, whether within or more than, two years before the date of the prospectus;
 - (b) every other material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of the prospectus.

A reasonable time and place at which any such contract or a copy thereof may be inspected.

- (iii) Full particulars of the nature and extent of the interest, if any, of every director or promoter -
 - (a) in the promotion of the company; or
 - (b) in any property acquired by the company within two years of the date of the prospectus or proposed to be acquired by it.

Where the interest of such a director or promoter consists in being a member of a firm or company, the nature and extent of the interest of the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or company, in connection with the promotion or formation of the company.

- 12. Rights of members regarding voting, dividend, lien on shares and the process for modification of such rights and forfeiture of shares.
- 13. Restrictions, if any, on transfer and transmission of shares/debentures and on their consolidation/splitting.
- 14. Revaluation of assets, if any (during last five years).
- 15. Material contracts and inspection of documents, e.g.
 - (a) Material contracts
 - (b) Documents
 - (c) Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of the subscription list.

PART III

Provisions applying to Parts I and II of the Schedule

16. Every person shall, for the purpose of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company, in any case where -
 - (a) the purchase money is not fully paid at the date of the issue of the prospectus;
 - (b) the purchase money is to be paid or satisfied, wholly or in part, out of the proceeds of the issue offered for subscription by the prospectus;
 - (c) the contract depends for its validity or fulfillment on the result of that issue.
17. Where any property to be acquired by the company is to be taken on lease, this Schedule have effect as if the expression “vendor” included the lessor, the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.
18. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five financial years, the accounts of the company or business have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.
19. Where the five financial years immediately preceding the issue of prospectus which are referred to in Part II of this Schedule or in this part cover a period of less than five years, references to the said five financial years in either Part shall have effect as if references to a number of financial years the period covered by which is less than five years immediately preceding the issue of the prospectus were substituted for references to the five financial years aforesaid.
20. Any report required by Part II of this Schedule shall either -
 - (a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary; or
 - (b) make those adjustments and indicate that adjustments have been made
21. Any report by accountants required by Part II of this Schedule -
 - (a) shall be made by accountants qualified under this Act for appointment as auditors of the company; and
 - (b) shall not be made by any accountant who is an officer or servant, or a partner or in the employment of an officer or servant, of the company or of the company’s subsidiary or holding company or of a subsidiary of the company’s holding company.

For the purposes of this clause, the expression “officer” shall include a proposed director but not an auditor.

22. Inspection of documents : Reasonable time and place at which copies of all balance sheets and profit and loss accounts, if any, on which the report of the auditors is based, and material contracts and other documents may be inspected.

Declaration : That all the relevant provisions of the Companies Act of the Kingdom of Bhutan, 2000, and the guidelines issued by the Securities Exchange have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act of the Kingdom of Bhutan, 2000.

Place :

Date :

Signatures of directors

SCHEDULE X

Creation of charge etc.

(See section 49)

Name of the company Private Limited/Limited

Registration No.....

Presented by.....

PARTICULARS OF CHARGE

1. Date and description of the instrument creating the charge.....
2. Amount secured by the charge/amount owing on security of the charge
3. Short particulars of the property charged.
If the property acquired is subject to charge, date of the acquisition of property should be given
4. Gist of the terms and conditions and extent and operation of the charge.
5. Names and addresses and description of the persons entitled to the charge

PARTICULARS OF MODIFICATION OF CHARGE

6. Date and brief description of instrument modifying the charge
7. Particulars of modifications already registered/filed in the office of the registrar of Companies
8. Particulars of modification specifying the terms, conditions or the extent of operation of the charge in which modification is made, and the details of modifications.

MEMORANDUM OF COMPLETE SATISFACTION OF CHARGE

- 9. Creation of original charge and amount secured
- 10. Date of registration/date of filing of the particulars with the Registrar of Companies
- 11. Date of filing of the memorandum of satisfaction/date of entry of satisfaction.

Place : Signature

Dated : Name

(In block capitals)

SCHEDULE XI

Register of Charges

(See section 48)

Name of the company Private Limited/Limited
Registration Number

1. Date of creation and registration of charge
2. Particulars of property charged
3. Amount secured by the charge
4. Person entitled to the charge
5. Particulars of modification if any
6. Date of registration of
modification of charge
7. Date of full satisfaction
of charge
8. Date of registration of
satisfaction of charge

Signature of the Registrar

SCHEDULE XII

FORM OF ANNUAL RETURN

(See section 57)

Annual Return of ----- as at the close of financial year ended on 31st day of December, -----

1. Name of the company
2. Registration Number and date of incorporation
3. Address of the Registered Office
4. Address of all Branches
5. Names, Addresses, description and occupation of Directors and the Chief Executive Officer
6. Particulars of Share Capital
7. Particulars of shareholders with names, description, address, number of shares (equity and preference shares) held by each shareholder and date of allotment.
8. Date of Annual General Meeting held in which the annual accounts for the year ended 31st December --- --- were adopted. If no AGM was held within the prescribed period, reasons therefor.
9. Particulars of indebtedness, indicating separately debentures, secured loans and unsecured loans.
10. Particulars of mortgages or charges created, modified or satisfied.
11. List of selling and buying agents of the company, giving salient terms of appointment.
12. Particulars of contracts entered into with the Directors or their relatives or director's interested company(ies).
13. Particulars of investments made in securities by the company indicating separately investments nor held in company's name.
14. List of general powers of Attorneys executed.
15. Number of employees.
16. Business of the company undertaken during the year and licence number and date issued by Ministry of Trade and Industry.
17. Particulars of any suits and other proceeding pending against the company and its directors, in relation to the company.
18. Special resolutions passed in general meetings with date (copies duly attested be enclosed).
19. Any information that the company may think appropriate.

