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CORPORATE REGULATORY AUTHORITY

ཚོང་ལྷན་གཅིག་བསྐྱེད་བཅའ་ཡིག་ ༢༠༢༤ ཅན་མ།  
REGULATIONS FOR AMALGAMATION OF  
COMPANIES IN BHUTAN, 2024

ROYAL GOVERNMENT OF BHUTAN  
MINISTRY OF INDUSTRY, COMMERCE, AND EMPLOYMENT



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## **REGULATIONS FOR AMALGAMATION OF COMPANIES IN BHUTAN, 2024**

In exercise of the powers vested by Section 410 (b) of the Companies Act of Bhutan 2016, the Corporate Regulatory Authority hereby adopts the Regulations for Amalgamation of Companies in Bhutan, 2024 for Companies in Bhutan, to enable regulation and registration of Amalgamation as follows:

### **PART I PRELIMINARY**

#### **Title and Commencement**

1. This Regulation shall:
  - (1) be called the Regulations for the Amalgamation of Companies in Bhutan, 2024; and
  - (2) come into force on September 1, 2024.

#### **Application**

2. This Regulation shall apply to every company under the Companies Act of Bhutan 2016.

## **PART II**

### **GENERAL RULES**

3. The general rules to be observed during the Amalgamation proceeding shall be as follows:
- (1) Individuals involved in the takeover or merger transactions must adhere not only to the explicit wording but also to the underlying principles of the General Principles and Rules.
  - (2) Every shareholder of the same class in the offeree company must be treated equally by the offeror.
  - (3) Rights of control must be exercised in good faith, and oppression of the minority is wholly unacceptable.
  - (4) An offeror should announce an offer only after the most careful consideration and diligent assessment in accordance with the stipulations outlined in these Regulations.
  - (5) Before taking any action that may lead to an obligation to make a general offer, a person and their financial advisers should ensure that they can and will continue to be able to implement the offer in full.

- (6) The financial adviser to any party to the offer should be independent and authorized by the Corporate Regulatory Authority (CRA).
- (7) Shareholders are entitled to receive adequate information and counsel from their board of directors. Facilitating them in arriving at a fully informed judgment, and they must be granted an ample time frame to accomplish this. No relevant information should be withheld from them. The CRA retains the prerogative to issue directives aimed at fulfilling the objectives of this provision.
- (8) Any document or advertisement addressed to shareholders containing information, opinions, or recommendations from the board of an offeror or offeree company or its advisers should meet the highest standards of care and accuracy applied to the documentation of a prospectus.

## **PART III**

### **PROCEDURE FOR APPROVAL AND CONTENTS OF AMALGAMATION**

#### **Amalgamation proposal**

4. Two or more companies may amalgamate and continue as one company, which may be either:
  - (1) one of the amalgamating companies (a takeover or acquisition), or
  - (2) a new company (a merger).
  
5. The board of each amalgamating company shall resolve that:
  - (1) in their opinion the amalgamation is in the best interest of the company; and
  - (2) they are satisfied on reasonable grounds that immediately after the amalgamation becomes effective:
    - a. the company will be able to pay its debts as they become due in the normal course of business; and
    - b. the value of the company's assets will be greater than the value of its liabilities, including contingent liabilities.



6. The board of each amalgamating company shall, not less than twenty working days before the amalgamation is proposed to take effect:
- (1) send to each shareholder of the company a copy of the amalgamation proposal and such other information as may be prescribed;
  - (2) send a copy of the amalgamation proposal to every secured creditor of the company;
  - (3) send a copy of the amalgamation proposal to the Registrar and, if any amalgamating company is a listed company, to the CRA for confirmation; and
  - (4) give public notice of the proposed amalgamation.

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

### **Powers of Court in respect of an amalgamation proposal**

7. If the court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a shareholder or creditor of an amalgamating company or a person to whom an amalgamating company is under obligation, it may, on the application, made at any time before the date on which the amalgamation becomes effective, of that person or the CRA, make any order it thinks fit in relation to the proposal, and may, without limiting the generality of this section, make an order:
  - (1) directing that effect shall not be given to the proposal;
  - (2) modifying the proposal in such manner as may be specified in the order;
  - (3) directing the company or its board to reconsider the proposal or any part of it.
8. Any order may be made under section 11 of this Regulation on such conditions as the Court thinks fit.

