

FINANCIAL INSTITUTIONS ACT OF BHUTAN, 1992

Be it enacted by the National Assembly of the Kingdom of Bhutan as follows:

Preliminary

1. Short title and extent

- a. This Act may be called the Financial Institutions Act of Bhutan, 1992;
- b. It shall extend to whole of the Kingdom of Bhutan

Part 1

BASIC PROVISIONS

Article 1

1. In applying the provisions of this Act and the regulations issued pursuant thereto, the following terms shall have the following meanings:
 - a. Financial institutions shall mean persons engaged in one or more of the following services.
 - (i) Depository banking:

Receiving financial resources from the public, including money deposits creating liabilities of the institution taking deposits, whether in the form of demand or time deposits or debt instruments in another form, and extending credit or investing in securities for the account of the institution.
 - (ii) Development or merchant banking:

Extending credit or investing in securities with funding obtained primarily from institutional investors.
 - (iii) Commercial or consumer finance:

Extending credit or providing lease finance with funding obtained primarily from institutional investors.
 - (iv) Insurance:

The provision of life and general insurance in consideration of the payment of premiums, which activity may include the investment of premium proceeds and investment income.
 - (v) Asset management :

The investment or control of money or securities by persons for the account of third parties.
 - (vi) Investment advice :

Carrying on the business of giving advice about investment.

(vii) Securities underwriting :

Arranging or guaranteeing the purchase of debt or equity or convertible securities for an issuer.

(viii) Securities dealing :

The purchase and sale of securities for one's own account.

(ix) Securities brokerage :

The purchase or sale of securities on the order and for the account of third parties.

(x) Investment company activities :

Investment by more than 25 persons through ownership of shares in a company which has as its primary activity the holding of securities for investment.

(xi) Other financial services :

Any service other than those described above that the RMA classifies as financial services by virtue of the activity of financial intermediation or the public interest in regulation of such services.

(xii) Bank means a company engaged in whole or in part in the financial services (banking activities) described in paragraph (i) herein above.

(xiii) Securities business means any of the activities described in sub sections (vii), (viii), (ix) or (x).

- b. The Companies Act shall mean, "The Companies Act of the Kingdom of Bhutan of 1989" as amended or replaced from time to time. For the purposes of the financial institutions any reference therein to the "Department" shall mean the Royal Monetary Authority of Bhutan ("RMA").
- c. "Credit" means any transaction creating for a person a direct or contingent obligation to deliver financial assets in exchange for a claim, including, without limitation, loans, advances, discounts of bills of exchange, lines of credit, payment orders and guarantees.
- d. "Director" includes any person who occupies the position of a director, by whatever name called and, in particular, in the case of :
- (i) a company, has the meaning assigned by the Companies Act 1989;

- (ii) a co-operative society, means a member of the board or other governing body of the co-operative society;
 - (iii) a government agency, means a member of the board, or other governing body of the government agency;
 - (iv) a partnership or joint venture, means a partner or joint venturer;
 - (v) a sole proprietorship means the sole proprietor; and
 - (vi) any other body, means any person having the direction and control of the management of its affairs or business.
- e. "Qualifying holding" means a direct or indirect holding in a person which represents 10 percent or more of the capital or of any class of voting rights, or which makes it possible to exercise a significant influence over the management or operations of the undertaking in which the holding exists;
 - f. "Persons" shall include an individual, a company, a partnership, a government agency and any body of persons recognized as a separate legal entity.
2. One or more of the activities described in Article 1 a, paragraphs (i) through (x) may be conducted by the same legal entity; provided:
 - a. the provision of insurance may be conducted in conjunction with only asset management and/or securities brokerage;
 - b. securities dealing conducted with depository banking may be subject to special limitations in the interest of the protection of depositors.
 3. The RMA shall not be regarded as a depository institution under this Act.

Article 2

No one shall engage in any of the financial services described in Article 1, Section 1a. without a license to operate in accordance with the requirements of this Act. The foregoing prohibition shall not apply to persons or enterprises, the activities of which the RMA determines are of such limited scope as not to warrant inclusions hereunder.

Article 3

1. Persons engaged in business through offices in the Kingdom other than those licensed to conduct banking activities as described in this Act shall be prohibited from using the word "bank", or translations or composite forms thereof, in their name or business.
2. The prohibition set forth in the preceding Section 1 shall not apply to enterprises whose name is established or recognized by Act or international agreement.

Part II

LICENSING

Article 4

1. A license to conduct one or more of the financial services described in Article 1, Section a. may be obtained only upon written application to the RMA in the form prescribed by the RMA. Applications by financial institutions to conduct additional activities shall be based upon the criteria in paragraphs a, b, c, d and f of Section 2 of this Article.
2. An application for an initial license shall include the proposed Articles of Incorporation of the proposed institution and be supported by a business plan for the first three years of operations. The application must, in the opinion of the RMA, demonstrate:
 - a. the adequacy of proposed capital funds and other financial resources;
 - b. the managerial capacity of the applicant to conduct the proposed operations;
 - c. that the convenience and needs of communities in the proposed market areas will be served;
 - d. that the proposal will have a net positive effect on competition in the markets to be served;
 - e. the reasonable likelihood that the proposed institution will become profitable in a reasonable period of time;
 - f. that the institution would not violate any law or any regulation of the RMA;
 - g. the integrity and financial soundness of shareholders with a qualifying holding.
3. Notwithstanding the foregoing, the RMA may require additional conditions for granting an initial license to entities any part of whose subscribed capital stock is owned or that are effectively controlled by persons who are not residents of the Kingdom.

Article 5

1. Within six months from the date of receipt of a complete application, the application shall be approved or denied by the RMA.
2. The license to conduct financial services shall be granted for an indefinite period of time.
3. The license to conduct financial services shall not be transferable.
4. The license to conduct financial services may exclude the conduct of activities with respect to which the RMA determines that the applicant is not qualified.

Article 6

Representative offices in the Kingdom of financial institutions domiciled abroad shall not provide financial services or make payments within the territory of the Kingdom nor shall institutions domiciled abroad without offices in the Kingdom provide financial services directly or through agents within the territory of the Kingdom or make payments directly or through agents other than institutions licensed to conduct financial services within the Kingdom.

Article 7

1. The license to conduct financial services may be revoked by the RMA if it determines that:
 - a. the license has been obtained on the ground of false or fraudulent statements or other material irregularities connected with the application for the license; or
 - b. the licensee fails to meet any of the conditions attached to the license; or
 - c. an infraction as specified in Article 58 has been committed; or
 - d. the licensee is a branch office or agency of an institution whose head office is located abroad and that does not have a license, or has lost its license, to operate as a financial institution in the country where its head office is located; provided, however, that, in this event, before revoking the license, the RMA shall consult with, or in the case of extreme urgency simply inform, the competent authorities of the foreign country of its intention to revoke the license; or
 - e. the owner or owners of the licensee have decided to dissolve or liquidate the company, or the licensee has ceased to exist as a legally or operationally independent entity following its dissolution, liquidation, merger, amalgamation or division, or has ceased to engage in substantial business.

2. The decision to revoke a license to operate as a financial institution shall be communicated in writing by the RMA to the institution concerned as soon as possible giving grounds for the revocation.

Article 8

1. A licensee may request the RMA in writing to revoke its license.
2. Within ninety days after its receipt of the request, the RMA shall decide on the request.
3. The decision of the RMA shall be communicated in writing by the RMA to the institution as soon as possible.

Article 9

1. All decisions to revoke a license to conduct financial services shall immediately be published in the Official Newspaper and in a newspaper of general circulation and shall become effective on the date of such publication.
2. Starting on the day following the date of publication in the Official Newspaper of the decision to revoke a license, the company concerned shall be prohibited from engaging in a financial service, and as soon as possible thereafter, shall liquidate its assets, and discharge its liabilities. Meanwhile, the company shall be deemed to be operating as a financial institution in order to permit an orderly winding up of its affairs under this Act.
3. A licensed financial institution shall post its license certificate at its places of business.

Article 10

1. A register shall be kept by the RMA recording currently licensed financial institutions; the name and the head office address of each person that receives a license shall be entered into the register; a person whose license to operate has been revoked shall be removed from the register.
2. Copies of the register shall be available for inspection by the public at the head office of the RMA.

Part III

ORGANIZATION AND ADMINISTRATION

Article 11

1. Financial institutions shall execute Articles of Incorporation substantially similar in form and substance to Schedule 1 of the Companies Act.
2. Financial institutions shall comply with Part II Sections 6, 7 and 11 of the Companies Act with respect to their registered office, service of documents and limited liability, respectively.
3. Financial institutions shall comply with Part III Sections 19, 21, 22, 23i, 26 and 27 of the Companies Act with respect to the offer of their shares to the public, voting rights of shares, share certificates, transfer of shares, register of shareholders, and list of shareholders, respectively.
4. Financial institutions organized in the Kingdom shall be administered by a Board of Directors, as the responsible policy-making and executive body. Directors shall comply with Part VII Sections 48c and 48d, 49, 50, 51, 53, 54, 59, 60, 62, 63 and 64 of the Companies Act with respect to directors' responsibilities, appointment, eligibility, registration, term of office, resignation, conduct of meetings, vacancies, minutes of meetings, remuneration, and validity of proceedings, respectively.
5. The Directors and Executive Officers of a financial institution must act honestly and with due skill and care; must not make improper use of their position or of information acquired by virtue of their position to gain a direct or indirect advantage for themselves or others or to cause detriment to the

institution; and must declare in writing to the institution any shares, debentures, or similar interest held directly or indirectly in the institution controlled as defined in Article 48, Section 3, which will be entered into a register open to inspection by the shareholders.

6. Shareholders meetings of financial institutions shall be conducted in accordance with Part VIII, Sections 66 and 67 of the Companies Act.
7. The voluntary dissolution of a financial institution shall be in accordance with Part XI Sections 74 and 76 of the Companies Act.
8. Financial institutions may also be organized as cooperatives, in which case they shall comply with organizational and other requirements comparable to those required by this article.

Article 12

1. All banks shall be governed by articles which, in compliance with their license, shall establish:
 - a. The structure of the administrative and operational units and sub-units, and their functions, supervisory positions, and reporting relationships;
 - b. The duties of each departmental head;
 - c. Internal committees and requirements for internal auditing;
 - d. The limits of the authority of agents, employees and units to conduct lending, borrowing and investment operations.
2. The articles of financial institutions shall be maintained by the Board of Directors, and a certified copy thereof and any amendments thereto shall be filed with the RMA.
3. Each financial institution shall maintain on file with the RMA a duly certified copy of the list of officials of the company who are currently authorized to contractually engage the institution, together with a description of the limits of the authority of such officials and specimens of their signatures.

Part IV

CERTAIN ACTIVITIES REQUIRING PRIOR APPROVAL

Article 13

1. A financial institution that is authorized to engage in certain financial services activities described in the First Part, Article 1a. may apply to the RMA to engage in other activities described in such Article.
2. Decisions on applications will be based on the criteria referred to in Section 1 of Article 4.

