

ROYAL MONETARY AUTHORITY OF BHUTAN

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CORPORATE GOVERNANCE REGULATIONS, 2011

OCTOBER 2011

1. Short title and commencement

- i. These regulations are issued in pursuant to Section 202 of the Financial Services Act of Bhutan, 2011 and must be read in conjunction with the additional requirements under the Financial Services Act, 2011 and Companies Act 2000.
- ii. These regulations may be cited as the Corporate Governance Regulations, 2011.
- iii. These regulations shall come into operation on such date as may be specified by the Royal Monetary Authority by notice in the Official Newspaper and RMA website.

2. Definitions

In these regulations, the following terms shall have the meanings indicated unless the content clearly indicates otherwise.

- i. **“Act”** means the Financial Services Act of Bhutan 2011;
- ii. **“Authority”** shall mean Royal Monetary Authority of Bhutan established under the Royal Monetary Authority Act of Bhutan, 2010.
- iii. **“Companies Act”** shall mean the Companies Act of the Kingdom of Bhutan, 2000 and amendments thereto.
- iv. **“Independent Director”** shall have the same meaning as in the Act.
- v. **“Regulated Entity”** shall mean company licensed and regulated under the Financial Services Act of Bhutan, 2011.
- vi. **“Related party”** shall be as defined under the Financial Services Act of Bhutan, 2011.
- vii. **“Relevant Person”** shall have the same meaning as that of Section 2 (iii) of Schedule II of this regulation.
- viii. **“Significant Owner”** shall be as defined under the Financial Services Act of Bhutan, 2011.

3. Application

- i. These regulations are applicable to:
 - a. financial institutions licensed by the Authority;
 - b. companies listed on the Royal Securities Exchange of Bhutan Limited (“RSEBL”) or such other securities exchange as may be established and licensed by the Authority (hereinafter “listed companies”);
 - c. Any other licencees licensed by the Authority.
- ii. Provisions on corporate governance in the Prudential Regulations, 2002, and inhouse company regulations remain applicable to the extent not inconsistent with these regulations.

4. General Provisions for Regulated Entities

i. Rights of Shareholders of Regulated Entities

Notwithstanding any provisions in the Companies Act, 2000, or any regulations issued pursuant thereto, shareholders of regulated entities are subject to the following provisions herein.

a. Access to List of Shareholders of Regulated Entities

Any shareholder of a regulated entity shall receive from the securities depository upon written request a list of names of shareholders and the amount of their shareholdings in that regulated entity. The securities depository shall provide the list requested within three working days of receipt of the request.

b. Record Date for Voting at Shareholders’ Meetings

The record date for determining which shareholders have the right to vote at any general meeting of shareholders of a regulated entity is thirty days prior to the date of issuance of the notice of the meeting.

c. Addition of Agenda Items for Shareholders’ Meetings; Say on Pay

(1) Any one or more shareholders who individually or in the aggregate own more than five percent of the issued shares of a regulated entity may

add items to be transacted at an annual general meeting or an extraordinary general meeting.

(2) Such items shall concern a matter consistent with the objectives of the regulated entity, as set forth in its articles of incorporation, and that are not prerogatives of the board of directors or management of a regulated entity.

(3) Such proponent or representative of the proponents shall present in writing a request to the Chairman of the board of directors of the regulated entity to add an item for consideration at such meeting at least ten days prior to the date of the meeting.

(4) The proponent or the representative of the proponents of such agenda item shall provide an explanatory statement setting out all material facts concerning such item of business.

(5) The agenda of the annual general meeting of shareholders of a regulated entity shall include a separate resolution subject to shareholder vote to approve the compensation proposed by the board of directors for the five highest paid executives of the regulated entity. Once adopted such list has to be submitted to the Authority.

d. Quorum for General Meeting of Shareholders

(1) If the quorum for a general meeting of shareholders of a regulated entity of one third of the issued shares present in person or represented by proxy is not present, the meeting shall stand adjourned to the same day and time and place in the two weeks hence. At such continued meeting a quorum shall consist of members representing at least twenty percent of the issued shares of a regulated entity.

(2) If such quorum is not present at such continued meeting, the meeting shall stand adjourned to the same day and time and place in the two weeks hence. At such continued meeting, a quorum shall consist of members representing at least ten percent of the issued shares of a regulated entity.

(3) If the regulated entity does not hold its annual general meeting within thirteen months of the required date, it shall be dissolved by order of the Authority in accordance with Part X of the Companies Act.

e. Special Resolutions for Shareholders' Meetings

A special resolution at a general meeting of a regulated entity shall be required for the regulated entity to effect the following actions:

- (1) the merger or acquisition of the regulated entity;
- (2) the sale of more than twenty-five percent of a regulated entity's assets;
- (3) an increase in authorized shares of the regulated entity; or
- (4) a change in the rights of shareholders of the regulated entity with respect to voting at shareholders' meetings or rights to dividends.

f. Remote Voting for Shareholders' Meetings

- (1) Shareholders of regulated entity may cast votes in general meetings of shareholders by transmission by Internet to an agent designated by the Registrar who shall record the shareholders' votes and transmit the results to the regulated entity.
- (2) Security procedures for electronic remote voting by shareholders shall be established by regulations.

g. Right to Question Directors and Management at Shareholders' Meetings

- (1) At any general shareholders' meeting, any shareholder may present orally or in writing questions to members of the board of directors or to the regulated entity's senior management concerning the affairs of the regulated entity.
- (2) Members of the board of directors or of the regulated entity's senior management must respond orally to the question.
- (3) A time period of at least one hour shall be set aside for shareholders' questions at any general meeting.

h. Appraisal Rights of Shareholders

(1) Any shareholder of a regulated entity who holds shares on the date of a notice by the regulated entity of a general meeting of shareholders to decide upon the acquisition of the regulated entity or a merger or consolidation of the regulated entity with another company, who continuously holds such shares through the effective date of the acquisition, merger or consolidation, and who has neither voted in favor of the acquisition, merger or consolidation nor consented thereto in writing shall be entitled to an appraisal of the fair value of the shareholder's shares in accordance with procedures established by regulation by the Registrar.

(2) Each shareholder electing to demand the appraisal of such shareholder's shares shall deliver to the regulated entity, before the taking of the vote on the acquisition, merger or consolidation, a written demand for appraisal of such shareholder's shares. Such demand shall be sufficient if it reasonably informs the regulated entity of the identity of the shareholder and that the shareholder intends thereby to demand the appraisal of such shareholder's shares.

(3) If the appraisal reveals that the consideration offered for the shareholders' shares in the acquisition, merger or consolidation is less than the appraised value, the shareholder shall be paid the difference in cash by the regulated entity.

5. Composition and Responsibilities of the Board of Directors

The board of directors of a regulated entity shall observe the provisions herein with respect to its composition and responsibilities.

i. Basic Responsibilities of a Board of Directors

- a. The board of directors of a regulated entity shall (i) establish the strategy and policies for a regulated entity's operations and (ii) oversee the implementation of that strategy by management.
- b. The board of directors shall appoint senior management and define key responsibilities of senior management.
- c. The board of directors shall approve (i) policies for oversight by senior management of subordinate staff and (ii) reporting relationships within the company.

d. The board of directors of a regulated entity shall issue annually a strategy policy statement and a remuneration policy statement.

(1) The strategy policy statement must include qualitative and quantitative business objectives for the next year and include such factors as projected market share, addressing competitive conditions, and professional development of staff.

(2) The remuneration policy statement must explain:

(i) whether and how the regulated entity's policy aims at aligning the personal objectives of its officers and employees with the long-term interests of the entity;

(ii) whether and how performance-based components of remuneration are based on longer-term performance and take into account the outstanding risks associated with the performance; and

(iii) whether and how the entity is able to reclaim variable components of remuneration that were awarded for performance based on data which has subsequently proven to be manifestly misstated.

(3) The strategy policy statement and remuneration policy statement shall be internal documents of the regulated entity subject to mandatory disclosure only to Authority inspectors or as the law otherwise provides. By decision of its board of directors, a regulated entity may publish one or both policy statements.

e. The board of directors shall adopt and oversee enforcement of a code of ethics for their company substantially in the form of *Schedule I*.

f. The board of directors shall oversee enforcement of rules on related party transactions in the Act and any related regulations thereon.

ii. **Composition of a Board of Directors; Annual Election of Directors**

a. Every regulated entity shall have a board of directors consisting of not more than seven directors of which at least one shall represent private sector. The board shall consist of minimum of two independent directors.