9. For the purpose of effecting an amalgamation, there shall be delivered to the CRA for registration:
- (1) An amalgamation proposal approved by the general meeting along with the special resolution of the shareholders;
  - (2) A signed declaration of solvency by directors;
  - (3) Board resolution signed by the board of each amalgamating company stating that the amalgamation has been approved in accordance with this regulation and the Articles of Incorporation of the company;
  - (4) If the amalgamated company is a new company or the amalgamation proposal provides for a change of the name of the amalgamated company, confirmation of clearance of the proposed name from the CRA;

- (5) A consent to act as a director signed by each of the persons named in the amalgamation proposal as a director of the amalgamated company containing his/her consent to be a director and a declaration of compliance that he/she is not disqualified from being appointed or holding office as a director of a company.
  - (6) No objection letter from all lending financial institutions or creditors on the proposed amalgamation.
  - (7) No objection letter from the respective Sector Regulatory Authority.
10. If a shareholder, creditor, or a person to whom an amalgamating company is under a legal obligation to, or the CRA believes that giving effect to the amalgamation proposal would unfairly prejudice their interest, they may approach the nearest district court in keeping with section 301 of the Companies Act, at any time before the date on which the amalgamation becomes effective.

### **Amalgamation Proposal Fees**

11. The applicant shall pay the amalgamation registration fee as prescribed in CRA fee schedule, along with the signed copy of the amalgamation report to the Corporate Regulatory Authority.

### **Content of Amalgamation proposal**

12. An amalgamation proposal shall set out the terms of the amalgamation, and in particular:
  - (1) the name of the amalgamated company, if it is the same as the name of one of the amalgamating companies or if new name is adopted for the amalgamated company;
  - (2) the proposed registered office of the amalgamated company;
  - (3) the full names and residential addresses of the directors of the amalgamated company;
  - (4) The share structure of the amalgamated company, specifying the number of shares of the company;

- (5) the rights, privileges, limitations, and conditions attached to each share of the company;
- (6) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company. If shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company;
- (7) Any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph 6)
- (8) Details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

- (9) May specify the date on which the amalgamation is intended to become effective and shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal shall provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective. It shall not provide for the conversion of those shares into shares of the amalgamated company.

### **Certificate of Amalgamation proposal**

13. On receipt of an amalgamation proposal and other documents required by section 15 of this Regulation, the Corporate Regulatory Authority shall:
  - (1) if the amalgamated company is the same as one of the amalgamating companies, issue a certificate of amalgamation; or
  - (2) if the amalgamated company is new, enter the particulars of the company on the register and issue a certificate of amalgamation together with a certificate of incorporation.

14. If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of amalgamation, and any certificate of incorporation shall be expressed to have effect on the date specified in the amalgamation proposal.
15. Any amalgamating company other than the amalgamated company shall be deemed dissolved with effect from the date specified in the certificate of amalgamation as being the date on which the amalgamation is to become effective.



## **PART IV**

### **TAKEOVER CODE PROCEDURE**

#### **Mandatory Offer**

16. Where a person or a group of persons acting in concert increase ownership of shares in a given company through a restricted purchase of shares or a restricted offer for shares so that such person or those with whom such person is acting in concert become the owner of 50% or more of a given class of voting shares listed on the Exchange, the Board shall have the right to exercise its power under the relevant law to order such person to offer to purchase the shares of the same class it does not own under the other relevant provisions of these Regulations.
17. Where a person or persons acting in concert:
  - (1) acquires or intends to acquire more than thirty percent (30%) but less than fifty percent (50%) of the voting shares of a public company in any 12 months; or

- (2) acquires or intends to acquire fifty percent (50%) or more of the voting shares of the public company; or
- (3) acquires a company that holds effective control in the public company or together with the shares already held, will result in acquiring effective control of the public company,

The person shall be obliged to make a takeover offer of such a public company and shall be required to comply with the takeover procedures set out under this Regulation.

- 18. Without prejudice to Rules 15 and 16 above, no person shall acquire effective control over a target company unless such person makes the same offer to all shareholders of the same class of such company under these Rules.

19. The Mandatory Takeover offer requirement may not apply to situations including the following:
- (1) any purchase of shares from un-issued shares provided that the acquisition will not result in fifty percent (50%) or more ownership shares by the purchaser;
  - (2) any purchase of shares from an increase in authorized share capital;
  - (3) acquiring of shares through inheritance;
  - (4) purchase in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement where the acquisition is made by the debtor or creditor;
  - (5) purchases in connection with privatization undertaken by the Government of Bhutan; and
  - (6) purchases in connection with liquidation or insolvency under court supervision.

## **Takeover Offer Announcement and Takeover Timetable**

20. A public announcement is required:

- (1) When a company is considering a potential takeover an approach to a potential offeree company has been made and the parties have reached an understanding (including the relevant conditions) that an offer will be made;
- (2) When a firm intention to make an offer (the making of which is not, or has ceased to be, subject to any pre-condition) is notified to the board of the offeree company from a serious source, irrespective of the attitude of the board to the offer;
- (3) Immediately upon an acquisition of shares by that person which gives rise to an obligation to make an offer or permission to make an offer. The announcement should not be delayed while full information is being obtained; additional information can be the subject of a later supplementary announcement;

- (4) When, following a bid approach, a company's shares are the subject of rumor and speculation or where there is a price movement of 20% or more above the lowest share price since the time of the approach.
- (5) When, before a bid approach has been made, the offeree company is the subject of rumor and speculation or where there is a price movement of 10% or more in a single day and there are reasonable grounds for concluding that it is the potential offeror's actions which have led to the situation;
- (6) When negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers); or

- (7) When a purchaser is being sought for a holding, or aggregate holdings, of shares listed on the Royal Securities Exchange of Bhutan (RSEB), carrying 30% or more of the voting rights of a company or when the board of a listed company is seeking one or more potential offerors; and
- (8) the company is the subject of rumor and speculation or there is a price movement of 20% or more above the lowest share price since the time of the approach or a price movement of 10% or more in a single day, or the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.