NOTES:

- (a) Unless otherwise specified, the particulars specified above shall be for the period as at the close of the financial year, and may be furnished in Annexures enclosed with the Annual Report.
- (b) The Annual Report and Annexures thereto shall be signed by the Chief Executive Officer of the Company.
- (c) The Annual Report shall be filed with the Registrar of Companies on or before 31th May in case of a listed company and on or before 31st July in case of other companies, every year.

SCHEDULE XIII A

HORIZONTAL FORM

(See section 69)

PART I

Form of Balance-sheet

The balance sheet of a company shall be either in horizontal form or vertical form

HORIZONTAL FORM

Balance sheet of [Here enter the name of the Company]
As at [Here enter the date as at which the balance-sheet is made out.]

| | <u>LIABILITIES</u> | | <u>ASSETS</u> | | |
|---|--|---|--|---|--|
| Instructions in Accordance with which liabilities should be made out | Figures for the previous year Nu. | Figures for the current year Nu. | Figures for the previous year Nu. | Figures for the current year Nu. | Instructions in accordance with which assets should be made out |

Terms of redemption or conversion (if any), of any redeemable preference capital to be stated, together with earliest date of redemption or conversion

SHARE CAPITAL
Authorise d share capital.... shares of Nu....each

FIXED ASSETS
Distinguishes as far as possible between expenditure upon (a) goodwill, (b) land (c) buildings (d) leaseholds, (e) railway sidings, (f) plant and machinery, (g) furniture and fittings, (h) development of property, (i) patents, trademarks and designs, (j) livestock and (k) vehicles, etc.

Under each head the original cost, and the additions thereto and deductions therefrom during the year, and total depreciation written off or provided up to the end of the year to be stated

Particulars of any option on un-issued share capital to be specified

Issued share capital (distinguishing between the various classes of capital and stating the particulars specified below in respect of each class)...shares of Nu...each.

Where the original cost aforesaid and additions and deductions thereto, relate to any fixed asset which has been acquired from a country outside Bhutan and in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there has been an increase or reduction in the liability of the company as expressed in the Bhutanese currency, for making payments towards the whole or a part of the cost of the asset or for repayment of the whole or a part of the cost of the asset or for repayment of the whole or a part of the money borrowed by the company from any person, directly or indirectly in any foreign currency specified for the purpose of acquiring the asset (being either the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability is so increased or reduced during the year, shall be added to, or, as the case may be deducted from the cost, and the amount arrived at after such addition or deduction shall be taken to be the cost of the fixed asset.

Particulars of the different classes of preference to be given.

Subscribed and paid-up share capital (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class)shares of Nu.....each.
Nu.....called up.

Specify the source from which bonus shares are issued e.g. capitalisation of profits or reserves or from share premium account.

Of the above shares....shares are allotted as fully paid-up pursuant to a contract without payment being received in cash.

Any capital profit on reissue of forfeited shares should be transferred to Capital Reserve.

Add: Forfeited shares(amount originally paid up)

Additions and deductions since last balance sheet to be shown under each of the specified heads.
The Word

Reserves And Surplus
(1)Capital Reserves
(2)Capital Redemption Reserve
(3)Share premium Account

INVESTMENTS
Showing nature of investments and mode of valuation ,for example

Fund” in relation to any”Reserve” Should be used only where such Reserve is specifically represented by earmarked investments.

4)Other Reserves Specifying the nature of each Reserve and the amount in respect thereof.

Less: Debit balance in profit and loss account (if any) (h)

(5)Surplus i.e, balance in profit and loss account after providing for proposed allocations namely:-

Dividends, Bonus or Reserves.

Proposed additions to Reserves.

Sinking Funds.

Cost or market value and distinguishing between—

(1)Investments in Government or Trust Securities.

(2)Investments in shares, debentures or bonds (showing seperately shares fully paid-up and also distinguishing the different classes of shares and showing also similar details investments in shares, debentures or bonds of subsidiary companies).

(3)Immovable Properties.

(4)Investments in capital of partnership firms.

(5)Balance of unutilised monies raised by issue.

Loans from Directors should be shown seperately. Interest accrued and due on secured loans should be included under the appropriate sub-heads under the head ‘Secured Loans’.

SECURED LOANS

- (1)Debentures
- (2)Loans and Advances From Banks
- (3)Loans and Advances from subsidiaries.
- (4)Other Loans and Advances.

CURRENT ASSETS, LOANS AND ADVANCES;

A. CURRENT ASSETS

(1) Interest accrued on Investments.

(2)Stores and Spare parts

The nature of the security to be specified in each case. Where the loans have guaranteed by directors, a mention thereof also be made and also the aggregate amount of such loans under each head.

Terms of redemption or conversion(if any) of debentures issued to be stated together with earliest date of redemption or conversion.

Loans from Directors should be shown separately. Interest accrued and due on Unsecured loans should be included under the appropriate sub-heads under the head 'Unsecured Loans'.

Where loans have been guaranteed by directors, a mention thereof shall also be made and also aggregate amount of such loans under each head.

UNSECURED LOANS:

- (1)Fixed Deposits
- (2)Loans and Advances from subsidiaries
- (3)Short term Loans and Advances
 - (a)From Banks
 - (b)From Others
- (4)Other Loans and Advances
 - (a)From Banks
 - (b)From Others

- (3)Loose Tools
- (4)Stock-in –Trade
- (5)Works-in-Progress.
- (6)Sundry debtors—
 - (a)Debts out standing for a period exceeding six Months.
 - (b)Other Debts
- (7)[a]Cash Balance on hand
 - [b]Bank Balances
 - (i)with banks and
 - (ii) with others

B.LOANS AND ADVANCES

- (8)(a)Advances and loans to subsidiaries
 - (b)Advances and loans to partnership firms in which the company or any of its subsidiaries is a partner.
- (9)Bills of Exchange
- (10)Advances recoverable in cash or in kind or for value to be received, e.g Rates, Taxes, Insurance, etc.
- (11)Balances with custom, Port Trust, etc (where payable)

The period for which the dividends are in arrear or if there is more than one class of shares, the dividends on each class are in arrear shall be stated.

The amount of any guarantees given by the company on behalf of Directors or other officers of the company shall be stated and where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified.

CURRENT LIABILITIES AND PROVISIONS

A.CURRENT LIABILITIES

- (1)Acceptances.
- (2)Sundry Creditors
- (3)Subsidiary companies
- (4)Unclaimed dividends
- (5)Other Liabilities(if any)
- (6)Interest accrued but not due on loans.

B.PROVISIONS

- (7)Provision for taxation
- (8)Proposed dividends
- (9)For contingencies.
- (10)For Provident Fund scheme.
- (11)For insurance, pension and similar staff benefit schemes.
- (12)Other Provisions

A foot-note to the balance sheet may be added to show separately:

- (1)Claims against the company not acknowledged as debts.

MISCELLANEOUS EXPENDITURE

(to the extent not written off[or adjusted])

- (1)Preliminary expenses.
- (2)Expenses including commission or brokerage on underwriting or subscription of shares or debentures.
- (3)Discount allowed on the issue of shares or debentures.
- (4)Interest paid out of capital during construction(also stating the rate of interest.)
- (5)Development expenditure not adjusted.
- (6)Other items (specifying nature)

PROFIT AND LOSS ACCOUNT.

(2)Uncalled liability on shares partly paid.

(3)Arrears of fixed cumulative dividends

(4)Estimated amount of contracts remaining to be executed on capital account and not provided for.

(5) Other money for which the company is contingently liable.

General instructions for preparation of balance sheet

- (a) The information required to be given under any of the items or sub-items in this Form, if it cannot be conveniently included in the balance sheet itself, shall be furnished in a separate Schedule or Schedules to be annexed to and to form part of the balance sheet. This is recommended when items are numerous.
- (b) In the case of subsidiary companies the number of shares held by the holding company as well as by the ultimate holding company and its subsidiaries must be separately stated.
- (c) the item "Share Premium Account" shall include details of its utilisation in the manner provided in section in the year of utilisation.
- (d) Short-term loans will include those which are due for not more than one year.
- (e) Depreciation provided shall be allocated under different asset heads.
- (f) Dividends declared by subsidiary companies after the date of the balance sheet should not be included unless they are in respect of period, which closed on or before the date of the balance sheet.
- (g) Any reference to benefits expected from contracts to the extent not executed shall not be made in the balance sheet but shall be made in the Board's report.
- (h) The debit balance in the Profit and Loss Account shall be shown as a deduction from the uncommitted reserves, if any.
- (i) Particulars of any redeemed debentures which the company has power to issue should be given.
- (j) A statement of investments (whether shown under "Investment" or under "Current Assets" as stock-in-trade) separately classifying trade investments and other investments should be annexed to the balance sheet, showing the names of the bodies corporate (indicating separately the names of the bodies

corporate under the same management) in whose shares or debentures, investments have been made (including all investments whether existing or not, made subsequent to the date as at which the previous balance sheet was made out) and the nature and extent of the investment; so made in each such body corporate; provided that in the case of an investment company that is to say, a company whose principal business is the acquisition of shares, stock, debentures or other securities, it shall be sufficient if the statement shows only the investments existing on the date as at which the balance sheet has been made out. In regard to the investments in the capital of partnership firms, the names of the firms (With the names of all their partners' total capital and the shares of each partner) shall be given in the statement.

- (k) If, in the opinion of the Board, any of the current assets, loans and advances have not a value on realization in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion shall be stated.
- (l) Except in the case of the first balance sheet laid before the company, the corresponding amounts for the immediately preceding financial year for all items shown in the balance sheet shall be also given in the balance sheet.
- (m) The amounts to be shown under Sundry Debtors shall include the amounts due in respect of goods sold or services rendered or in respect of other contractual obligations but shall not include the amounts which are in the nature of loans or advances.
- (n) Current accounts with directors, and Manager, whether they are in credit or debit, shall be shown separately.

VERTICAL FORM

Name of the Company

Balance Sheet as at

| | Schedule No. | Figures as at the end of current financial year | Figures as at the end of previous financial year |
|--|-----------------|--|---|
|--|-----------------|--|---|

I. Sources of funds :

- (1) Shareholder's funds
 - (a) Capital
 - (b) Reserves and Surplus
- (2) Loan funds
 - (a) Secured loans
 - (b) Unsecured loans

TOTAL :

II. Applications of funds :

- (1) Fixed assets
 - (a) Gross block
 - (b) Less depreciation
 - (c) Net block
 - (d) Capital work-in-progress
- (2) Investments
- (3) Current assets, loans, and advances:
 - (a) Inventories
 - (b) Sundry debtors
 - (c) Cash and bank balances
 - (d) Other current assets
 - (e) Loans and advances

Less :

Current liabilities and provisions:

- (a) Liabilities
 - (b) Provisions
- Net current assets
- (4) (a) Miscellaneous
 expenditure to the

extent not written off
or adjusted
(b) Profit and Loss account
TOTAL :

Notes – 1. Details under each of the above items shall be given in separate Schedules. The Schedules shall incorporate all the information required to be given under A - Horizontal Form read with notes containing general instructions for preparation of balance sheet.

2. The Schedules, referred to above, accounting policies and explanatory notes that may be attached shall form an integral part of the balance sheet.
3. the figures in the balance sheet may be rounded off to the nearest 000,000 as may be convenient or may be expressed in terms of decimals of one million.
4. A foot-note to the balance sheet may be added to show separately contingent liabilities.

PART II

Requirements as to Profit and Loss Account

1. The provisions of this Part shall apply to the income and expenditure account in like manner as they apply to a profit and loss account, but subject to the modification of references as specified in that sub-section.
2. The profit and loss account -
 - (a) shall be so made out as clearly to disclose the result of the working of the company during the period covered by the account; and
 - (b) Shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of an exceptional nature.
3. The profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the following information in respect of the period covered by the account :-
 - (i) (a) the turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in respect of each class of goods dealt with by the company, and indicating the quantities of such sales for each class separately.
 - (b) Commission paid to sole selling agents or buying agents.
 - (c) Brokerage and discount on sales, other than the usual trade discount.
 - (ii) (a) In the case of manufacturing companies, -
 - (1) The value of the raw materials consumed, giving item-wise break-up and indicating the quantities thereof. In this break-up, as far as possible, all important basic raw materials shall be shown as separate items. The intermediates or components procured from other manufacturers may, if their list is too large to be included in the break-up, be grouped under suitable headings without mentioning the quantities, provided all those items which in value individually account for 10 per cent or more of the total value of the raw material consumed shall be shown as separate and distinct items with quantities thereof in the break-up.
 - (2) (a) The opening and closing stocks of goods produced, giving break-up in respect of each class of goods and indicating the quantities thereof.
 - (b) In the case of trading companies, the purchases made and the opening and closing stocks, giving break-up in respect of each class

of goods traded in by the company and indicating the quantities thereof.

- (c) In the case of companies rendering or supplying services, the gross income derived from services rendered or supplied.
- (d) In the case of a company, which falls under more than one of the categories mentioned in (a), (b) and (c) above, it shall be sufficient compliance with the requirements herein if the total amounts are shown in respect of the opening and closing stocks, purchases, sales and consumption of raw material with value and quantitative break-up and the gross income from services rendered is shown.
- (e) In the case of other companies, the gross income derived under different heads.

Note 1.-The quantities of raw materials purchases, stocks, and the turnover shall be expressed in quantitative denominations in which these are normally purchased or sold in the market.

Note 2. -In giving the break-up of purchases, stocks and turnover, items like spare parts and accessories, the list of which is too large to be included in the break-up, may be grouped under suitable headings without quantities, provided all those items, which in value individually account for 10 per cent or more of the total value of the purchases, stocks, or turnover, as the case may be, are shown as separate and distinct items with quantities thereof in the break-up.

- (iii) In the case of all concerns having works-in-progress, the amounts for which such works have been completed at the commencement and at the end of the accounting period.
- (iv) The amount provided for depreciation, renewals or diminution in value of fixed assets. If such provision is not made by means of a depreciation charge, the method adopted for making such provision.

If no provision is made for depreciation, the fact that no provision has been made shall be stated and the quantum of arrears of depreciation shall be disclosed by way of a note.]

- (v) The amount of interest on the company's debentures and other fixed loans, that is to say, loans for fixed periods, stating separately the amount of interest, if any, [paid or payable] to the Chief Executive Officer.
- (vi) (a)The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserves, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as at which the balance-sheet is made up.
 - (b) The aggregate, if material, of the amounts withdrawn from such reserves.

- (vii) Expenditure incurred on each of the following items, separately for each item :-
- (a) Consumption of stores and spare parts.
 - (b) power and fuel.
 - (c) Rent
 - (d) Repairs to buildings
 - (e) Repairs to machinery
 - (f) (1) Salaries, wages and bonus
 - (2) Contribution to provident and other funds
 - (3) Workmen and staff welfare expenses [to the extent not adjusted from any previous provision or reserve].
 - (g) Insurance
 - (h) Rates and taxes, excluding taxes on income
 - (i) Miscellaneous expenses :

[Provided that any item under which the expenses exceed one per cent of the total revenue of the company or Nu. 5,000 whichever is higher shall be shown as a separate and distinct item against an appropriate account head in the Profit and Loss Account and shall not be combined with any other item to be shown Under `Miscellaneous expenses'.]

- (viii) (a) The amount of income from investments distinguishing between trade investments and other investments.
- (b) Other income by way of interest, specifying the nature of the income.
 - (c) The amount of income tax deducted if the gross income is stated under sub-paragraphs (a) and (b) above.
- (ix) (a) Profits or losses on investments [showing distinctly the extent of the profits and losses earned or incurred on account of membership of a partnership firm] [to the extent not adjusted from any previous provision or reserve].
- (b) Profits or losses in respect of transactions of a kind, not usually undertaken by the company or undertaken in circumstances of an exceptional or non-recurring nature, if material in amount.
 - (c) Miscellaneous income
- (x) (a) Dividends from subsidiary companies
- (b) Provisions for losses of subsidiary companies
- (xi) The aggregate amount of the dividends paid, and proposed, and stating whether such amounts are subject to deduction of income-tax or not.
- (xii) Amount, if material, by which any items shown in the profit and loss account are affected by any change in the basis of accounting.

4. The profit and loss account shall also contain or give by way of a note detailed information, showing separately the following payments provided or made during the financial year to the directors and the Chief Executive Officers), or manager, if any, by the company, the subsidiaries of the company and any other person :-

- (i) remuneration paid or payable during the financial year to the directors and the Chief Executive Officers
- (ii) other allowances and commission including guarantee commission (details to be given);
- (iii) any other perquisites or benefits in cash or in kind (stating approximate money value where practicable);
- (iv) pensions, etc., -
 - (a) pensions,
 - (b) gratuities,
 - (c) payments from provident funds, in excess of own subscriptions and interest thereon,
 - (d) compensation for loss of office,
 - (e) consideration in connection with retirement from office.

5. The profit and loss account shall further contain or give by way of a note detailed information in regard to amounts paid to the auditor, (whether as fees, expenses or otherwise for services rendered)

- (a) as auditor;
- (b) as adviser, or in any other capacity, in respect of -
 - (i) taxation matters;
 - (ii) company law matters;
 - (iii) management services; and
 - (iv) in any other manner

Schedule XIII B
Cash Flow Statement

(See Section 69)

Name of the Company...

Cash Flow Statement

For the year ended.....

| | Nu. | Nu. |
|--|------------|------------|
| Net cash flow from operating activities | XX | |
| Returns on investments and servicing of finance (Note 1) | XX | |
| Taxation | (XX) | |
| Capital expenditure (Note 2) | (XX) | |
| Net cash inflow/ (outflow) from investing activities | ----- | (XX) |
| Net cash inflow/ (outflow) before financing | | XX |
| Financing (Note 3) | XX | |
| Management of liquid resources (Note 4) | (XX) | |
| Net cash inflow/ (outflow) from financing | ----- | XX |
| | | |
| Increase/ (Decrease) in cash | | XX |

Notes :

1. Returns on investments and servicing of finance

| | |
|-------------------|------|
| Interest received | XX |
| Interest paid | (XX) |
| Dividends paid | (XX) |
| Dividend received | XX |

2. Capital expenditure

| | |
|--|------|
| Payments to acquire intangible fixed assets | (XX) |
| Payments to acquire tangible fixed assets | (XX) |
| Receipts from sales of tangible fixed assets | XX |

3. Financing

| | |
|---|------|
| Issue of Shares and Debentures | XX |
| Redemption of Shares and Debentures | (XX) |
| Repayments of amounts borrowed (other than overdrafts) | (XX) |
| Payments of expenses or commission on any issue of equity share | (XX) |

4. Management of Liquid resources

| | |
|----------------------------|------|
| Purchase of Treasury bills | (XX) |
| Sale of Treasury bills | XX |

To derive the Net cash flow from operating activities:

Indirect method:

Nu.

Net profit before Tax/ Operating profit **XX**

(1) Add back

| | |
|--------------------------------|----|
| . Depreciation charges | XX |
| . Interest payable | XX |
| . Loss on sale of fixed assets | XX |

(2) Deduct

| | |
|----------------------------------|------|
| . Profit on sale of fixed assets | (XX) |
| . Interest receivable | (XX) |

| | | |
|---|-------|----|
| (Increase) / Decrease in Stock | | XX |
| (Increase)/ Decrease in Debtors | | XX |
| Increase / (Decrease) in Creditors | | XX |
| | ----- | |
| Net cash flow from operating activities | | XX |

Indirect method starts with operating profit and adjusts it for non-cash charges and credits to reconcile it to the net cash flow from operating activities.

Direct Method:

| | | |
|--|-----|------|
| Cash sales | XX | |
| Cash received from Debtors | XX | XX |
| | --- | |
| <u>Less:</u> | | |
| Cash Purchases | | XX |
| Cash paid to Creditors | XX | |
| Cash expenses | XX | (XX) |
| | --- | |
| | | ---- |
| Net/ Gross cash flow from operating activities | | XX |

Direct method shows operating cash receipts and payments (including, in particular, cash receipts from customers, cash payments to suppliers and cash payment to and on behalf of employees), aggregating to the net cash flow from operating activities.

- The term “cash” for this purpose shall mean cash in hand and cash at bank including deposits repayable on demand with any qualifying financial institution, less overdrafts repayable on demand from any qualifying financial institution. Deposits are repayable on demand if they can be withdrawn at any time without notice and without penalty or if a maturity or period of notice of not more than twenty four hours or one working day has been agreed.
 - The term “qualifying financial institution” shall mean a financial institution that as a part of its business carries on banking operations and receives deposits or other payable funds and grants credits for its own account.
- **Financing** cash flow comprises receipts or repayments of principal from or to external providers of finance.
 - **Liquid resources** are current asset investments held in readily disposable stores of value. A readily disposable investment is one that is disposable by the entity without curtailing or disrupting its business and is either:
 - (a) readily convertible into known amounts of cash at or close to its carrying amount: or

(b) traded in an active market.

e.g term deposits, government securities, loan stock, equities and derivatives.
Deposits that are more than one year from maturity on acquisition would not be classed as liquid resources.

Schedule XIV

GENERAL TERMS OF REFERENCE FOR THE AUDITORS AND MINIMUM AUDIT EXAMINATION AND REPORTING REQUIREMENTS.

(See section 75)

I General Terms of Reference.

1. Audit of all Companies shall be conducted in accordance with the Generally Accepted Auditing Standards and in keeping with the auditing and reporting requirements relative to specific laws, rules and regulations.
2. The scope of audit shall be,
 - a. Certification of Financial Statements
 - b. Proprietary audit
 - c. Performance audit
 - d. Management Audit, and
 - e. Compliance audit

In addition to above Auditors shall be responsible for assessing the strength & weaknesses in the accounting/internal controls system and frame the recommendations to improve it.

3. The auditors should report whether the annual financial statements have been compiled on the basis of Generally Accepted Accounting Principles and that the financial statements are in agreement with the underlying accounting records.
4. The audit reports with qualifications in respect of the following areas shall be discouraged as much as possible by requiring the clients to carry out necessary corrections/adjustments in the accounts.
 - i) Fixed Assets
 - ii) Inventory
 - iii) Sundry debtors and other advances
 - iv) Sundry creditors and other current liabilities
 - v) Cash and Bank transaction and their balances at the year end.
5. The Auditors shall deploy skilled, qualified and professional staffs so that the quality of audit and reporting is kept at the highest possible standard. The audit team should comprise of experienced audit manager and qualified assistant(s), and not more than one Article clerk under the overall supervision of a partner in-charge. Where required, a mix of professionals of diverse discipline should be deputed.

6. The audit fees shall include out of pocket expenses incurred by the auditors in connection with the audit but it shall be indicated separately. Expenses of personal and discretionary nature i.e., tips, private calls, unreasonable amounts etc. shall not be entertained.
7. While conducting proprietary audit of a company, the following aspects shall be looked into and audit observations thereto shall be reported:
 - a) Whether the fund and property of the company has been used economically efficiently and effectively and in the best interest of the company;
 - b) Cases of any:
 - i) Excessive/extravagant/unnecessary expenditure incurred;
 - ii) Irregular expenditure and uses of property;
 - iii) Embezzlement of fund;
 - iv) Misuse of fund, inventory or property of the Company;
 - v) Whether the transactions comply with the rules and regulations of the Government.
 - The terms used in (i) to (iii) are defined in the Definition of Terms.
8. Any other special terms of reference, if required, shall be agreed before the commencement of the audit.
9. Upon receipt of the letter of appointment, the auditors should prepare a time schedule for each audit in consultation with the client.
10. The Auditors are expected to keep the Royal Audit Authority informed of the progress of audit work and changes, if any in the audit time schedule.
11. Auditors are expected to strictly adhere to their professional and ethical standards.
12. In the case of Government/Government controlled (majority shares owned by the Government) company, following shall also apply:
 - The audit shall be conducted on behalf of the Royal Audit Authority.
 - Audit reports shall be issued through the Royal Audit Authority and the Auditors shall be accountable exclusively to the said Authority.

- Audit fees shall be agreed with the Royal Audit Authority before the commencement of audit, and it shall not be changed unless the Royal Audit Authority decides otherwise. Type of accommodation, mode of travel and admissibility of other out of pocket expenses of auditors will be decided by the Royal Audit Authority.
 - Any disputes shall be settled in Bhutan by an arbitrator mutually acceptable to the Royal Audit Authority and the Auditors.
 - A copy of the time schedule which should also indicate the dates of exit, audit conference (final audit meeting) shall be transmitted to the Royal Audit Authority for facilitating visits by its representative(s).
 - The Auditors shall, if required by the Royal Audit Authority, make available copies of all the audit working papers to it in respect of each audit conducted pursuant to the appointment made by the Royal Audit Authority.
 - The auditors shall intimate the RAA of name of the audit team members, partner in-charge and time schedule for the audit.
13. The term "Auditors" means the firms of accountants belonging to the following accountancy bodies, which are authorised to conduct statutory audits of companies/financial institutions.
- Institute of Chartered Accountants (ICA),
 - Association of Chartered Certified Accountants (ACCA), and
 - Certified Public Accountants (CPA),

II MINIMUM AUDIT EXAMINATION AND REPORTING REQUIREMENTS.

Every report made by an auditor under the Company's Act of the Kingdom of Bhutan in examining the accounts of the corporation shall contain, *inter alia*, the following:

In the case of a manufacturing, mining or processing company:

1. Whether the company is maintaining proper records showing full particulars including quantitative details and situation of fixed assets; whether any material discrepancies were noticed on physical verification and, if so, whether the same have been properly dealt with in the books of accounts.

2. Whether any of the fixed assets were being revalued during the year; if so, the basis of revaluation should be indicated. The treatment for profit/loss on revaluation should be clearly indicated.
3. Whether physical verifications were conducted at reasonable intervals in respect of finished goods, stores, spares parts and raw materials.
4. Whether the procedures of physical verification of stocks followed by the management are reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported.
5. Whether any material discrepancies were noticed on physical verification of stocks as compared to the book records, and if so, whether the same have been properly dealt with in the books of accounts.
6. Whether the Auditors, on the basis of their examination of stocks, are satisfied that such valuation is fair and proper in accordance with the normally accepted accounting principles. Whether the basis of valuation of stocks is the same as in the preceding year or if there is any deviation in the basis of valuation, the effect of such deviation.
7. Whether the rate of interest and the other terms and conditions of loans availed, if any, by the company secured or unsecured from companies, firms or other parties and/or from the companies under the same management are *prima facie* not prejudicial to the interest of the company.
8. Whether the rate of interest and other terms and conditions of loans granted, if any, secured or unsecured to other companies, firms or other parties and/or to the companies under the same management, are *prima facie* not prejudicial to the interest of the company.
9. Whether the parties to whom the loans or advances have been given by the company are repaying the principal amounts as stipulated and are also regular in payment of interest, and if not, whether reasonable steps have been taken by the company for recovery of the principal and the interest.
10. Whether the loans/advances granted to officers/staff are in keeping with the provisions of service rules and no excessive/frequent advances are granted and accumulated of large advances against particular individual is avoided.
11. Whether the company has established adequate system of internal controls to ensure completeness, accuracy and reliability of accounting records, carrying out the business in an orderly and efficient manner, to safeguard the assets of the company as well as to ensure adherence to the rules/regulations and system and procedures.

12. Whether there is system of competitive biddings, commensurate with the size of the company and the nature of its business, for the purchase of goods and services including stores, raw materials, plant and machinery, equipment and other assets, and for the sale of goods and services.
- 13(a) Whether the transactions for purchases and sales of goods and services made in pursuance of contracts or arrangement entered into with the director(s) or any other party(ies) related to the director(s) or with company or firms in which the director(s) are directly or indirectly interested have been made at prices, which are reasonable having regard to the prevailing market prices for such goods or services or at prices at which the transactions for similar goods or services have been made with other parties. It should also be ensured that details of such transactions and amounts thereof are adequately disclosed in the financial statements.
- (b) If the Auditors' examination reveal that the transactions entered into by the company wherein the directors are directly or indirectly interested are prejudicial to the interest of the other shareholders and the company, the details thereof together with the likely financial impact thereof should be reported.
14. Whether any unserviceable or damaged stores, raw materials or finished goods are determined, and whether provisions for loss, if any, have been made in the accounts.
15. Whether there is a reasonable system of ascertaining and identifying point of occurrence of breakage/damages raw materials, packaging materials and finished products i.e. while in transit, during processing, during loading/ unloading, in storage and during handling etc. so that responsibility could be fixed and compensation sought from those responsible.
16. Whether the company is maintaining reasonable record for production of finished goods, by-products and whether adequate physical safeguards exist to prevent unauthorized or irregular movement of goods from the company.
17. Whether the company is maintaining reasonable records for sales and disposal of realizable by-products and scraps where applicable.
18. Whether the company is regular in depositing rates and taxes, duties, royalties, provident funds, and other statutory dues with the appropriate authority and if not, the extent of arrears should be disclosed. Whether the provision for corporate tax is adequate and that necessary adjustments have been made to compute amount of tax required under the Revised Taxation Policy, 1992.

19. Whether any undisputed amounts payable in respect of rates, taxes, duties, royalties, provident funds and other statutory deductions were outstanding, as per the last day of the financial year concerned, if so, the amounts of such outstanding dues.
20. Whether personal expenses have been charged to the company accounts; if so, the details thereof.
21. Whether the company has a reasonable system or recording receipts, issues and consumption of materials and stores and allocating materials consumed to the respective jobs, commensurate with its size and nature of its business, if applicable.
22. Whether quantitative reconciliation is carried out at least at the end of accounting year in respect of all major items of inventories i.e. finished goods and raw materials.
23. Whether approval of Board/appropriate authority is obtained for writing off amounts due to material loss/discrepancies in physical/book balances of inventories including finished goods, raw materials, stores and spares.
24. Whether the company has a reasonable system of allocating man-hours utilized to the respective jobs, commensurate with the size and nature of its business, if applicable.
25. Whether there is a reasonable system of authorization at proper levels, and an adequate system of internal control commensurate with the size of the company and nature of its business, on issue of stores and allocation of materials and labour to jobs.
26. Whether there is a reasonable system of price fixation taking into account the cost of production and market conditions.
27. Whether the credit sales policy is reasonable and proper credit rating of customers are carried out.
28. Whether the system of screening commission agents is adequate where sales are made through commission agents and that the agency commission structure is in keeping with the industry norms/market conditions. Whether the company has a system of evaluating performance of each agent on a periodic basis.
29. Whether there is a reasonable system for continuous follow-up with debtors and other parties for recovery of outstanding amounts. Also whether age-wise analysis of outstanding amounts is carried out for management information and follow-up action.

30. Whether the management of liquid resources particularly cash/Bank and short term deposits etc. are adequate and that excessive amount are not lying idle in non-interest bearing accounts, and whether withdrawals of loan amounts are made after assessing the requirements of funds from time to time and no excess amounts are withdrawn leading to avoidable interest burden on the company.
31. Whether the activities carried out by the company are lawful and intravires to the Articles of Incorporation of the company.
32. Whether the activities/investment decisions are made subject to prior approval of the Board and investment in new projects are made only after ascertaining the technical and economic feasibility of such new ventures.
33. Whether the company has established an effective budgetary control system.
34. Whether in the case of manufacturing companies, where input-output relationship can be established, standard costing system is established and the variance analysis carried out on periodic intervals and corrective action taken if warranted.
35. The details of remuneration, commission and other payments made in cash or in kind to the Board of Directors including the Chief Executive Officer or any of their relatives (including spouse(s) and child/children) by the company directly or indirectly are disclosed in the accounts.
36. Whether the directives of the Boards have been complied with and if not, enumerate the non-compliance.
37. Whether the officials of the company have transmitted any price sensitive information which are not made publicly available, unauthorisedly to their relatives/friends/associates or close persons which would directly or indirectly benefit themselves.

In the case of a Trading Company.

1. All matters specified in clause A above shall apply to a Trading Company except matters relating to raw materials, labour, by-products etc. which are applicable only in respect of the audit of a manufacturing company.
2. Whether the extent of damaged/slow moving goods have been determined and if the value of such goods is significant, whether provisions were made for the loss.

In the case of Finance and Investment Company.