Article 14

1. To have legal effect, the acquisition or merger of a financial institution, or the sale of a major portion of its assets shall require the prior authorization of the RMA.
2. Determinations shall be based upon the financial and managerial resources and future prospects of the financial institutions concerned and the convenience and needs of the communities to be served. No proposed transaction shall be approved whose effect may be substantially to lessen competition unless the anticompetitive effects are clearly outweighed by the probable effect of meeting the convenience and needs of the communities to be served.
3. Approval of such transactions shall be granted only if the resulting company engaged in financial services shall be or shall have been granted a license to operate as a financial institution.

Article 15

1. To have legal effect, the transfer, in one or more transactions, to any one person or number of persons acting in concert, of an equity interest representing more than 20 percent of the authorized capital stock of a financial institution shall require the prior authorization of the RMA.
2. Determinations shall be based, in the case of natural persons, upon the competence, experience, integrity and financial ability of the person or persons by whom such acquisition is to be made. In the case of legal persons, the criteria of Section 2 of Article 14 shall apply.

Article 16

The establishment of branches, agencies, and other such offices of financial institutions shall be subject to prior approval of the RMA.

Part V

OPERATIONAL REQUIREMENTS

General

Article 17

In carrying out credit and investment operations, financial institutions shall operate in accordance with the principles of risk management and diversification to promote the solvency, liquidity and profitability of institutions and shall comply with the directives and instructions in this regard issued by the RMA.

Article 18

1. Financial institutions shall keep on file the pertinent documents for every credit operation, namely:

- a. the credit application and, if relevant, the documents in which the borrower indicates the use to be made of the borrowed funds, and the legal status of and value assigned to any collateral provided;
 - b. the financial records of the borrower and any guarantors which served as the basis for the operation; and
 - c. the decision of the unit, departmental director or deputy approving the operation, with the signature of the person or persons responsible for the decision, and in the case of a decision by the Board of Directors or a committee thereof, a copy of the minutes of the meeting at which the operation was approved.
2. The provision of this Article may be supplemented by regulations of the RMA, and the documentation may be simplified or dispensed with by decision of the RMA for operations involving small amounts or the discount or pledge of commercial paper approved by managers of branches, agencies, and other such offices within the limits of their authority.

Article 19

Financial institutions shall observe the following maximum limits prescribed by regulations of the RMA.

- a. the maximum ratios to be maintained by financial institutions between their risk-weighted assets and off-balance sheet items and their net worth; and
- b. the maximum amount, expressed as a percentage of their net worth, that financial institutions shall be permitted to lend to any single borrower or related group of borrowers.

Article 20

1. Each financial institution shall comply with the written directives that the RMA may issue to it on an individual basis concerning its management and operations provided, however, that such directives may specify only:
- a. requirements concerning their minimum amount of net worth in relation to :
 - (i) credit granted and investments, or specific categories thereof;
 - (ii) commitments of a risk bearing nature;
 - (iii) unhedged foreign currency positions;
 - (iv) liabilities or categories thereof.
 - b. prohibitions, restrictions or conditions concerning :
 - (i) specific types or forms of credit or of credit that exceeds a certain amount;
 - (ii) specific types or forms of investment or investments that exceed a certain amount;

- (iii) specific types or forms of commitments of a risk bearing nature or similar commitments exceeding a specific amount;
 - (iv) matching as to maturity of assets and liabilities and of-balance sheet items;
 - (v) unhedged foreign currency positions or similar positions exceeding a specific size; and
 - (vi) fees or expenses relating to transactions or to the maintenance of accounts.
2. Institutions that engage in similar activities and that are in comparable financial condition shall be subject to similar regulations.

Article 21

1. No financial institution and no institution affiliated through a 20 percent or more shareholding interest shall:
- a. extend credit beyond limits determined by the RMA to a person or underwrite or place securities or arrange financing from third parties to that person to enable the person to repay his obligation to the other institution.
 - b. underwrite or place securities of a person and extend credit to that person to enable him to pay the principal, interest, or dividend on such securities.
 - c. underwrite, place, or distribute securities and within 60 days of the initial sale, purchase or recommend the purchase of such securities in the capacity of asset manager or investment advisor.
2. No bank shall purchase from a person engaged in the securities business with which the bank is affiliated through a 20 percent or more shareholding interest (i) assets of that person; (ii) securities to be underwritten, placed or distributed by that person or that have been so underwritten, placed or distributed within the past 360 days.
3. No bank shall (i) provide credit enhancement for or (ii) extend credit to facilitate the purchase of securities underwritten, placed or distributed by a person with which the bank is affiliated through a more than 20 percent shareholding interest.
4. A financial institution shall introduce suitable arrangements and procedures so that it is not placed in a situation where its duty to one customer conflicts with its duty to another, or where its own interest conflicts with its duty to a customer.

Article 22

1. Financial institutions engaged in extensions of credit shall at the outset and then regularly notify their customers of the terms and conditions associated with their deposits or loans, including the annual rate of interest and charges, and the calculation method used.
2. The RMA may make regulations in respect of the making of deposits and granting of credit.

Article 23

Present and former officers, directors, and employees of financial institutions shall keep secret any information they obtain or obtained in the course of their services to the institution. Such information may be divulged only to administrative or judicial authorities under procedures provided by law and, in the case of information concerning the financial affairs of a customer, on the consent of such customer.

