



ཚོང་སྡེ་རྒྱུན་འགོད་དབང་འཛིན།

CORPORATE REGULATORY AUTHORITY

ཚོང་སྡེ་ཉེ་ཤགས་འཛིང་འདུམ་འགྲིག་གི་སྒྲིག་གཞི་ ༡༠༢༡ ཅན་མ།

REGULATIONS FOR CORPORATE DISPUTE

SETTLEMENT, 2022

ROYAL GOVERNMENT OF BHUTAN

MINISTRY OF INDUSTRY, COMMERCE AND EMPLOYMENT



ཚོང་ཕྱོད་རྒྱུན་བཀོད་དབང་འཛིན།

CORPORATE REGULATORY AUTHORITY

ཚོང་ཕྱོད་ཉེ་གསལ་འཛིང་འདུམ་འགྲིག་གི་སྒྲིག་གཞི་ ༢༠༢༢ ཅན་མ།

REGULATIONS FOR CORPORATE DISPUTE

SETTLEMENT, 2022

ROYAL GOVERNMENT OF BHUTAN

MINISTRY OF INDUSTRY, COMMERCE AND EMPLOYMENT

TABLE OF CONTENT

PART I

PRELIMINARY

Title and Commencement.....	1
Scope.....	2

PART II

DISPUTE SETTLEMENT COMMITTEE

Appointment.....	3
Secretarial Services.....	5
Functions of the Dispute Settlement Committee.....	5
Meetings.....	6
Quorum.....	6
Decision.....	6

PART III

FILING COMPLAINT

Application.....	7
Form and requirements of application, petition, or appeal.	7
Demand.....	8
Admission.....	8
Summary order.....	9

Proceedings on the application.....	10
Refusal of Application, Petition, or Appeal.....	11
Appeal from Refusal of Application, Petition, or Appeal.	12

PART IV

PROCEDURE FOR PROCEEDINGS

Summon.....	13
Representation.....	13
Preliminary Hearing.....	14
Rebuttal of the Defendant.....	15
Surrebuttal of the plaintiff.....	15
Rejoinder of the Defendant.....	16
Witness Hearing.....	16
Closing Arguments.....	17
Deliberations and Order.....	18
Appeal.....	18
Enforcement.....	18
Discontinue of Proceedings.....	19
Criminal Referral.....	19
Payment of Expenses.....	20
Penalty.....	21

PART V
MISCELLANEOUS

Amendment..... 22

Definitions..... 22

REGULATIONS FOR CORPORATE DISPUTE SETTLEMENT, 2022

In the exercise of the power vested by Sections 410 (e) and 413 of the Companies Act of Bhutan, 2016, to provide for the procedures for the settlement of disputes arising from the shareholders and management of the companies, the Corporate Regulatory Authority (CRA) hereby frames and adopts the Regulations for Corporate Dispute Settlement 2022, as follows:

PART I

PRELIMINARY

Title and commencement

1. This Regulation shall:
 - (1) Be called the Regulations for Corporate Dispute Settlement, 2022; and
 - (2) Come into force on 1st July 2022.

Scope

2. Except otherwise provided by the Companies Act of Bhutan, 2016, or other laws or regulations made thereunder related to Companies and Securities, this Regulation shall apply to the resolution of corporate disputes arising from:
 - (1) Violations of the Companies Act and subsidiary legislations thereunder;
 - (2) Complaints from minority shareholders on unfair prejudice; or
 - (3) An actual or proposed act or omission involving negligence, default, breach of duty, or breach of trust by the directors, Chief Executive Officer, Executive heads or Managers, or heads of business units, of the company.

PART II

DISPUTE SETTLEMENT COMMITTEE

Appointment

3. In accordance with Section 392 of the Companies Act of Bhutan, 2016, the Corporate Regulatory Authority (CRA) shall constitute a Dispute Settlement Committee from time to time for a duration of three years.
4. Subject to Section 7 of this Regulation, the Dispute Settlement Committee shall consist of three members:
 - (1) One person with expertise in the corporate sector, finance, or business management;
 - (2) One person with expertise on the subject matter of dispute being referred; and
 - (3) One person with the qualification to practice law in Bhutan.
5. The Registrar shall appoint one of the members as Chairperson of the Dispute Settlement Committee.

6. Notwithstanding Section 5 of this Regulation, the Registrar may reconstitute the Dispute Settlement Committee by appointing members from appropriate backgrounds, for a particular case if:
 - (1) An appointed member has a conflict of interest; or
 - (2) The smooth functioning of the Committee becomes impossible due to repeated lack of quorum of the Committee.
7. The tenure of the Committee so constituted under Section 6 of this Regulation shall lapse upon completion of the assignment for which it was so established.

8. If a conflict of interest arises among the members of the Dispute Settlement Committee after appointment or during the process of making decisions, such members shall abstain from the meeting after notifying the Registrar. The Registrar shall ensure that a replacement member is appointed for the particular assignment expeditiously if the functioning of the Committee becomes impossible due to the lack of quorum. The tenure of the replaced member shall end upon completion of the assignment.

