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**CORPORATE REGULATORY AUTHORITY**

**REGULATIONS FOR BUY-BACK OF SHARES, 2024**

**ROYAL GOVERNMENT OF BHUTAN**

**MINISTRY OF INDUSTRY, COMMERCE, AND EMPLOYMENT**



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## **REGULATIONS FOR BUY-BACK OF SHARES, 2024**

In exercise of the powers vested by Section 410 (b) of the Companies Act of Bhutan 2016, the Corporate Regulatory Authority (CRA) hereby adopts the Regulations for the Buy-back of shares, 2024 for all companies, to provide rules and procedures on buy-back of shares, as follows:

### **PART I**

#### **PRELIMINARY**

##### **Short Title and Commencement**

1. This Regulation shall:
  - (1) Be called the Regulations for Buy-back of Shares, 2024; and
  - (2) Come into force on September 1, 2024.

##### **Scope**

2. This regulation shall govern the buy-back of equity shares by all companies.

**PART II**  
**PRIMARY MARKET REGULATORY COMMITTEE**  
**AND FUNCTIONS**

3. There shall be a Primary Market Regulatory Committee (PMRC) established under this Regulation to carry out the functions delegated by the Corporate Regulatory Authority (CRA) in this Regulation.

**Quorum**

4. There shall be a minimum of three members to constitute a quorum for the meeting.

**Decision**

5. The decisions at the Primary Market Regulatory Committee shall be taken by the majority of members voting in favor of any resolution, and in case of equality of votes, the Chairperson of the Committee shall have a casting vote.

## **PART III**

### **CONDITIONS FOR BUY-BACK OF SHARES**

#### **Conditions**

6. The PMRC may approve the proposed buy-back of shares by companies, upon fulfillment of the following conditions, among others:
  - (1) The articles of the Incorporation shall contain provisions to enable the buy-back of shares and in the absence of relevant provisions to this effect, the articles are to be amended in accordance with the provisions of the Companies Act, 2016.
  - (2) Buy-back shall be authorized by a special resolution in a general meeting.
  - (3) The company shall have a debt-equity ratio not exceeding 2:1 or higher ratio after the completion of the buy-back.
  - (4) All shares for buy-back shall be fully paid-up.
  - (5) The buyback shall not amount to the delisting of the companies' securities from the RSEB.

- (6) Buyback shall result in the reduction of the paid-up capital, except in the case of shares converted into treasury stock.
- (7) The company shall not have any defaults in respect of the payment of the fees related to any filings or approvals under the Companies Act and any fees to the RSEB, statutory dues of the employees, such as contributions to provident funds, gratuity, bonus, and related payables.
- (8) Prior to buying its shares, the company must have, on its own, sufficient working capital for the twelve (12) months immediately following the date of completion of the share buy-back transaction.
- (9) The company shall submit a declaration of solvency in a format prescribed in Annexure I.
- (10) The duration of the buy-back of shares shall be within 12 months from the date of the approval accorded by the CRA.
- (11) A company can buy back its shares only once in a year and should not be more than 20% of the total paid-up capital.



- (12) No fresh issue is allowed within 6 months from the date of buy-back, except by way of issue of bonus shares, employee shares, and conversion of the debt or preference shares into equity.

### **Methods to buy back the shares**

- 7. A company may buy back its shares by any one of the following methods:
  - (1) From the existing shareholders on a proportionate basis; from the open market; or
  - (2) 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 RSEB or
  - (3) By purchasing the securities issued to the employees of the company, pursuant to a scheme of stock options; or
  - (4) In any other manner approved by the CRA.

## **Treatment of Treasury Shares**

8. The company opting to keep the buy-back shares as Treasury Shares shall disclose the following information
- (1) To forfeit or cancel (Partially or wholly) from the total paid-up capital, or
  - (2) To reissue to employees as share ownership, or
  - (3) Transact directly in the secondary market.