Banks

Article 24

Financial institutions licensed as banks may engage in the following activities:

- a. accepting deposits;
- b. extending credit;
- c. operating clearing systems;
- d. providing money transmission services;
- e. issuing guarantees and stand-by letters of credit;
- f. transactions related to bills of exchange, promissory notes, and like instruments;
- g. issuing means of payment (e.g. letters of credit, banker's drafts, traveler's cheques, debit cards);
- h. factoring (receivables financing);
- i. acting as trustee and administrator of estates;
- j. foreign exchange transactions;
- k. financial advice;
- l. purchasing and selling securities;
- m. anything incidental to items a-1 or prescribed by the RMA.

Article 25

Each bank shall ensure that at no time shall the aggregate amount of credit extended to its ten largest borrowers, including economically dependent person, exceed thirty percent of the aggregate book value of its loan portfolio or such lesser percentage as the RMA shall prescribe by regulation from time to time.

Article 26

1. Banks engaged in financial services shall comply with the general regulations that the RMA shall issue when it determines that current conditions affect the stability of the Kingdom's monetary and financial systems. Such regulations may specify:
 - a. requirements concerning the minimum size of liquid resources or specific categories of such resources in relation to the size or change in size of assets and guarantees or specific categories thereof, or in relation to the size or change in size of liabilities or specific categories of liabilities, provided that banks shall be permitted to meet the requirement of liquid resources by maintaining with the RMA deposits of an equivalent value;
 - b. requirements concerning the maximum size of credits made, investments and guarantees, or specific categories thereof;
 - c. prohibitions, restrictions or conditions concerning the types or forms of credits, guarantees or investments made;
 - d. requirements concerning the rates of interest and other charges to be paid by a depository institution, and the maturity and other conditions applicable to deposits, guarantees and other liabilities denominated in Ngultrum or in foreign currency; and
 - e. requirements concerning the rate of interest and other charges, maturity and other conditions applicable to any type or form of financing extended or received, or contingent liabilities entered into, by a financial institution.
2. Such regulations may extend to institutions providing development or merchant banking, commercial or consumer finance.

Securities Activities

Article 27

In relation to any distribution, dealing or market in securities, no person shall:

- a. make a misstatement of material fact or false representation; or
- b. do anything to create a false appearance or engage in any manipulative device or practice not approved in the rules of the RMA.

Article 28

None of the following persons shall deal or get others to deal in securities if they have non-public price-sensitive information about the issuer, or about the plans of the Royal Government or another person in relation to the first mentioned person:

- a. officers and employees of the issuer or of the person;
- b. officers and employees of the Royal Government;
- c. those associated in a professional capacity with the issuer, the Royal Government, or with the other person;
- d. those who obtain the information, directly or indirectly, from the persons mentioned in (a), (b) and (c).

Article 29

In conducting securities dealing, a person or company conducting securities business must :

- a. minimize the risks of its operations and diversify its securities activities, in particular in accordance with any regulations issued by the RMA;
- b. limit its exposure so that the securities of any one person, other than the Royal Government or an agency thereof do not constitute more than the percentage of its portfolio fixed by the RMA;
- c. have the capital laid down in regulations issued by the RMA; and
- d. have its portfolio valued in terms of market price and otherwise comply with accounting regulations issued by the RMA.

Article 30

A person carrying on securities business:

- a. must ensure that a deal it recommends to or effects for a customer is suitable for the customer;
- b. must not deal in the securities of a company immediately prior to it recommending that a customer engage in a similar transaction or engaging in a similar transaction on a customer's behalf;
- c. must not prefer some customers over others, for example, by giving them earlier access to information or by executing their orders first or at better prices;
- d. must not recommend dealing to customers, or deal for customers, for the primary purpose of making commissions;
- e. must provide customers with a contract note following a dealing, and with a customer agreement setting out the information required by regulations issued by the RMA;
- f. must keep moneys of customers in a bank account separate from its own moneys.

Article 31

A financial institution underwriting or offering for sale the issue of securities and any person offering any securities to more than fifty persons must provide a prospectus, which fairly presents the information which a prospective investor would want to know. The prospectus must contain valuation information on the price-earnings ratio of the company, the ratio of the price of the securities to the book value of the issuer, and comparable information about other issuers.

Insurance Activities

Article 32

In this Act and in regulations issued under it:

- a. “general insurance business” means accident, sickness, fire, marine, aviation, motor liability, or miscellaneous insurance business;
- b. “life assurance” means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include :
 - (i) the granting of annuities upon human life;
 - (ii) the granting of health benefits where a person becomes incapacitated for a period of not less than five years, until retirement or without limit of time;
 - (iii) the granting of superannuation allowances and annuities payable out of a fund applicable solely to the relief and maintenance of persons engaged or who has been engaged in any particular profession, trade, or employment or of the dependents of such persons.

Article 33

1. A person conducting an insurance business shall in respect of each type of insurance business maintain a separate account and separate accounting records, setting out the assets and liabilities for each type.
2. The receipts of each type of insurance business shall form a separate insurance fund and shall be applicable only for the purposes of that type of business.

Article 34

1. The RMA may prescribe for each type of insurance business the extent to which its assets must exceed its liabilities (the margin of solvency).
2. If the margin of solvency falls below that set by the RMA, the person must immediately prepare plans for the restoration of its financial position and must implement it (or its modified version) when approved by the RMA.

Article 35

The RMA may require a person carrying on insurance business.

- a. not to make investments of a specified kind;
- b. to hold its assets in a specified form, manner, or place;
- c. to charge premiums or fees within specified limits;
- d. to act as the RMA considers it necessary for the purpose of protecting policy holders.