Secretarial Services

9. The CRA shall provide secretarial services to the Dispute Settlement Committee.

Functions of the Dispute Settlement Committee

10. For the purpose of this Regulation, the Dispute Settlement Committee shall have all the powers of the CRA to conduct hearings and decide a case.

Meetings

11. The meeting of the Dispute Settlement Committee shall be convened upon receiving the application, petition, or appeal, as the case may be.

Quorum

12. There should be at least two members of the Dispute Settlement Committee to constitute a quorum for the meeting or hearing, as the case may be.

Decision

13. The decision of the Dispute Settlement Committee shall be taken by the majority of members voting in favor of any decision and in case of equality of votes, the chairperson shall have a casting or second vote. The decision shall be signed by all presiding members.

PART III

FILING COMPLAINT

Application

14. A shareholder shall submit an application, petition, or appeal, as the case may be, to the Dispute Settlement Committee for redressal of the grievance including a request for a summary order.

Form and Requirements of Application, Petition, or Appeal

15. The petition or application in this Regulations, as the case may be, shall be in the form of memorials and:
 - (1) Specify the cause of action;
 - (2) Summarize the facts on which the proceedings are sought;
 - (3) Attach some relevant and credible evidence; and

- (4) If the application is for a derivative proceeding, state that proceedings will be initiated in the name and on behalf of the company in respect of actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by any or all the directors of the company.

Demand

16. If the application is for a derivative proceeding, in addition to the requirements under Section 15 of this Regulation, the applicant shall submit proof that the company has been served with a demand to rectify the grievance or issue and no such remedy for the grievance is effected or rectification is denied by the company after a lapse of 14 days.

Admission

17. The Dispute Settlement Committee may admit the application, petition, or appeal, as the case may be if there are:
 - (1) Legal standing; and
 - (2) Concrete case or controversy.

18. For the purpose of this Regulation, a person has a legal standing if he or she is a shareholder of the company. However, a person may be deemed a shareholder for the purpose of admission of the appeal, if he or she could not become a shareholder due to the conduct of the defendant.
19. For the purpose of this Regulation, there shall be deemed to be a concrete case or controversy if there appears to be an injury to the plaintiff, which can be attributed to the defendant's action.

Summary order

20. Upon admission of the petition, the Dispute Settlement Committee shall determine whether the petition should be dealt with summarily and issue appropriate orders under Sections 129 and 130 of the Companies Act. If the Committee deems that the petition is well founded under Section 129 of the Companies Act, it may issue a summary order under Section 130 (a) and (b) of the Companies Act 2016 or refer for civil proceedings under Section 130(c) of the Companies Act 2016.

Proceedings on the application

21. Upon receipt of the application by the Dispute Settlement Committee, it shall determine whether the application is submitted under Section 167 of the Companies Act or under other Sections of the Companies Act.
22. Upon admission of the application, petition, or appeal, as the case may be, under Section 18 of this Regulations, the Dispute Settlement Committee shall conduct hearings according to the provisions of this Regulations.
23. If the application is for a derivative proceeding before it is admitted, the CRA:
 - (1) Shall require the applicant to serve the application to the company to determine whether the company wants to take part in further proceedings on the application; and

- (2) May direct the company to produce evidence to the Committee for review of the application.
- 24. If the Committee directs the company to produce evidence under Section 23(2) of this Regulation, the Committee may adjourn the proceedings on application for such a number of days the company is given to produce evidence.

Refusal of Application, Petition, or Appeal

- 25. The Dispute Settlement Committee shall refuse the application, petition, or appeal if:
 - (1) There is no legal standing of the applicant, petitioner, or appellant, as the case may be; or
 - (2) The evidence produced by the applicant, petitioner, or appellant does not disclose a prima facie case; or concrete case or controversy.

Appeal from Refusal of Application, Petition, or Appeal

26. If the applicant, petitioner, or appellant, as the case may be, is not satisfied with the decision made under Section 25 of this Regulations, the aggrieved party may appeal directly before the court of competent jurisdiction.

PART IV

PROCEDURE FOR PROCEEDINGS

Summon

27. Upon admission of the application, petition, or appeal, as the case may be, the Dispute Settlement Committee shall summon the plaintiff and the defendant within 14 working days for a preliminary hearing at the mentioned time and place.

Representation

28. The parties may represent themselves or by their representatives or lawyers, as the case may be. If the parties choose to be presented by the representative or lawyers, the power of attorney shall be submitted according to the format provided in Annexure I.

Preliminary Hearing

29. In the preliminary hearing, the Dispute Settlement Committee:

- (1) Shall inform rights of the parties;
- (2) Shall agree on the number of hearings to be held;
- (3) Shall require the plaintiff to present its application, as submitted to the Committee;
- (4) Shall share a copy of the application, petition, or appeal, as the case may be, with the defendant;
- (5) Shall grant opportunity to the plaintiff to ask for relevant evidence from the company, if the plaintiff does not have access to evidence; and
- (6) May issue relevant orders for the interest of the case.