- b. If the regulated entity fails to have the requisite number of independent directors following its annual general meeting of shareholders or within ninety days thereafter, the Authority shall appoint one or more independent directors for the regulated entity to satisfy the required number of independent directors who shall serve until the next annual general meeting of shareholders of the regulated entity.
- c. Each director must meet the requirements on fitness and propriety established in regulations of the Authority and must be approved by the Authority prior to assuming office.
- d. Directors of a regulated entity shall be elected by shareholders for a term of one year. Directors may stand for re-election.
- e. The Board of directors shall elect a chairman of the board of directors who shall not be an executive of the regulated entity. The chairman is responsible for leading the board and ensuring it has effective governance policies. To do this, the chairman has to carry the following responsibilities:
 - (1) The chairman of the board of directors shall preside over meetings of the board of directors, and unless otherwise provided in the regulated entities articles or bylaws, call the meetings of the board. In his absence, the chair for a board meeting shall be elected by the members present, unless the regulated entity's articles or bylaws provide otherwise.
 - (2) The chairman shall ensure that all relevant issues are included in the board agenda prior to board meetings.
 - (3) The chairman shall create a climate of trust between the independent director and the other board of directors allowing the Independent Director to contribute to board meetings in a professional atmosphere of constructive challenge.
 - (4) The chairman shall promote the highest standards of corporate governance, requiring, at a minimum, compliance with relevant laws, rules and regulations, upholding the highest standards of probity and integrity.
 - (5) The chairman shall allow sufficient time for discussion of difficult and contentious issues and if required he may arrange for informal

meetings of the non executive directors to be thoroughly prepared without being pressurized by unrealistic datelines into making poor decisions.

- (6) The Chairman shall be open to ideas emanating from the board and be able to explain the company's actions and intentions when required.
- (7) The chairman shall ensure that the Board of Director are provided with accurate timely, and clear information to assist them in making informed decision.
- (8) The chairman shall act as a facilitator by setting the style and tone of the meetings to ensure that no member dominates the discussions and the board's decision is result of a constructive debate.
- (9) The chairman shall ensure effective implementation of board decisions by providing appropriate documentation of what was agreed and ensuring that it is followed up at regular intervals.
- (10) The chairman shall ensure that no individual board member exercise individual powers in issues pertaining to the promotion of the employees.
- (11) The chairman, assisted by the company secretary, shall monitor technical matters which include:
 - (i) punctuality of directors for board meetings;
 - (ii) presence of a quorum;
 - (iii) reasonable time for directors to consider board papers prior to the board meeting;

6. Restrictions on Directors of Affiliated Financial Institutions

- i. A director or an employee of a financial institution must not serve as a member of the board of directors of another financial institution.
- ii. Any natural person who directly or indirectly owns more than five percent of the paid-up capital of a financial institution may not be appointed or elected as a member of the board of directors of another financial institution.

7. Removal of Members of the Board of Directors

- i. A regulated entity may, by ordinary resolution at a shareholders' meeting, remove a director from the board of directors before the expiry of the term of office only for cause.
- ii. The fact of removal of a director and the reasons therefore shall be communicated within seventy two hours of the removal to the Authority, the Company Registrar, and the securities exchange on which the regulated entity's securities are traded, if any.

8. Committees of the Board of Directors

- i. The board of directors of a regulated entity shall establish an Audit Committee and a Governance Committee.
- ii. A licensee that is bank or insurance company shall establish a Risk Management Committee of the board; provided, however, that financial institutions whose assets are below the amount determined by regulation by the Authority as at its most recent financial statement may combine the duties of a Risk Management Committee with the Audit Committee.
- iii. Committees are responsible to the board of directors. Committee decisions shall be taken by a majority of the members present and no abstentions shall be allowed.

9. Audit Committee of the Board of Directors

The Audit Committee shall consist of three members appointed by the board, two of whom are independent directors. An independent director shall be the chairperson who shall have financial expertise. However he/she shall not be the chairperson of any other committees. The Audit Committee shall:

- i. establish appropriate accounting procedures and accounting controls for the company, including those prescribed by the Registrar for listed companies or by the Authority for financial institutions, supervise compliance with such procedures, and, as it deems appropriate, commission audits at the expense of the company of some or substantially all of the company's accounts and records.

- ii. approve the strategy, operations and budget for the company's internal auditing that is appropriate for the nature and scope of the company's business, monitor internal audit operations, and provide for remedial measures;
- iii. engage and terminate the company's independent external auditors, subject to ratification by the Authority, and determine the scope of the audit;
- iv. assess the auditor's independence in relation to all relationships between the independent external auditor and the company and remedy any conflicts of interest;
- v. discuss the annual audited financial statements and quarterly financial statements with management and the independent external auditor and report to the board of directors thereon;
- vi. monitor and report to the board of directors on management's efforts to correct deficiencies described in an external audit or a regulatory examination;
- vii. monitor and report to the board of directors on compliance of the company with requirements for transactions of the company with related persons;
- viii. obtain advice and assistance, as it deems appropriate, at the expense of the company from outside legal, accounting or other advisors and report to the board of directors. deliver opinions to the board of directors on any matters that it wishes to address including those submitted to it by the management or the board;
- ix. inform the board of directors of its determinations on matters described in subparagraphs i, ii, and iii;
- x. inform the Authority about any fraudulent act by any official or employee of the regulated entity or any of its subsidiaries or any irregularity or deficiency in its administration or operations that should be expected to result in a material loss for the regulated entity or such subsidiary.
- xi. meet once every quarter and extraordinarily when convened by two of its members or by the board of directors.

10. Governance Committee of the Board of Directors

The Governance Committee shall consist of three members appointed by the board of directors of which one shall be an independent director, who shall be the chairperson. The Committee shall:

- i. establish criteria for selecting new members of the board of directors; identify individuals qualified to become directors in consultation with the board; and recommend that the shareholders nominate the persons identified for election at the next annual meeting of shareholders;
- ii. establish criteria for the evaluation of governance by the board;
- iii. provide for a program of an annual performance evaluation of the board;
- iv. set the remuneration of non-executive members of the board of directors; and
- v. meet every six months or extraordinarily when convened by the board or by two of its members.

11. Risk Management Committees of Boards of Directors.

- i. The Risk Management Committee of a licensee mentioned under Section 8(ii) shall consist of three members appointed by the board of directors, at least one of whom shall be an independent director. It shall meet once every three months and extraordinarily when convened by the board of directors or by two of its members and deliver opinions on any matters submitted to it by the board of directors or that it wishes to address.
- ii. The Risk Management Committee shall:
 - a. establish and monitor implementation of policies and procedures for: limits or restrictions on the amount and particular types of investments of the the safekeeping of assets; and identifying, monitoring and managing risks to which the licensee is exposed;
 - b. monitor compliance with the laws and regulations applicable to their line of business and report to the board of directors thereon;

- c. establish a policy for use of derivatives if such instruments are to be used by the licensee, which policy shall be approved and reviewed no less frequently than annually by the board of directors.

12. Liability of Members of the Board of Directors

A director of a regulated entity shall not be personally liable for the effect on the regulated entity of a decision that he takes if:

- i. he informs himself of relevant considerations on the matter to be decided;
- ii. he makes the decision in the best interest of the regulated entity and not in his own personal interest; and
- iii. the action decided is not in violation of law or regulations.

13. Prohibition on Misuse of Confidential Information

- i. Present and past members of a board of directors, employees, and agents of a regulated entity shall keep secret, and not to use for personal gain or gain by other than the regulated entity that they serve or have served, or permit to be examined by others, any non-public information that they obtained in the course of their services to the regulated entity.
- ii. The information described in paragraph (i) shall include information about the regulated entity concerning: its customers or suppliers; the nature of or the development of its products or services; plans for outsourcing; plans for expansion of the business either organically or by merger or acquisition; and its financial condition.

14. Transparency of Regulated Entities

Regulated entities shall comply with the requirements for disclosure provided herein:

i. Disclosure of Material Events by Listed Companies

- a. When a material event occurs affecting a listed company that is not generally known and, if known, would be likely to have a significant influence on the market price of securities of a listed company, the listed company shall prepare and distribute within three working days a press release disclosing the substance of the event.

b. The company shall immediately file a copy of the press release with the Authority and any securities exchange in which its securities are traded.

c. If the board of directors of the listed company has reasonable grounds to believe that disclosure: (i) would be seriously prejudicial to the interests of the listed company only temporarily; and (ii) no transaction in the securities of the listed company has been or will be carried out on the basis of the information not generally known, the listed company shall not be required to issue such press release.

ii. **Disclosure of Trading in Securities of Listed Companies by Certain Persons**

a. Each member of the board of directors of a listed company and the ten highest remunerated employees of a listed company (or such lesser number that a listed company may have) shall report to the Authority and to the securities exchange on which the company's securities are listed any purchases or sales of debt or equity securities of the listed company within 3 working days of such purchases or sales.

b. The reports shall include the number of shares purchased or sold and the price or prices at which the transaction or transactions was consummated.

iii. **Disclosure of Members of Boards of Directors' Pecuniary Interests**

a. Members of boards of directors of regulated entities shall file with the Authority and the company that they serve a report on a form prescribed by the Authority disclosing:

(1) any securities that they and their family members own, the name of the issuers, and the value of the securities within ranges prescribed by the Authority;

(2) any investments that they and their family members have in business ventures, the names of other investors in the venture, the nature of the venture, and the amount of the investment within ranges prescribed by the Authority;

- (3) the names of any employers of members of the board of directors or of companies on whose boards of directors they serve; and
 - (4) The names of employers or partners of their family members, or of companies on whose boards they serve.
- b. The report shall be filed within 10 working days of the director's appointment and annually thereafter.
 - c. Material changes in the circumstances described in the reports shall be filed within five working days.

15. Provisions for Financial Institutions

i. Governance Committees of the Board of Directors of Financial institutions

- a. The Governance Committee of the board of directors of a bank shall recommend as candidates for membership on the board of directors, at least two of the following persons:
 - (1) One person who has had at least three years of professional experience in commercial banking;
 - (2) One person who has had at least three years of professional experience in asset and liability management of a financial services firm;
 - (3) One person who has had at least three years of professional experience in consumer or commercial credit.
- b. The Governance Committee of the board of directors of an insurance company shall recommend as candidates for membership on the board of directors at least two of the following persons:
 - (1) One person who has had at least three years of professional experience in the line or lines of insurance business in which the company engages;
 - (2) One person who has had at least three years of professional experience in commercial lending;

- (3) One person who has had at least three years of professional experience in fixed income investment management;
 - (4) One person who has had at least three years of professional experience in asset and liability management of a financial services firm.
- c. The Governance Committee of the board of directors of a stock exchange shall recommend as candidates for membership on the board of directors:
- (1) At least two persons who have had at least three years of professional experience in trading of equity and fixed income securities;
 - (2) At least one person who has had at least three years of professional experience in administration of a financial services firm or in administration of back office operations of a financial services firm.

ii. **Risk Management Committees of Certain Licencees**

- a. Risk Management Committees of the Board of Directors of banks shall establish policies and procedures for matters including credit, interest rate, liquidity, market, country, and operational risks, credit appraisal, loan administration, asset and liability management, approval of equity and fixed income investments, requirements for collateral for credit, classification of and provisioning for value-impaired assets, and pursuit of borrowers and issuers in default, including those prescribed by the Authority.
- b. Risk Management Committees of the Board of Directors of insurance companies shall establish policies and procedures including those for interest rate, liquidity, market and operational risks, credit appraisal, loan administration, asset and liability management, approval of equity and fixed income investments, requirements for collateral for credit, classification of and provisioning for value-impaired assets, pursuit of borrowers and issuers in default, actuarial risks, and setting of premia, including those prescribed by the Authority.

16. Fit and Proper Requirements

Financial institutions, significant owners, officers and employees of the financial institutions must meet the “Fit and Proper” Qualifications for Financial Institutions in Schedule II.

SCHEDULE I

Rules on a Code of Ethics of Regulated Entities

1. Application

These rules apply to members of the board of directors, officers and employees of financial institutions, listed companies (hereinafter collectively “regulated entities”) and other licencees established in the form of a company. When rules apply only to financial institutions, the rules so indicate.

2. Principles of Ethical Conduct

The following principles must guide ethical conduct by directors, officers and employees of regulated entities:

- a. to manage conflicts of interest;
- b. avoid misuse of position;
- c. to prevent misuse of information gained through the regulated entity’s operations either for personal gain or for any purpose other than that intended by the regulated entity;
- d. to ensure completeness and accuracy of relevant records;
- e. to ensure confidentiality of communications and transactions between the regulated entity and its suppliers and customers; and
- f. to ensure fair and equitable treatment of all suppliers, customers and others who engage in business with the regulated entity.

3. Conflict of Interest

Directors and employees must not engage directly or indirectly in any business activity that conflicts or competes with the regulated entity's interests. These activities include, but are not limited to, the following:

i. Outside Financial Interest of Directors

The directors of regulated entities shall fully disclose to its board any commercial, financial, agricultural, industrial, or other business interests with which they or members of their immediate families may at any time directly or indirectly be interested and shall refrain from voting on any matter related thereto which becomes the subject of Board action: provided that such an interest, if sodisclosed, shall not disqualify the interested party for the purpose of constituting a quorum.

ii. Outside Financial Interest of Employees

Where an officer or employee has a financial interest in a party that engages or proposes to engage in a transaction with the regulated entity, whether as a sole proprietor, partner, shareholder, creditor or debtor, such an interest must be disclosed immediately to his/her immediate supervisor. Thereafter, that person must not be directly involved in the regulated entity's dealings with the counterparty so long as the interest continues to exist. This restriction does not apply in cases where persons have holdings of publicly listed securities, unless their immediate supervisor considers the interest to be material and likely to impair the objectivity of the person concerned.

iii. Other Business Interest

It is a conflict of interest if a an officer or employee conducts business other than the regulated entity's business during office hours. A conflict of interest also arises where the acquisition of any business interest, or participation in any business activity outside the regulated entity and its office hours, demands excessive time and attention from the staff, thereby depriving the regulated entity of the person's best efforts on the job.

iv. Entertainment and Gifts

Directors, officers and employees must not accept costly entertainment from customers, potential customers or suppliers. However, they may accept token gifts of *de minimis* commercial value, if the acceptance of such gifts would not place them in a compromising position. Under no circumstances must gifts in the form of cash, bonds, negotiable securities, personal loans, airline tickets or use of vacation property be accepted.

4. Misuse of Position

- i. Directors, staff and immediate family and their relatives officers and employees must not use the regulated entity's name or facilities for personal advantage in investment or retail purchasing transactions, or in similar types of activities. Directors and staff, and their relatives must not use their connection with the regulated entity to borrow from or become indebted to customers, prospective customers or suppliers. The use of position to obtain preferential treatment, such as in purchasing goods or securities is prohibited.
- ii. Directors, officers and employees of financial institutions must not use the institution's facilities or influence for speculating in commodities, gold, silver, foreign exchange or securities, whether acting personally or on behalf of relatives. Directors, officers and employees must also refrain from "back-scratching" exercises with directors, officers and employees of other financial institutions to provide mutually beneficial transactions in return for similar facilities, designed to circumvent these ethical regulations.

5. Misuse of information

- i. No directors, officer or employee shall use any information which he/she may obtain in the discharge of his/her duties about the regulated entity itself, or any of its customers or supplier, for his or another's personal or financial gain.
- ii. No directors, officer or employee shall deal in the securities of any company listed or pending listing on a stock exchange at any time when he or she is in possession of information obtained as a result of his/her employment by, or his or her connection with the regulated entity, which is generally not available to shareholders of that company and the public, and which, if it were so available, would likely bring about a material change in the market price of the securities of the company concerned.
- iii. A director, officer or employee who possesses non-public information concerning a company is prohibited from influencing any other person to deal in the securities concerned or communicating such information to any other person, including other directors, officers or employees who do not require such information in discharging their duty.

6. Integrity of records and transactions

- i. A regulated entity must at all times maintain clearly, accurately and in complete form accounting records and reports as are necessary to reflect the true state of its affairs, to explain its transactions and its financial position.
- ii. Regulated entities must not make entries or allow entries to be made for any account, record or document of the regulated entity that is false or would obscure

the true nature of a transaction, or mislead the true authorization limits or approval by the relevant person of such transactions.

- iii. All records and computer files or programs of the regulated entity, including personnel files, financial statements and customer information, must be accessed and used only for the purpose approved by the management.

7. Confidentiality

- i. Directors, officers or employees must take precautions to protect the confidentiality of customer information and transactions. No directors, officers or employees shall divulge information regarding any customer, or any correspondence, accounts or dealings of the regulated entity with its customers to any person other than administrative or judicial authorities.
- ii. Business and financial information about any customer may be used or made available to third parties only with the prior written consent of the customer, or in accordance with arrangements for the proper interchange of information between regulated entities and Credit Information Bureau about credit risks, or when disclosure is required by law.

8. Fair and equitable treatment

All business dealings on behalf of the regulated entity with current and potential customers and suppliers and with members of the staff must be conducted fairly and equitably, without granting favored terms. Directors, officers and employees must not be influenced by friendship or association, either in meeting a customer's or a supplier's requirements, or in recommending what transactions or procedures need to be conducted. Such decisions must be strictly made on an arms-length basis. Any related party transactions must be in full compliance with applicable laws, regulations and this code and must be based on normal business criteria and fully documented. All transactions with insiders or related parties must not be on preferential terms.

9. Addressing suspected or actual illegal or unethical behavior

- i. Members of the board of directors of regulated entities must promote ethical behavior by: (a) encouraging company employees to talk to supervisors when in doubt about the best course of action in a particular situation that presents an ethical issue; and (b) encouraging directors and employees to report violations of laws, rules, regulations or the company code of ethics to the chairman of the Governance Committee.

- ii. The chairman of the Governance Committee must keep confidential the source of information communicated to him or her concerning violation of laws, regulations or a code of ethics.
- iii. No director or employee will be subject to retaliation for reports made in good faith of violations of laws, rules, regulation or a code of ethics.
- iv. The board of directors must ensure that credible reported violations of laws, regulations or a code of ethics will be investigated by a person designated by the board and disciplinary action will be taken in the event of any violations that is appropriate in relation to the gravity of the violation.
- v. Disciplinary action shall consist of one or more of the following: (a) suspension from board membership and withholding of any salary and benefits for a period of one to six months; (b) dismissal from board membership or employment at the company; or, (c) referral of suspected violations of law or regulations to the Authority and to the Office of the Attorney General.

10. Code of Ethics

These rules are meant to serve as a guide for the promotion of proper ethical standards, and sound and prudent business practices amongst regulated entities. Such a code of ethics should not, however, restrict or replace the mature judgment of staff in conducting their day-to-day business. Where there is doubt over matters relating to the code of ethics, staff should seek guidance from their supervisors, from a member of the Governance Committee, or from the Financial Regulation and Supervision Department of the Authority.

11. Financial Institutions' Code of Ethics

A financial institution may adopt additional in-house rules which require ethical standards not below those required by these rules. A copy of the in-house rules duly approved by the board of directors must be submitted to the Financial Regulation and Supervision Department of the Authority on a yearly basis.

12. Recruitment of Employees by Financial Institutions

An employee terminated by any other regulated entity based on embezzlement of funds or fraud must not be recruited in by any financial institution. A prospective new financial institution employer must obtain a clearance certificate of no objection or a reference from the previous employer of the candidate.

SCHEDULE II

Fit and Proper Qualifications

1. Introduction

- i. This schedule sets out the fit and proper criteria applicable to all relevant natural persons and institutions in relation to the carrying out of any financial service activity regulated by the Authority under the Act.
- ii. A relevant person must be competent, honest, have integrity and be of sound financial standing.
- iii. Each relevant person must establish that it, he, or she is a fit and proper person rather than for the Authority to show otherwise.
- iv. As different appointments and designations entail different responsibilities, the Authority will consider the nature of the responsibilities of the relevant person in determining the standard that should be expected of the relevant person.

2. Applicability

The requirement of this schedule shall be applicable to all the licensees licensed by the Authority in the following way:

- i. The expressions used in this Regulation shall, except where expressly defined in this Regulation have the same meanings as in the Act.
- ii. “Authorization” means:
 - a. a licensing as a securities exchange under the Act;
 - b. a licensing as a depository under the Act;
- iii. “Relevant person” means a person:
 - a. in relation to legal entity that is licensed by Authority under the Act:

- (1) a significant owner;
 - (2) a director;
 - (3) a chief executive officer or deputy chief executive officer;
 - (4) a chief financial officer; or
 - (5) any other officer by whatever name described, who has responsibilities or functions similar to any of the persons referred to in sub-sections (2), (3) or (4);
- b. in relation to a financial institution incorporated outside the Kingdom that is licensed by Authority under the Act;
- (1) a chief executive officer or deputy chief executive officer;
 - (2) any other officer by whatever name described, who has responsibilities or functions similar to any of the persons referred to in sub-section (1); or
 - (3) an institution.

3. Fit and Proper Test

- i. The following criteria will be taken into account by the Authority in determining whether a relevant person is fit and proper:
 - a. honesty, integrity and reputation;
 - b. competence and capability;
 - c. financial soundness.
- ii. In addition to 3.i. in the case where the relevant person is an institution, to establish that it is fit and proper, an institution must satisfy the Authority that:
 - a. all of its significant owners meet the fit and proper criteria of this Regulation;
 - b. each of its directors and chief executive officer, or equivalent persons, meet the fit and proper criteria of this Regulation; and

- c. it has in place appropriate recruitment policies, adequate internal control systems and procedures that would reasonably ensure that the persons that it employs, authorizes or appoints to act on its behalf, in relation to its conduct of the activity regulated under the relevant legislation, meet the fit and proper criteria of this Regulation.

4. Honesty, Integrity and Reputation

- i. The factors set out in the following sections are relevant to the assessment by Authority of the honesty, integrity and reputation of a relevant natural person. The Authority will consider whether the relevant person:
 - a. has been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific license registration or other authorization is required by law in any jurisdiction;
 - b. has been issued a prohibition order under any Act administered by Authority or has been prohibited from operating in any jurisdiction by any financial services regulatory authority;
 - c. has been censured, disciplined, suspended or refused membership or registration by Authority, any other regulatory authority, an operator of market or clearing facility, any professional body or government agency, whether in the Kingdom or elsewhere;
 - d. has been the subject of any complaint made reasonably and in good faith, in the determination of Authority, relating to activities that are regulated by authority or under any law in any jurisdiction;
 - e. has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
 - f. has been convicted of any offence, or is being subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction;
 - g. has had any judgment associated with a finding of fraud, misrepresentation dishonesty entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;