Article 36

1. A person carrying on life assurance business must appoint an actuary who must be approved by the RMA.
2. At least every twelve months, and at such other times as the RMA requires, a person carrying on life assurance business must have its actuary value its assets and liabilities in relation to that type of business. The actuary's report must be sent immediately to the RMA.
3. If as a result of the valuation any surplus emerges, eighty percent of it (or such higher percentage as the RMA requires) may be distributed to (or reserved for the policy holders. The remainder may be paid as a dividend to shareholders in the case of a company or be utilized for such purposes as the RMA requires.

Article 37

If for any financial year profits accrue from any type of general insurance business, then after making provision for reserves and other matters for which provision is necessary or expedient, the balance of such profits may be paid as a dividend to shareholders in the case of a company.

Article 38

At any time the RMA may require in respect of a person carrying on insurance business to prepare a statement with respect to any type of insurance business, annexing any certificates required in respect of particular matters.

Investment Company Activities

Article 39

1. Investment companies must not advertise, offer, or sell any share in the investment company without providing prospective investors with a prospectus approved by the RMA.
2. In addition to the information required by Section 19 of the Companies Act 1989, the prospectus must contain:
 - a. a statement of the company's investment policies and objectives, including any limitation on imposed investments of particular types;

- b. how investors can redeem their shares in the company;
- c. a description, including the amount, of selling, management, and redemption fees and charges;
- d. the qualifications, background, and experience of the management of the investment company or its investment advisor (if any);
- e. the past financial performance of the investment company or of any investment company with which the management has been associated in the last five years;
- f. such other information which RMA deems necessary for informed decisions by prospective investors in the fund.

Article 40

The RMA may require an investment company :

- a. not to make investments of a specified kind;
- b. to hold its investments in a specified form, manner, or place;
- c. not to exceed specified fees and charges;
- d. to act as the RMA considers necessary for the purpose of protecting investors.

Asset Management

Article 41

1. A person conducting an asset management must act in the sole interest of the owners of the assets and at their direction (or at the direction of their designated agent or in accordance with a direction given in accordance with their internal procedures).

Separate accounts and accounting record must be kept for the assets being managed of each individual or group of individuals.

The assets being managed are not the assets of the asset manager; they are to be treated as a separate fund in the event of the insolvency of the asset manager and do not form part of his estate.

2. A person carrying on asset management:
 - a. must ensure that the transactions it effects for a customer are suitable for the customer;

- b. must not prefer some customers over others or prefer its own interest over that of its customers;
- c. must not deal for a customer for primary purpose of being able to charge its customer a fee;
- d. must provide customers quarterly with a statement setting out the changes in the value of the assets on a quarterly and year-to-year basis, the composition of the portfolio in general terms (cash, shares, bank deposits etc.), and such other matters as the RMA prescribes.

Article 42

Article 40 shall apply mutatis mutandis to the assets of an asset manager.

Investment Advice

Article 43

- 1. A person giving investment advice:
 - a. must disclose in writing whether it is giving independent advice or whether it has any material interest in the investment opportunity recommended;
 - b. in recommending a specific opportunity, must have engaged in a reasonable search of investment opportunities available to the customer and satisfied himself that this opportunity is suitable for the customer and is the best opportunity available.
- 2. Article 40 shall apply mutatis mutandis to a person giving investment advice.

Part VI

CERTAIN PROHIBITED ACTIVITIES

Article 44

- 1. Financial institutions carrying on banking activities shall not, directly or indirectly, without prior written authorization from the RMA:
 - a. purchase shares, become partner in, or acquire an interest that in the aggregate amounts to more than twenty percent of the equity of projects or enterprises, or come under common ownership with, or become owned to more than twenty percent of its equity by enterprises other than financial institutions (or such other related activities as the RMA shall designate by regulation); and
 - b. permit the investments described under paragraph a. to exceed the equivalent of 25 percent of the financial institutions' net worth.

2. A person who has more than the holding specified in Section (1) does not have the power to exercise any rights attached to the holding, and the court may order him to dispose of the whole or a part of it.
3. The above prohibitions of Section 1 shall not apply in the following cases:
 - a. acquisition of shares or other interests by way of repayment of credit granted, in which case the purchasing institution in question shall dispose of all shares or interest acquired within one year, unless an extension is granted by the RMA;
 - b. acquisition of shares or other interests as an agent; and
 - c. acquisition of shares for the purpose of reselling them to third parties (underwriting).

Article 45

1. Financial institutions shall be prohibited from entering into contracts or agreements or adopting practices of any kind which would secure them a position of dominance on the money, financial or foreign exchange markets, or from engaging in misleading, fraudulent, or manipulative practices in order to obtain an unfair advantage for themselves or for third parties.
2. Without prejudice to the generality of Section 1, persons licensed under this Act must not engage in:
 - a. eliminating or substantially damaging a competitor of the person or of a person that is related to the person in that or any other market;
 - b. preventing the entry of a person into that or any other market; or
 - c. deterring or preventing a person from engaging in competitive conduct in that or any other market.

Article 46

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

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

Article 47

A financial institution shall not extend credit or provide any service or fix or vary the consideration therefore on the condition that the customer shall obtain credit or some service from that company or from related persons, as defined in Article 48.