Rebuttal of the Defendant

30. The Dispute Settlement Committee shall grant a reasonable time to the Defendant to refute the application, petition, or appeal, as the case may be, of the plaintiff. The rebuttal may include:

- (1) Specific denial;
- (2) Counter-claim against the plaintiff;
- (3) Challenge based on the application, petition, or appeal, as the case may be;
- (4) Agreement to perform a specific act, as desired by the plaintiff; and
- (5) Request for relevant evidence from the company or plaintiff, if the defendant does not have access to evidence.

Surrebuttal of the plaintiff

31. The Dispute Settlement Committee shall grant a reasonable time to the plaintiff to submit a surrebuttal in the form of a memorial. The surrebuttal and memorial shall include:

- (1) Issue wise counter-arguments; and
- (2) Evidence to prove or disprove the claims.

Rejoinder of the Defendant

32. The Dispute Settlement Committee shall grant a reasonable time to the defendant to submit a rejoinder in the form of a memorial. The rejoinder and memorial shall include:
- (1) Issue wise counter-arguments; and
 - (2) Evidence to prove or disprove the claims.

Witness Hearing

33. The Dispute Settlement Committee shall grant a reasonable time to the parties to summon witnesses, if necessary, for examination and cross-examination.
34. The names of witnesses shall be shared by the parties immediately upon completion of the hearing of the rejoinder of the defendant.
35. It shall be the duty of the parties to produce witnesses during the witness hearing.

36. The allowances and expenses of the witnesses shall be borne by the respective parties if the proceedings are not derivative. If the party initiates derivative proceedings, the company shall bear reasonable allowances and expenses of the witnesses.
37. All the testimony of the witnesses shall be recorded in written statements, which shall be verified and endorsed by the Committee.

Closing Arguments

38. The Dispute Settlement Committee shall grant a reasonable time to the parties to submit closing arguments, which may include:
 - (1) Re-statement of facts disputed or not;
 - (2) Re-statement of law;
 - (3) Final claim or relief sought after conclusion of the hearings; and
 - (4) Appreciation or objection to the evidence and testimony of the witnesses.

Deliberations and Order

39. Upon conclusion of the closing argument, the Dispute Settlement Committee shall deliberate on the submission of the parties, and in not more than twenty-one working days after the date of the closing argument, decide and issue an order to the parties in their presence.
40. The order under Section 39 of this Regulation shall be signed by all three Members of the Committee and append the seal of the CRA, with the date of issuance.

Appeal

41. If any party is not satisfied with the order of the Committee, he or she may appeal to the competent court within ten working days of the order.

Enforcement

42. If no appeal is preferred by the party within ten working days of the issuance of an order by the Committee, the order shall be enforced by the CRA.

Discontinue of Proceedings

43. The Dispute Settlement Committee may order for the discontinuance of proceedings after considering the elements under Sections 172 and 173 of the Companies Act 2016.
44. If any party fails to appear for the scheduled hearing, the Dispute Settlement Committee may wherever applicable:
 - (1) Dismiss the application, petition or appeal, as the case may be;
 - (2) Issue the order on merits in *ex-parte*; or
 - (3) Adjourn the hearing.

Criminal Referral

45. If the Dispute Settlement Committee finds that the dispute is criminal in nature, partly or wholly, it shall inform the applicant, petitioner or appellant, as the case may be, to refer the criminal part of matter to the competent authorities for appropriate action.

Payment of Expenses

46. On conclusion of the derivative proceeding, the Dispute Settlement Committee may:

- (1) Order the company to pay the applicant reasonable expenses including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the company;
- (2) Order the applicant to pay any defendant's reasonable expenses including counsel fees incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

- (3) Order a party to pay an opposing party's reasonable expenses including counsel fees incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of proceedings.

Penalty

47. If the Dispute Settlement Committee finds that the conduct of the defendant violates the provisions of the Companies Act, he or she shall be imposed a penalty according to the provisions of the Companies Act.

PART V

MISCELLANEOUS

Amendment

48. The CRA may amend this Regulation when deemed necessary.

Definitions

49. In this Regulations, unless the context requires otherwise, -
- (1) “**Application, petition or appeal**” shall have the same meaning for the purpose of this Regulation;
 - (2) “**Committee**” shall mean the Dispute Settlement Committee constituted under this Regulation;
 - (3) “**Defendant**” shall refer to the person against whom the application, petition, or appeal is submitted;
 - (4) “**Derivative proceedings**” shall have the same meaning as under Section 416(15) of the Companies Act of Bhutan;

- (5) “**Plaintiff**” shall refer to the person who submits an application, petition, or appeal, as the case may be, to the Dispute Settlement Committee for resolution of the dispute or claim;
- (6) “**Regulations**” shall mean the Regulations for Corporate Dispute Settlement 2024;
- (7) “**Summary order**” shall refer to a directive issued by the Dispute Settlement Committee based on the well-founded grounds in the petition under Section 128 of the Companies Act, 2016; and
- (8) “**Well-founded**” shall refer to a situation where there is no real legal or factual dispute as the law, facts, and evidence are indisputably clear.