### **Responsibilities of Offeror and Offeree Company**

- 21. Before the board of the offeree company is approached, the responsibility for making an announcement lies only with the offeror. The offeror should, therefore, keep a close watch on the offeree company's share price for any signs of movement.

22. Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price for any untoward movement of 20% or more above the lowest share price since the time of the approach or a price movement of 10% or more in a single day. Where the offer is to be recommended and an application to the Corporate Regulatory Authority to grant a temporary suspension of trading in accordance with the Listing Rules is submitted and the Corporate Regulatory Authority has granted such suspension, a possible alternative to an immediate announcement may be to obtain a suspension to be followed shortly by an announcement.
23. A potential offeror must not attempt to prevent the board of an offeree company from making an announcement or requesting the Corporate Regulatory Authority to grant a temporary suspension of trading, in accordance with the Listing Rules.
24. The responsibility to make an announcement is a joint responsibility of the potential offeror and offeree company.

## **PART V**

### **EFFECT OF AMALGAMATION**

25. On the date shown in the certificate of amalgamation:
- (1) the amalgamation is effected;
  - (2) if it is the same as the name of one of the amalgamating companies, the amalgamated company has the name specified in the amalgamation proposal;
  - (3) the amalgamated company succeeds to all the property, rights, powers, and privileges of each of the amalgamating companies;
  - (4) the amalgamated company succeeds to all the liabilities and obligations of each of the amalgamating companies;
  - (5) Proceedings pending by, or against, an amalgamating company may be continued by, or against, the amalgamated company;
  - (6) A conviction, ruling, order, or judgment in favour of, or against, an amalgamating company may be enforced by, or against, the amalgamated company; and



- (7) Any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their terms.
- 26. The presentation to any person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company:
  - (1) executed or purporting to be executed by the amalgamated company; and
  - (2) relating to any property held immediately before the amalgamation by an amalgamating company; and
  - (3) stating that property has become the property of the amalgamated company by virtue of Chapter 12 of the Companies Act of Bhutan 2016, shall, in the absence of evidence to the contrary, be sufficient evidence that the property has become the property of the amalgamated company.

## **PART VI**

### **OFFENSES AND PENALTIES**

#### **Complaints**

27. If a shareholder, creditor, or a person to whom an amalgamating company is under a legal obligation, may submit complaints to the CRA if there is reasonable suspicion of violation of the provisions of this Regulations and Companies Act of Bhutan 2016.
  
28. If there is any complaint or suspicion of insider trading during an offer period, and the offeror and persons acting in concert sell any securities in the offeree company without prior consent from the CRA, the CRA may initiate an investigation or take appropriate legal action on the allegation, forwarding the case for prosecution by law enforcement agencies.

## **Offenses and Penalties**

29. In the event of deliberate misrepresentation or omission of information and relevant documents, the applicant shall be punished with a fine up to Nu. 1,000,000/-, and if such omission or commission is proven to be committed by the applicant with the knowledge of all or any of its Board Directors, every such director shall be punishable with a fine up to Nu. 1,000,000/-.
30. Any person, who violates any provision of this Regulations, may be liable for financial sanctions not exceeding Nu. 100,000/- per violation, or be issued with such other appropriate orders by CRA, if not expressly provided in this Regulations.

## **Definitions**

31. For this regulation, unless the context otherwise requires:
- (1) The Act means the Companies Act of Bhutan, 2016.

- (2) The Amalgamating company means the company(s) subject to the amalgamation process or undergoing amalgamation proceedings under sections 296 to 306 of the Companies Act.
- (3) The Amalgamated company means the company(s) that has emerged from the process of amalgamation, either by acquisition or merger process and adopted to be the new company
- (4) The amalgamation means a process where two or more companies may amalgamate and continue as a new (i.e., merger) or where one of the amalgamating companies continue as an amalgamated company (takeover or acquisition).

**ANNEXURE**

**Certificate of Amalgamation**

I hereby certify that \_\_\_\_\_ and  
\_\_\_\_\_ have been amalgamated and continue  
as a single company named \_\_\_\_\_.

Given under my hand at Thimphu this \_\_\_\_\_ year  
\_\_\_\_\_ month and \_\_\_\_\_ day.