- h. has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction;
- i. has had any civil penalty enforcement action taken against it or him by Authority or any other regulatory authority under any law in any jurisdiction;
- j. has contravened or abetted another person in breach of any laws or regulations whether in the Kingdom or elsewhere;
- k. has been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by Authority, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in the Kingdom or elsewhere;
- l. has been refused a fidelity or surety bond, whether in the Kingdom or elsewhere;
- m. has demonstrated an unwillingness to comply with any legal or regulatory requirement or to uphold any professional standard, whether in the Kingdom or elsewhere;
- n. has been untruthful or provided false or misleading information to Authority or been uncooperative in any dealings with Authority or any other regulatory authority in any jurisdiction;
- o. Where a relevant natural person has served or been associated with a company or other business venture, in addition to sub-sections (a) to (n), the Authority will consider whether the relevant person:
 - (1) is or has been a director, partner, significant owner or concerned in the management of a business that has been censured, discipline prosecuted or convicted of a criminal offence, or been the subject of any disciplinary or criminal investigation or proceeding, in the Kingdom or elsewhere, in relation to any matter that took place while the person was a director, partner, significant owner or concerned in the management of the business;
 - (2) is or has been a director, partner, significant owner or concerned in the management of a business that has been suspended or refused membership or registration by Authority, any other regulatory

authority, an operator of market or clearing facility, any government agency, whether in the Kingdom or elsewhere;

- (3) has been a director, partner, significant owner or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, the relevant person was a director, partner, significant owner or concerned in the management of the business, whether in the Kingdom or elsewhere;
- (4) has been dismissed or asked to resign from:
 - (i) office;
 - (ii) employment;
 - (iii) a position of trust; or
 - (iv) a fiduciary appointment or similar position, whether in the Kingdom or elsewhere;
- (5) has been disqualified from acting as a director or disqualified from acting in managerial capacity whether in the Kingdom or elsewhere; and
- (6) has been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, whether in the Kingdom or elsewhere;
- (7) has NPL for past one year.

5. Competence and Capability

The criteria set out in the following sections shall be considered by the Authority in its assessment of the competence and capability of a relevant person. The Authority shall consider:

- a. whether the relevant person has satisfactory past performance or expertise, having regards to the nature of the relevant person's business or duties, as the case may be, whether in the Kingdom or elsewhere;

- b. where the relevant person is an individual who is assuming concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his duties in relation to any activity regulated by the Authority under the relevant legislation;
- c. whether the relevant person has satisfactory educational qualification or experience, whether in the Kingdom or elsewhere, having regards to the nature of the duties they are required to perform; and
- d. where a certification or satisfactory completion of an examination is required to hold a particular position, whether the relevant person has received the certification or passed the relevant examination.

6. Fitness of Financial Institution Directors

- i. Members of the board of directors of each financial institution must demonstrate to the satisfaction of the Authority that they possess experience in banking or finance and can analyze a financial statement.
- ii. In addition, the following types of financial institutions must have directors with the following expertise:
 - a. A bank shall have on its board of directors, at least two of the following persons:
 - (1) One person who has had at least three years of professional experience in commercial banking;
 - (2) One person who has had at least three years of professional experience in asset and liability management of a financial services firm;
 - (3) One person who has had at least three years of professional experience in consumer or commercial credit.
 - b. An insurance or re-insurance company shall have on its board of directors at least two of the following persons:
 - (1) One person who has had at least three years of professional experience in the line or lines of insurance business in which the company engages;

- (2) One person who has had at least three years of professional experience in commercial lending;
 - (3) One person who has had at least three years of professional experience in fixed income investment management;
 - (4) One person who has had at least three years of professional experience in asset and liability management of a financial services firm.
- c. A stock exchange shall have on its board of directors:
- (1) At least two persons who have had at least three years of professional experience in trading of equity and fixed income securities;
 - (2) At least one person who has had at least three years of professional experience in administration of a financial services firm or in administration of back office operations of a financial services firm.

7. Financial Soundness

- i. The criteria set out in the following subsections shall be considered by Authority in its assessment of the financial soundness of a relevant natural person. The Authority will determine whether the relevant person:
 - a. is or has been unable to fulfill any of its or his financial obligations, whether in the Kingdom or elsewhere;
 - b. has entered into a compromise or scheme of arrangement with its or his creditors or made an assignment for the benefit of its or his creditors, being a compromise or scheme of arrangement or assignment that is still in operation, whether in the Kingdom elsewhere;
 - c. is subject to a judgment for payment of debt which is unsatisfied, either in whole or in part, whether in the Kingdom or elsewhere;
 - d. in the case where the relevant person is an institution, whether it:
 - (1) is or has been the subject of a winding up petition, whether in the Kingdom or elsewhere;
 - (2) is in the course of being wound-up or otherwise dissolved, whether in the Kingdom or elsewhere;

(3) is or has been a corporation where a receiver or insolvency administrator has been appointed, in relation to any property of the corporation, whether in the Kingdom or elsewhere; or

(4) is or has been subject to any other process that is similar to those referred to in subsections (i) to (iii).

8. “Fit and Proper” criteria for licensee licensed by the Authority which are not explicitly mentioned in these regulations shall be determined by the Authority from time to time