Part VII

BUSINESS WITH PERSONS RELATED TO A FINANCIAL INSTITUTION

Article 48

1. Financial institutions may conduct business with related persons only in accordance with the provisions of this Part.
2. For the purposes of this Act, persons related to a financial institution shall mean:
 - a. the members of the Board of Directors and Departmental Heads;
 - b. the members of the Audit Committee;
 - c. companies controlling the institution and their principal shareholders or administrators;
 - d. spouses or relatives, up to the third degree of consanguinity, of members of the Board of Directors or Audit Committee, departmental directors, administrators, or shareholders of the controlling company;
 - e. companies in which one of the person referred to above has a direct or indirect equity interest equal to or exceeding ten percent of the authorized capital stock; and
 - f. persons with qualifying holdings in the financial institution and any company under their direct or indirect control.
3. For the purposes of this Article:
 - a. "control" with respect to a company or other business enterprise include :
 - (i) owning more than fifty percent of any class of voting securities;
 - (ii) having the power to elect a majority of the directors or of another policy-making body; or
 - (iii) otherwise exercising a controlling influence over the management or policies of a company or enterprise;
 - b. legal entities under public law controlling a public or both public and privately owned financial institutions and their administrators as well as any legal entity directly or indirectly controlled by them, and its directors or administrators, shall also be considered persons related to such financial institution; and
 - c. persons related to any of the companies constituting a group of companies affiliated by virtue of share-holding or economic dependency shall be considered related to each of the companies in the group.

Article 49

1. Financial institutions shall not grant favoured terms to related persons.

- 2 For the purposes of this Article, “granting favoured terms” shall mean :
- a. carrying out a business which, by its nature, purpose, characteristics, or risk, would not be carried out by the institution with other customers; and
 - b. collecting interest, fees, or other charges or accepting guarantees which are lower, or paying interest which is higher, than that required of other customers.

Article 50

1. Financial institutions shall do business with related persons only if so authorized by their Board of Directors based on a report of their departmental heads including a description of the relationship involved, an analysis of the transaction concerned and of the financial situation and income of the applicant, and an assessment of the applicant’s creditworthiness.
2. Members of the Board of Directors with an interest in the transaction, or who are related by marriage, blood, kinship, or business interests with the person related to the financial services company shall be required to leave the meeting during the time in which the board is deliberating and deciding on the transaction in question.
3. Persons related to financial institutions other than directors and executive officers whose obligations are described in Section 5 of Article 11, shall be required to file statements of financial interest as may be prescribed from time to time by the RMA.

Part VIII

ACCOUNTS, AUDITING, REPORTING REQUIREMENTS, INSPECTION

Article 51

1. A financial institution must at all times keep such records in Bhutan as are necessary to exhibit clearly and correctly the state of its affairs, to explain its transactions and financial position, and to enable the RMA to determine whether it has complied with the provisions of this Act.
2. The records required by Section 1 must be kept for a period of at least five years.
3. Not later than three months after the expiration of its financial year, a financial institution must prepare in respect of all business transacted by it in that year, a balance sheet and profit and loss account as of the last working day of that year, in such form as the RMA may approve, audited in accordance with the provisions of this Act.
4. A financial institution must send the balance sheet, profit and loss account and auditor’s report described in Section 1b of Article 52 to the RMA within 14 days of its preparation, must publish them as the RMA directs, and must keep a copy of them available for inspection by members of the public for at least a year in each of its places of business in Bhutan.

5. In the event that a financial institution has an equity interest in one or more other financial institutions equivalent to more than fifty percent of the capital of each such other company, or the financial institution effectively controls one of more or other financial institutions, the before mentioned accounts, records and financial statements shall also reflect the financial condition of such other companies on a consolidated as well as on an unconsolidated basis.
 - a. For the purposes of this Section, "control" shall have the meaning set forth in Article 48, Section 3.

Article 52

1. An independent auditor approved by the RMA shall be appointed by each financial institution and shall have the following duties:
 - a. to assist the financial institution in keeping adequate accounts and records of its operations and transactions in accordance with sound accounting principles;
 - b. to prepare in accordance with generally accepted auditing practices, an annual report on the balance sheet and profit and loss account of the financial institution and to deliver an opinion as to whether the financial statements of the financial institution adequately reflect the financial position of the financial institution and its solvency; and
 - c. to inform the Board of Directors of the financial institution and the RMA of any irregularities or deficiencies observed in the operations, transactions, records or accounts of the financial institution which could result in material losses for the financial institution or its customers.
2. In the case of a termination of the engagement of an independent auditor by a financial institution, both the institution and the auditor shall inform the RMA of the reasons therefore within fifteen days of the termination.

Article 53

For each bank, the auditor's report and the balance sheet for the financial year shall be published in a newspaper of general circulation as indicated by the Board of Directors and approved by the shareholders.

Article 54

1. All financial institutions shall be subject to inspections by RMA inspectors or by auditors appointed by it. In their inspections of financial institutions, the RMA and its auditors may:
 - a. examine the assets, accounts, and related documentation, the corporate books, and any documents in the archives of the institution; and

- b. require controllers, administrators, agents, deputies and employees of the institution to provide all such information on any matter relating to its organization and operation as they shall reasonably request.
2. The RMA may call for any information or document that it may require for the purpose of the administration of this Act from any financial institution, and that person must provide the information within any stated period.
3. No director, manager or other employee of a financial institution shall obstruct the proper performance by an auditor or his duties, or a lawful examination of an institution, or make a false misleading statement or entry in any account, report or in any information provided to the RMA.
4. For the purposes of determining the condition of a financial institution, and its compliance with the provisions of this Act, the RMA may examine, or cause to be examined, a person that controls or is controlled by a financial institution.