## **Limits of Treasury Shares for Buy-back**

9. The Treasury Shares of the Company, must not at any time exceed 10% of the total Shares in the class of Shares subject to the buy-back;
- (1) Unless the Treasury Shares are allocated to the Company's employees as part of the Employees' Shares Plan, a Company may not increase its share capital through a rights issue if it retains Treasury Shares or if the General Meeting approved a Share buy-back transaction, and did not cancel such approval.

- (2) If a Company that retains Treasury Shares increases its share capital through a capitalization issue, it shall have rights similar to those of other shareholders with respect to such Shares.

### **Sale of Treasury Stock**

10. For a listed company selling its Treasury Shares shall follow the guidelines of RSEB on buy-back.

**PART IV**  
**PROCEDURE FOR APPROVAL OF BUY-BACK OF**  
**SHARES**

**Approval of Buy-back.**

11. The proposal for buy-back shall be reviewed and approved by the PMRC.

**Procedure of Buy-back**

12. The company proposing the buy-back of shares shall follow the following procedure:
  - (1) The company shall convene a general meeting for the proposal for buy-back of shares.
  - (2) The company shall apply for approval of buy-back with a draft offer letter and all the documents listed in section 14 of this regulation. CRA shall convene a PMRC meeting to accord approval of the proposed buy-back based on documents submitted by the companies as required under subsection (b).

- (3) The approval of PMRC will be conveyed to the company by endorsing the offer letter by the CRA.
- (4) The letter of offer of buy-back shall be sent to the shareholders upon approval from the CRA within fifteen days from the date of approval.
- (5) The offer shall remain open for a period of not less than fifteen days from the date of dispatch of the offer letter, for unlisted companies and private companies.
- (6) The listed companies shall comply with the guidelines for Buy-back of Shares for Listed Companies of RSEB.

### **Documents to be submitted to the CRA**

- 13. The following documents shall be submitted for the buy-back of shares:
  - (1) Permission from the Royal Securities Exchange of Bhutan, for the buy-back of shares to be listed for transaction through the exchange for listed companies;

- (2) The resolution of the General Meetings approving the buy-back of shares, together with the documents and reports presented to the meeting;
- (3) Summary of audited financial statements for the last three years, preceding the year of proposed buy-back;
- (4) Credit information report from Credit Information Bureau for past one year;
- (5) Letter of offer containing purpose, terms, and conditions of the proposed buy-back;
- (6) Submit a clearance or approval from their respective regulators or regulatory authorities;
- (7) Any additional statements required by the CRA.

## **PART V**

### **OFFENSES AND PENALTIES**

#### **Complaints**

14. Shareholders may submit complaints to the CRA in relation to the buy-back of shares if there is reasonable suspicion of violation of the provisions of this Regulations and Companies Act.
15. If a shareholder is aggrieved by the untrue statement of the offer letter, the CRA may advise the shareholders to approach the court in accordance with section 111 of the Companies Act.
16. If there is any complaint or suspicion of insider trading, the Primary Market Regulatory Committee may advise the CRA to initiate an investigation or appropriate legal action on the allegation.

## **Offenses and Penalties**

17. In the event of deliberate misrepresentation or omission of information and relevant documents for the purpose of obtaining approval for the offer of buy-back, the company proposing buy-back shall be punishable with a fine of Nu. 1,000,000/-. If such omission or commission is proven to be committed by the company 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/-.
18. Any person who violates any provisions of this Regulations, the CRA may impose financial sanctions not exceeding Nu. 100,000/- per violation, or such other appropriate orders, if not expressly provided in this Regulation.

## **Approval Fees**

19. The company proposing the buy-back shall pay the deposit of a draft offer letter prescribed in Annexure II and non-refundable approval fees to the CRA for approval.