1. All matters specified in clause-A except those pertaining to manufacturing, activities and relative procurements, sales, marketing etc. functions which are not relevant in a financing and investment company.
2. Whether adequate documents and records are maintained in case, where the company has granted loans and advances and that agreements have been drawn up and whether timely entries have been made therein.
3. Whether proper records of the transactions and contracts have been maintained and whether timely entries have been made therein if the company is dealing or trading in shares, securities and other investments.
4. Whether reasonable records are maintained for funds collected from depositors and for interest payment.
5. Whether the provisions are made for permanent diminution, if any, in the value of investment (shares).
6. Whether or not the financial institutions have complied with the requirements of Financial Institutions Act, 1992 and any other applicable laws, rules and regulations and guidelines issued by the appropriate Authorities.
7. Whether or not the requirements relating to provisioning for the non-performing assets including loans and advances have been complied with.
8. Whether recognition of interest income in respect of non-performing assets have been deferred.
9. Whether assets hypothecated against loans and advances have been physically verified, properly valued, mortgage deed executed and ensured that the assets are free of any prior lien or charges.
10. Whether or not the financial institutions have a system of monitoring of projects for which loans have been provided to ensure that loan amounts are used for the specified purposes and project activities are progressing satisfactorily.
11. Whether or not the disposal of assets taken over for repayment defaults etc. are made through open/sealed bids.
12. Whether or not proper analysis is carried out before re-phasing/rescheduling of loans are permitted and that rephasing is not permitted in respect of non-performing loans.
13. Whether or not there is a system to ensure that additional loans are not granted to those who have defaulted payments of previous advances.

In Case of Other Service Sector Companies.

1. All matters specified in Clause A except those pertaining to manufacturing activities and relative procurements functions etc. which are not relevant in a Service Sector Company.
2. Whether the Company maintains a reasonable system of costing to ascertain the cost of its services and enable it to make proper pricing decisions for its services.
3. Whether proper records are kept for inter unit transactions/services and arrangements for services made with other agencies engaged in similar activities.
4. Whether proper agreements are executed and that the terms and conditions of leases are reasonable and the same are applied if machinery/equipments are acquired on lease or leased out to others.

Computerised Accounting Environment

1. Whether the organisational and system development controls and other internal controls are adequate relative to size and nature of computer installations.
2. Whether adequate safeguard measures and back up facilities exist.
3. Whether back up facilities and disaster recovery measures include keeping files in different and remote locations.
4. Whether the operational controls are adequate to ensure correctness and validity of input data and out put information.
5. Whether the measures to prevent unauthorised access over the computer installation and files are adequate.

Reasons to be stated for unfavorable or qualified answers:

Where in the Auditors' Report, the answer to any of the questions referred to in the above paragraphs is unfavorable or qualified, the Auditors' Report must also state the reasons for such unfavorable or qualified answers as the case may be. Where the auditors are unable to express any opinion in answer to a particular question, his report shall indicate such facts together with the reasons as to why it is not possible to give any answer to such questions.

General.

1. Going concern problems.

In all the above cases, in addition to the various matters to be checked and reported, the Auditor's Report shall specify whether the company is healthy or is likely to become sick in the near future. Potential going concern problems shall be highlighted.

2. Ratio Analysis.

Auditors should carry out such analysis including ratio analysis so as to determine the financial health and profitability of the enterprise. Ratio analysis should also ascertain the impact of Government subsidy (in case or in kind) or any other forms of benefits extended by the Government on the profitability of the company. Where appropriate, comparison of the ratios with the industry norms should also be carried out. A separate chapter should be devoted, under the head financial and operational resume in respect of each audited entity. Graphic presentation of the important performance indicators and financial highlights should be made.

3. Compliance with the Companies Act of the kingdom of Bhutan.

Auditors should in their report clearly indicate as to whether the companies have complied with the various provisions of the Companies Act of the Kingdom of Bhutan concerning conducting of meetings, filing requirements, maintenance of records, issue of shares, raising of loans and all other matters specified in the said Act.

4. Adherence to Laws, Rules and Regulations.

Auditors should also report as to whether the companies have been complying with the applicable laws, rules and regulations, systems, procedures and practices.

Reporting.

1. Auditors' Report shall be addressed to the members of the company.
2. Auditor's Report shall consist of:
 - i) Audited financial statements and auditors' report thereon. Notes to Accounts and significant accounting policies shall form an integral part of the accounts.

- ii) Auditors' observations and recommendations on the accounts, internal control system and operations of the company including Financial and Operational Resume for the current year.*
- iii) Follow-up report on the current status of the recommendations of earlier year.*

*Comments of the management should be duly incorporated in the report.

3. In respect of Government/Government controlled companies, the following shall also apply:

- Six sets of audit reports as in para 3 above should be forwarded to the Royal Audit Authority.
- In addition to reports as in H above, the Auditors should also enclose an authenticated list of outstanding advances availed by the officials and employees of the Government/Government controlled companies and Financial Institutions including advances given to the officials of other Government agencies. Such advances should not include loans availed by the employees in the normal course of business which are subject to recovery through set procedures. The details should indicate the voucher number and date of loan, amount paid, amount adjusted and details of adjustment, balance outstanding and period since the amount is overdue for adjustment/refund.

DEFINITION OF TERMS.

- i) 'Excessive Expenditure' is one where the amount involved is exorbitant or exceeds what is usual or proper, or is in excess of reasonable limits.
- ii) 'Extravagant Expenditure' is one that exceeds the bounds of propriety, or is immoderate, lavish, luxurious, wasteful, grossly excessive or unrestrained.
- iii) 'Unnecessary Expenditure' means an expense incurred or payment made for something that is not essential, or can be dispensed with without loss or damage, or not responsive to the exigencies of the service or is useless or not required by the circumstances of the cases.
- iv) 'Irregular Expenditure' of funds and uses of property are transactions conducted in manner that deviate or depart from or do not accord with the standards of regularity, such as:

- (1) adherence to established policies, rules, regulations, procedural guidelines, principles, practices, and
 - (2) Conformity with prescribed usages, rules or discipline.
- v) 'Embezzlement of fund' means fraudulent diversion/misappropriation of funds.