Article 55

1. Banks shall be required to prepare periodic reports using forms issued by the RMA, providing sufficient information on their administration and operations, liquidity, solvency, profitability, and such other information that the RMA may require for an assessment of their financial condition.
2. The reports shall be prepared in accordance with the accounting standards established by the RMA.
3. In the event that the bank has an equity interest in one or more other companies engaged in financial services equivalent to more than twenty percent of the amount of its authorized capital stock, the reports shall also provide the required information with respect to such other companies on a consolidated basis, as well as on an unconsolidated basis.

Article 56

1. Each bank shall have an Audit Committee consisting of three members appointed by the shareholders. The Audit Committee shall:
 - a. monitor compliance with the laws and regulations applicable to the bank and report to the Board of Directors such situations as it feels should be reported; and
 - b. deliver opinions on any matters submitted to it by the Board of Directors.
2. The Audit Committee shall meet ordinarily once per quarter and extraordinarily when convened by the Board of Directors. Decisions shall be taken by majority of the members present and no abstentions shall be allowed.
3. The Audit Committee may be assisted by experts specially appointed or engaged for this purpose.

4. Directors, managers and other officers of a bank must notify the Audit Committee of any error or misstatement of which they become aware in any account, report or information provided under this Part.

Article 57

The provisions of this Part shall apply to branch offices of foreign financial institutions in respect of all business transacted through places of business in Bhutan. Statutory or regulatory provisions requiring financial statements may be satisfied for the branch office by financial statements prepared on a proforma basis. An Audit Committee or other administrative organ of the foreign bank may function as the Audit Committee of the branch for the purposes of this Act.

Part IX

INFRACTIONS AND PENALTIES

Article 58

1. The actions and penalties provided for infractions described in this Part shall be determined in particular cases by the RMA. Any party aggrieved may appeal such administrative determination to the courts of law (in accordance with the then applicable procedures).
2. If the RMA determines that there has been an infraction by a financial institution, by one or more of its officers or directors, or by any other person with respect to (i) the violation of a provision of this Act or of a regulation of the RMA pursuant thereto; (ii) the breach of fiduciary duty in transactions covered by this Act; or (iii) the unsafe or unsound operation of a financial institution, it may take the following actions or impose the following penalties:
 - a. Issue warnings;
 - b. Conclude written agreements for the company to undertake remedial measures, including those limiting the operations of the institution engaged in financial services;
 - c. Issue orders to cease and desist from such infractions;
 - d. Impose fines up to Nu. 5000 per day for each day that the infraction continues;
 - e. Suspend temporarily or permanently officers or directors from duties in the financial institutions;
 - f. Order conservatorship in the case of bank in accordance with the provisions of part X;
 - g. Revoke the license to operate.
3. The administrative penalties provided in this Article shall not preclude application of other civil penalties or criminal penalties as provided in other applicable legislations in force.

4. Penalties shall be applied in accordance with the seriousness of the offence and its impact on the financial institution's assets.
5. The failure of a person to comply with any direction or requirement, or contravention of any prohibition imposed on it under this Article shall be of itself a ground for revocation of a license.
6. These penalties shall apply to any individual or legal entity which violates this Act by engaging, without a license, in activities for which a license is required under this Act.
7. Any fines imposed in accordance with this Article shall be paid to the Royal Government.

Article 58A

1. A person who is guilty of an offence under this Act is punishable by imprisonment of not more than 60 months or fine of not more than Nu. 25,000/- or both.
2. Such offence is committed by a person who :
 - a. does an act or thing that he is forbidden to do by or under provision of this Act;
 - b. does not do an act or thing that he is required or directed to do by or under a provision of this Act;
 - or
 - c. otherwise contravenes or fails to comply with a provision of this Act.

Article 59

A financial institution shall reveal to the RMA any evidence of serious criminal activity either in the Kingdom or abroad which it suspects is associated with the use of a bank account or its proceeds, or if it suspects that investments are the product of serious criminal activity either in the Kingdom or abroad.

Part X

CONSERVATORSHIP; LIQUIDATION

Article 60

1. The RMA may place a financial institution under conservatorship:
 - a. when the RMA is satisfied that its business is being conducted in an unlawful or imprudent manner, or that it is otherwise in an unsound condition;
 - b. when the continuation of its activities is not in the best interest of its customers : or
 - c. when the RMA has served a notice revoking its license.

Article 61

The decision ordering conservatorship shall indicate:

- a. the reasons for the conservatorship;
- b. the name of the conservator appointed, who may or may not be an official of the RMA;
- c. the duration of the conservatorship;
- d. the possible freezing of deposits or other customer funds in the institution; and
- e. measures applicable to the officers and directors of the institution, including sequestration of their personal assets to guarantee payment of possible losses to third parties.

Article 62

1. The conservatorship shall take effect on the date of posting of public notice or publication in the Official Newspaper of the decision ordering conservatorship.
2. Acts on behalf or for the account of the institution that occur without the prior approval of the conservator after the date of such publication shall be null and void unless the conservator otherwise decides.
3. The appointment of the conservator shall, until the end of conservatorship, suspend the terms of office of the administrators. They shall return to their duties only if they are not disqualified by the RMA.
4. The conservator shall as soon as possible apply for the necessary changes in the list of authorized officials of the institution that is kept by the RMA.
5. During the period of the conservatorship, no execution of any judgment can be effected against the property of the institution.

Article 63

The conservator appointed by the RMA shall have broad managerial powers and shall be authorized to adopt any measures required to normalize the situation of the institution, including the closure of branches, agencies, and other such offices and dismissal of officers and employees deemed by him to be redundant or unfit to perform their duties.

Article 64

If required for the rehabilitation of the institution, the conservator may at any time declare deposits and investments by the public in the institution to be totally or partially blocked for a maximum period of one year, provided that measures are taken which, in the opinion of the conservator, will preserve the approximate value of these deposits and investments.

Article 65

The extraordinary provisions set forth in Part X shall apply only as long as the causes which gave rise to them persist.

Article 66

During this period, the RMA may provide financial support to the institution under conditions to be specified in order to make up any temporary liquidity deficiency.

Article 67

Funds provided by the RMA to the institution during the conservatorship shall be senior to and shall have priority over all other liabilities of the institution.

Article 68

If during or at the end of the conservatorship the RMA deems the rehabilitation of the institution to be more costly than its dissolution it shall declare the institution insolvent and liquidate it. In assessing the cost of rehabilitation, the RMA shall take into account the availability of other sources of the financial services provided by the institution in conservatorship.

Article 69

The conservatorship shall cease:

- a. at the end of the term established if there is no extension; or
- b. if the RMA deems that the institution can operate normally; or
- c. upon liquidation of the institution in accordance with the law.

Part XI

TRANSITORY AND MISCELLANEOUS PROVISIONS

Article 70

1. The RMA may, after consulting such persons as it thinks appropriate, make regulations pursuant to this Act for regulating the circumstances and manner of:
 - a. the licensing of banks, securities business and other persons required to be licensed under this Act;
 - b. the operation of licensed institutions; and
 - c. the administration of this Act.
2. Without prejudice to the generality of Section 1, regulations may make provision for any of the following purposes :
 - a. notifying the criteria and information required for the licensing of a person under this Act; and

- b. prescribing anything which under this Act can be prescribed.

Article 71

The provisions of the Companies Act that shall apply to financial institutions are specifically incorporated by reference in Article 11 of this Act.

Article 72

1. Companies that engage in financial services described in Article 1, Section 1a at the time that this Act enters into force, shall be deemed to be licensed to operate as a financial institution as if its license had been issued pursuant to the provisions of this Act. The RMA shall specify which activities the financial institution may engage in.
2. A financial institution whose organizational structure, financial condition or operations do not conform to the requirements of this Act shall come into compliance with this Act and regulations issued pursuant thereto within one year from the enactment of this Act or of the issuance of such regulation.

Article 73

1. Any person who offers or sells a security in violation of the provisions of Articles 27, 28, 31 or 39 of this Act shall be liable to the person purchasing such security from him who may seek to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security, in any court of competent jurisdiction in an action against a person who is not a financial institution, or in accordance with the procedures of Section 2 of this Article.
2. In the absence of specific contractual provisions to the contrary, all disputes arising out of or in connection with transactions between financial institutions and their customers shall be submitted for resolution in the first instance in accordance with procedures to be issued by the RMA.
 - a. Compliance with procedures under Section 2 shall be a condition precedent to the later submission of the matter by a party to the courts of law.

Article 74

All regulations, orders and guidelines issued by the RMA that apply to more than one financial institution shall become effective upon posting of a public notice or upon publication in the Official Newspaper of the Kingdom or on such later date as such regulation, order or guideline shall specify.

Article 75

1. The RMA, after consultation with the Royal Government and such other persons as it deems appropriate, may make regulations in relation to the provision of financial services in the following areas:
 - a. bills of exchange, cheques, and other negotiable instruments;

- b. credit and guarantee agreements, including financial leasing;
 - c. debt recovery, including the establishment of a system of conciliation and arbitration for disputes arising out of the provision of credit, guarantees, and security;
 - d. the granting, enforcement, and registration of security agreements; and
 - e. any ancillary matters.
2. Such regulations shall:
- a. facilitate commercial transactions and the efficient and speedy resolutions of disputes arising out of them;
 - b. be consistent with international conventions and the principles of commercial law in modern legal systems;
 - c. ensure that the terms of contracts drawn by those providing financial services will be full and fair and in so clear a form that they are easy to read and understand; and
 - d. ensure that the customer is given a fair and balanced explanation of those terms, especially the basis of calculating the amount of charges including interest and of the possible consequences of granting guarantees and security.

Article 76

The Royal Monetary Authority Act 1982 is amended as follows:

1. Delete the definitions of “bank”, “banking business”, “financial institution” and “credit institution” in Section 2, and substitute therefore the definitions of “bank” and “financial institution” contained in Article 1, Section 1a. of the present Act.
2. Delete “banking business” in Section 6 (c) and substitute “banks” and other financial institutions subject to the Financial Institutions Act of 1992”.
3. Delete “five” million in Section 9 (1) where first occurring and substitute “one hundred million”.
4. Delete “two times” in Section 11 (1) where occurring and substitute “three times”.
5. Insert after “be” where occurring in Section 21 (4) the words “the only”.
6. Delete the title of Section 42 “Acquisition of evidence of indebtedness issued by the government” and substitute “Acquisition and Issuance of evidence of indebtedness” and reframe the Section as follows:

Section 42. The authority may:

- a. Purchase, hold and sell notes, bills, securities or other evidence of indebtedness issued or guaranteed by the Government bodies, which were publicly for sale or form part of an acquisition by the authority; and
 - b. itself issue notes, bills, securities and other evidences of indebtedness, whether in Ngultrum or in other currencies, and may hold, sell or purchase the same.
7. Delete Part XII of the Royal Monetary Authority of Bhutan Act in its entirety.

Article 77

This Act shall enter into force on 1 November 1992. Legislation which is inconsistent with the provisions of this Act shall be revoked. The legislations establishing the existing financial institutions shall be deemed to have been revoked and they will be required to execute Articles of Association in accordance with the provisions of Article 11 of this Act.