## Definitions

20. In this Regulations, unless the context requires otherwise:

- (1) “**Insider trading**” shall have the same meaning as defined by the provisions of the Companies Act;
- (2) “**Net worth**” means the net tangible asset. For the purposes of this Regulations net tangible assets are to be computed as total assets less total liabilities and intangible assets;
- (3) “**Corporate Regulatory Authority**” shall have the same meaning as “Regulatory Authority” defined in the Companies Act; and
- (4) “**Untrue statements**” shall have the same meaning as defined in the Companies Act.

## ANNEXURES

### ANNEXURE - I

Date.....

The Registrar of Companies,  
Corporate Regulatory Authority,  
Ministry of Industry, Commerce and Employment,  
Thimphu: Bhutan

#### **Sub: Application for buy-back of shares**

Sir,

We intend to issue a Buy-back of shares amounting to Nu..... We confirm and declare that our application is in full compliance with the Regulations for the Buy-back of shares, 2024 issued by the CRA under the Companies Act.

We further confirm and declare that the company is incorporated under the Companies Act and we are satisfied to the best of our knowledge and belief, that there is no information or statement nor is there any omission in the draft Prospectus, which would

make our statements false or misleading. We undertake to provide such information and documents as the CRA may reasonably require in relation to the application.

This application is made by the undersigned authorized person of (*Company Name*) pursuant to the authority granted by a written resolution of our Board of Directors passed on (Date).

Faithfully yours,

For and on behalf of the issuer (**Name of the Issuer Company**)

Name:

Address:

Tel No:

Email ID:

**Enclosed:** *Documents as prescribed in Section 26 of Regulation for Public Buy-back of shares, and the Draft Prospectus (as per format prescribed in Annexure II).*

**ANNEXURE II****Offer letter for buy-back of shares**

The following constitutes full, true, and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the Companies Act and in line with the relevant provisions of the Regulatory Authorities.

**1. General Information:**

- 1) Name of the company:
- 2) Registered Office:
- 3) Auditors:
- 4) Bankers:
- 5) Registration/License Number:

**2. Objective of the issue (Purpose of Issue):****3. Particulars of offer:**

Issue Unit	Price	Number of Units Offered	Opening Date	Closing Date	Allotment Date
Face value of 1,000					

**4. Terms of the Bond, Coupon Rate, and interval of payment:**

Term	Coupon/Interest Rate	Coupon payment interval	Payment of Coupon Amount

**5. Redemption:** *(The issuer shall create a buy-back of shares redemption reserve of an amount equivalent to the issue size of buy-back of shares issued. The redemption reserve of 20% of the buy-back of shares amount shall be created annually, in the last five years of the buy-back of shares tenure).*

**6. Basis of Allotment:**

**7. Private Placement:**

**8. Conditions for Premature redemption:** (same conditions shall apply to both the issuer and bondholders):

**9. Lock-in period and Right to Redeem:** (The issuer and the bondholders have the right to redeem before the maturity date, subject to completion of lock-in period of three years, and such terms and conditions shall be defined in the Prospectus).

**10. Risk Factors (Disclose all the risks associated with the business):**

- 1) Credit Risk/Loan Delinquency Risk:
- 2) Operational Risk:
- 3) Interest Rate Risk:
- 4) Market/Economy Risk:

**11. Present Capital Structure of the Company:**

Authorized Capital:

Issued and paid-up capital:

**12. Eligibility of Bondholders:**

**13. Financial Highlights:**

- 1) Last three years (Audited)
- 2) Projected Financial statements for three years

**14. Particulars of the Present Board of Directors:**

**15. Details of the Previous Bonds issued if any:**

**16. Sole Manager to the issue (Broker, Underwriter, issue manager):**

**17. Other Information (litigations or any material information of the issuer):**

**18. Declaration:**

We hereby declare that most of the relevant provisions of the Companies Act and the Prudential Regulation 2017 issued by the Royal Monetary Authority and Royal Securities Exchange have been complied with and no statement made in the prospectus contrary to the provisions of the Companies Act.

**Chief Executive Officer**

**Director/Chairperson**

Place:

Date: