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CORPORATE REGULATORY AUTHORITY

**REGULATIONS FOR COMPANY SECRETARIES AND
FILING AGENTS, 2024**

ROYAL GOVERNMENT OF BHUTAN

MINISTRY OF INDUSTRY, COMMERCE AND EMPLOYMENT



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REGULATIONS FOR COMPANY SECRETARIES AND FILING AGENTS, 2024

In the exercise of the powers vested by sections 410 (b) and 413 of the Companies Act of Bhutan 2016, the Corporate Regulatory Authority of Bhutan hereby adopts the Regulations for Company Secretaries and Filing Agents, 2024. These regulations are designed to ensure that companies in Bhutan maintain adherence to professional standards and promptly fulfill compliance requirements.

PART I

PRELIMINARY

Title and Commencement

1. This Regulation shall
 - (1) be called the Regulations for Company Secretaries and Filing Agents of Bhutan, 2024.
 - (2) Come into force on September 1, 2024.

PART II

COMPANY SECRETARY

General Provisions

2. The following companies shall appoint a Company Secretary with prescribed qualifications:
 - (1) Every listed company.
 - (2) Every public company.
 - (3) Every private company has a paid-up share capital of Nu. 100,000,000 (hundred million) or more.

Appointment of Company Secretary

3. The Board of the company shall appoint a secretary.
4. A Company Secretary shall be appointed for a term, with remuneration and upon such conditions as decided by the Board.
5. The company shall notify the Regulatory Authority of the appointment of the company secretary within 30 days after they are appointed.
6. A Company Secretary shall consent to his appointment.
7. The notice shall be in the prescribed form.

8. The office of company secretary shall not be left vacant for a period exceeding six months.
9. Within these six months, the board shall depute an existing officer as a substitute to ensure the continuity and effectiveness of the duties performed by the company secretary.

Qualification of Company Secretary

10. The individual appointed as a company secretary shall;
 - (1) Be a resident of Bhutan.
 - (2) Be a citizen of Bhutan.
 - (3) Hold a degree from a recognized university.
 - (4) Have a certificate of company secretary issued by or recognized by the Regulatory Authority.
 - (5) Stay informed on the requirements, and updates on rules and standards issued by the Regulatory Authority.
 - (6) Not hold the position of secretary for two companies simultaneously.

Fit and Proper Considerations for Company Secretary

11. An individual applying for Regulatory Authority is subject to the following conditions being met:
- (1) The individual has undergone professional training conducted or recognized by the Regulatory Authority;
 - (2) The individual's previous conduct and compliance history are assessed as meeting expectations by the Board and Regulatory Authority;
 - (3) The individual has acted in a manner to constitute professional misconduct, breach of fiduciary duty, or serious negligence, or caused, contributed to, or facilitated the commission of professional misconduct, breach of fiduciary duty or serious negligence by some other person;
 - (4) The individual has the capacity and capability to fulfill the obligations of a company secretary properly; and/or
 - (5) It would be contrary to the national or general public interest for the individual to be registered as a company secretary.

Process for Certification and Registration of a Company Secretary

12. The individuals seeking certification as a company secretary shall first undergo professional training that is either conducted or officially recognized by the Regulatory Authority.
13. The documents and prerequisites to be submitted to the Regulatory Authority shall be as follows;
 - (1) the certificate of company secretary to the Regulatory Authority.
 - (2) Pay the annual registration fee of Nu.10,000.
14. The registration or renewal of registration of a company secretary is valid for 3 years from the date of registration. An application to renew the registration of a company secretary shall be made within 60 days prior to the date of expiry and pay the renewal fee of Nu.10,000.

Duties of Company Secretary

15. The company secretary shall:

- (1) Provide support and advice to the board of directors.
- (2) Ensure the effective maintenance of the statutory registers in accordance with section 228 of the Companies Act and their availability for inspection in accordance with section 229 of the Companies Act.
- (3) Ensure the effective maintenance of books of account in accordance with section 232 of the Companies Act.
- (4) Ensure effective communication with shareholders of the company;
- (5) Ensure the timely delivery to the relevant authority of any return, account, or other document required under the provisions of this Act or any other law;
- (6) Ensure all legal compliance by the company.
- (7) Act as a focal officer for all official communications and regulatory calls for documents from the Regulatory Authority.

- (8) Comply with the terms and conditions as adopted by the Regulatory Authority.
- 16. A company secretary's services mentioned in sections 16 (2), (3), (5), (6), and (7) of this regulation shall be allowed as outsourced services from a qualified individual or firm.

Personal Liability of Company Secretary

- 17. The company secretary owes a fiduciary duty to the company in a similar way to that owed by directors.
- 18. A company secretary shall be accountable to the company for any secret profit or gain made as a result of his position with the company.
- 19. A company secretary entering into a contract on behalf of the company shall make it clear that he does so as the company's agent and upon authorization from the company.

Penalty for Non-compliance

- 20. If the company secretary contravenes with sections 13, 14, 15, 16, and 17 of this regulation, they shall be liable for a fine of up to Nu. 100,000 with an additional fine of Nu.10,00 per day until the default is rectified.

PART III

FILING AGENTS

Issue of Professional Numbers

21. The Registrar of Companies shall issue to each registered filing agent:
- (1) A unique professional number for the purpose of carrying out any transaction with the Registrar of Companies using the electronic transaction system and accessing the electronic transaction system; and
 - (2) A notice of registration in such form as the Registrar of Companies may determine.
22. A professional number issued to a registered filing agent shall be used in conjunction with such authentication code as the Registrar of Companies may determine.

Qualification of Registered Filing Agents

23. The individual appointed as a registered filing agent shall;
- (1) Be a resident of Bhutan.
 - (2) Be a citizen of Bhutan.
 - (3) Hold a degree from a recognized university.

- (4) Have a certificate of company secretary issued by or recognized by the Regulatory Authority.
- (5) Stay informed on the requirements, and updates on rules and standards issued by the Regulatory Authority.

Fit and Proper Considerations for Registered Filing Agents

24. An individual applying for registration or renewal as a registered filing agent shall be considered fit and proper by the Regulatory Authority, subject to the following conditions being met:
- (1) The individual has undergone professional training conducted or recognized by the Regulatory Authority;
 - (2) The individual's previous conduct and compliance history are assessed as meeting expectations by the Regulatory Authority and their clients;

- (3) The individual has acted in a manner to constitute professional misconduct, breach of fiduciary duty, or serious negligence, or caused, contributed to, or facilitated the commission of professional misconduct, breach of fiduciary duty, or serious negligence by some other person;
- (4) The individual has the capacity and capability to properly fulfill the obligations of a registered filing agent and the terms and conditions of registration; and
- (5) It would be contrary to the national or general public interest for the applicant to be registered as a registered filing agent.

Process for Certification and Registration of Registered Filing Agents

- 25. The individuals seeking certification as a registered filing agent shall first undergo professional training conducted or recognized by the Regulatory Authority.

26. The documents and prerequisites to be submitted to the Regulatory Authority shall be as follows;
- (1) The certificate of registered filing agent to the Regulatory Authority.
 - (2) A copy of the applicant's Citizenship Card.
 - (3) A declaration of being a fit and proper person in accordance with this regulation.
27. The registration or renewal of filing agents is valid for one year from the date of registration. An application to renew the registration of a filing agent shall be made within 60 days prior to the date of expiry and pay the prescribed renewal fee.

Terms and Conditions Applicable to Registered Filing Agents

28. Every registered filing agent shall comply with all of the following conditions:
- (1) to perform such customer due diligence measures to detect or prevent money laundering and the financing of terrorism as may be prescribed;

- (2) to cease to act as filing agent for a person, if the registered filing agent is unable to complete the prescribed customer due diligence measures in respect of that person;
 - (3) to keep, in such manner and for such minimum period as may be prescribed, all records obtained through the prescribed customer due diligence measures, including but not limited to, all copies or records of any identification document, accounts, and business correspondence, as well as the results of any analysis undertaken.
- 29. A registered filing agent shall comply with the terms and conditions set out in Annexure IV.
- 30. The terms and conditions are applicable to registered filing agents, irrespective of the transactions being carried out for the customer, using the electronic transaction system or by other means specified or directed by the Registrar of Companies of Companies, if the electronic transaction system is unavailable.

False Information

31. A registered filing agent who, under the terms and conditions of registration, is required to produce any document, or to provide any information or explanation to the Registrar of Companies or an officer authorized by the Regulatory Authority, shall not:
- (1) produce any document or provide any information or explanation which the registered filing agent knows to be false, does not believe to be true or is reckless as to whether the document, information or explanation is false; or
 - (2) intentionally suppress any material fact.

Refusal to Register or Renew

32. The Registrar of Companies may refuse to register or renew the registration of a person as a registered filing agent, if:
- (1) the applicant has been convicted, whether in Bhutan or any other jurisdiction, of any offence involving fraud or dishonesty punishable with imprisonment up to 3 years or more; or

- (2) the applicant is an undischarged bankrupt, whether in Bhutan or any other jurisdiction;
- (3) The Registrar of Companies is not satisfied that the applicant is a fit and proper person to be so registered, or that any of its directors or partners or any individual directly or indirectly taking part in or concerned in the management of the applicant, is a fit and proper person;
- (4) That person's previous registration as a registered filing agent had been canceled because of
 - (a) a breach of a prescribed term or condition of registration; or
 - (b) a failure to pay a financial penalty imposed because of a breach of a prescribed term or condition of registration; and
 - (c) 2 years have elapsed from the date of expiry or cancellation of their registration.

Fees

33. The application fee for registration as a registered filing agent is Nu.15,000 for every year of registration.
34. The application fee for renewal of registration as a registered filing agent is Nu.15,000 for every year of registration.

Penalty

35. If the filing agent contravenes with sections 28, 29, 30 and 31 of this regulation, they shall be liable for a fine of up to Nu. 100,000 with an additional fine of Nu.1000 per day until the default is rectified.
36. The agent in violation of the provisions of this regulation may also be prosecuted under relevant laws, if the conduct of the agent constitutes an offense under penal code of Bhutan.

PART IV

MISCELLANEOUS

Definitions

37. In this Regulation, unless the context otherwise requires:

- (1) **“Board of Directors”** or **“Board”** in relation to a Company means directors collectively acting as the Board of directors of the Company.
- (2) **“Company”** means a company incorporated under this Act, any other legislative provision of the Kingdom of Bhutan or by Royal Charter and which is included in the register of companies maintained under section 401.
- (3) **“Companies Act”** means the Companies Act of Bhutan, 2016.
- (4) **“Company Secretary”** means a full-time officer appointed by the Board of Directors for a fixed term and for a remuneration agreed therein.

- (5) **“Regulatory Authority”** shall mean the Corporate Regulatory Authority established under chapter 14 of the Companies Act;
- (6) **“Customer”** means any person who employs or engages a registered FA to carry out any transaction with Regulatory Authority using the electronic transaction system on his behalf.
- (7) **“Diploma/Degree”** shall mean any undergraduate or postgraduate Course, recognized by the Ministry of Education or Royal University of Bhutan as an accredited course from a recognized University.
- (8) A **“filing agent” (“FA”)** is a person who who, in the course of his or her business, carries out on behalf of any other person any transaction with the Regulatory Authority using the electronic transaction system or any other means permitted or directed by Regulatory Authority if the electronic transaction system is unavailable.

- (9) **“Independent director”** means a director other than a director defined as not independent by section 135 of the Company Act of Bhutan 2016.
- (10) **“Paid up share capital”** means the capital paid up and allotted to the shareholders of a company.
- (11) **“Prescribed”** means prescribed by the regulations.
- (12) **“Private Company”** means a company other than a public company.
- (13) **“Public company”** means a company that is authorized by its Articles to offer its shares to the public.
- (14) **“Transaction”** with Regulatory Authority means:
 - I. Filing, lodging, submitting, producing, delivering, furnishing, or sending of any document with or to Regulatory Authority under the legislation administered by Regulatory Authority;

- II. Making any application, submission, or request to the Regulatory Authority under the legislation administered by the Regulatory Authority;
- III. Providing any undertaking or declaration to the Regulatory Authority under the legislation administered by the Regulatory Authority; and
- IV. Extracting, retrieving, or accessing any document record or information maintained by the Regulatory Authority under the legislation administered by the Regulatory Authority.

ANNEXURE

ANNEXURE I

Application for filing consent

Date:.../...../...

The Registrar of Companies,

Corporate Regulatory Authority

Ministry of Industry, Commerce and Employment,

Thimphu, Bhutan

Sub: Application to register as Company Secretary

Sir,

We have appointed Mr.....as Secretary of our Company w.e.f..... We confirm and declare that our application is in full compliance with the Regulations for Company Secretaries and Filing Agents, 2024 issued by the Regulatory Authority.

We further confirm and declare that the relevant documents including the resolutions are passed/obtained following due procedures under the Companies Act. We undertake to provide any such information and documents as the Regulatory Authority 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 to by a written resolution of the Shareholders/Board of Directors passed on (Date.....).

Faithfully yours,

For and on behalf of the Company.....

(Name of the Company)

Name: Address:

Tel No:

Fax No:

Email:

Enclosed: *Documents as prescribed in Section 27 of this Regulation*

ANNEXURE II

Board Resolution for Appointment of Secretary

APPOINTMENT OF SECRETARY - BOARD RESOLUTION
RESOLVED that

Mr/Mrs/Miss, having the requisite qualification as prescribed by Regulatory Authority, be and is hereby appointed Secretary of the Company at a remuneration of Nu..... per month/year to perform all such duties that may be prescribed these rules and the Companies Act of Bhutan, or any modification thereto from time to time and any other executive or administrative duties that may be assigned by the Chief Executive Officer or Board of Directors.

Signed

Chairman

ANNEXURE III

Consent to act as Company Secretary

Name of Company.....Private Limited/Limited

Presented by.....

To,

The Registrar of Companies,

The Corporate Regulatory Authority

Thimphu: Bhutan

I, the undersigned, having consented to act as Secretary of the company, Private Limited/Limited and confirm that I am qualified to act as Secretary, section 11 of the Regulations for Company Secretaries and Filing Agents, 2024

Date of appointment:

Name in full:

Address:

Date of birth:

Nationality:

Place:

Date:

Signature: