



## Table of Contents

1. Short Title and Commencement.....	3
2. Definitions .....	4
3. Guiding Principles .....	10
4. Licensing Requirements .....	12
5. Application for License .....	13
6. Grant of License .....	15
7. Duties and Responsibilities of Licensees .....	17
8. Segregation and Safekeeping of Assets.....	26
9. Control of Related Party Transactions and Conflicts of Interest .....	27
10. Public Offering and Advertising of an Investment Fund .....	28
11. Valuation of Investment Fund Assets .....	30
12. Issue and Redemption of Units of Open-End Investment Funds.....	31
13. Compliance Audit .....	32
14. Investments, Policies and Strategies of Investment Funds .....	32
15. Maintenance of Books and Records .....	33
16. Fees and Charges .....	34
17. Periodic Reports.....	34
18. Cancellation and Suspension of Licenses.....	36

19. Registers .....	38
20. Submissions .....	38

## **1. Short Title and Commencement**

1.1 The objective of these regulations is the protection of investors in their dealings with Investment Advisors, Management Companies, Investment Funds and their related parties.

1.2 These regulations are issued pursuant to Sections 202, 286, 292, 298, 299, 303 and 362 of the Financial Services Act of Bhutan, 2011, and must be read in conjunction with the requirements under that Act.

1.3 In accordance with Section 364 of the Financial Services Act of Bhutan, 2011, where the provisions of these regulations appear to conflict with the provisions of the Companies Act or another law, or a regulation under them, each of the provisions shall apply, unless it is not possible to satisfy both provisions or, the application of such provision would clearly disrupt the orderly functioning of the scheme of regulation established under the Financial Services Act of Bhutan, 2011, in which case the provisions of these regulations shall prevail.

1.4 These regulations may be cited as the Investment Advisor and Management Company Regulations, 2014 (IAMCR).

1.5 They replace the Fund Management Company Regulations, 2011, and the Investment Advisors Regulations, 2011, each of which is hereby rescinded.

1.6 They shall come into operation on such date as may be specified by the Royal Monetary Authority of Bhutan by notice in the official newspaper and the Authority website.

## 2. Definitions

In these regulations, the following terms shall have the meanings indicated unless the context clearly indicates otherwise. Definitions in the Financial Services Act of Bhutan, 2011, are included here for easy reference and completeness. If the definitions in the Financial Services Act of Bhutan, 2011 are amended, the amended definitions shall prevail.

2.1 “**Act**” means the Financial Services Act of Bhutan, 2011.

2.2 “**Advisee**” means a client of an Investment Adviser or Management Company.

2.3 “**Affiliate**” means, except as more specifically provided herein, a person or company that controls, is controlled by, or is under common control with another person or company, by virtue of direct or indirect common ownership.

2.4 “**Applicant**” means the promoter(s) of a proposed Investment Adviser, Management Company, Investment Fund or Compliance Auditor.

2.5 “**Auditor**” means an auditor empanelled by the Royal Audit Authority, who is not an employee of the person audited and satisfies such other criteria of independence, integrity, diligence and skill as required by law or regulation or in regulations adopted by the Royal Monetary Authority with respect to audits of persons licensed under the Act, or audits prescribed in the listing standards of a securities exchange.

- 2.6 “**Authority**” means Royal Monetary Authority of Bhutan established under the Royal Monetary Authority Act of Bhutan, 2010.
- 2.7 “**Bankruptcy Act**” means the Bankruptcy Act of the Kingdom of Bhutan, 1999 and any amendments thereto.
- 2.8 “**Closed-end Investment Fund**” means an Investment Fund incorporated under the Companies Act of the Kingdom of Bhutan, 2000 with transferrable shares not subject to regular redemption by the company.
- 2.9 “**Companies Act**” means the Companies Act of the Kingdom of Bhutan, 2000 and any amendments thereto.
- 2.10 “**Compliance Auditor**” means an entity approved by the Authority to conduct audits of compliance by Investment Funds, their Investment Advisors, Management Companies and depositaries, with applicable laws, regulations and codes of conduct and internal controls, systems and procedures for the protection of investors and unit holders.
- 2.11 “**Control person**” means a director, shadow director, manager, significant owner - including any person, or group of persons acting cooperatively - whose direct or indirect equity holdings in, or control over votes in the general meeting of a company or its affiliates, give it substantial influence over the conduct of the company's business.
- 2.12 “**Financial planning**” means analyzing the financial circumstances of a person and providing a plan to meet that person's financial needs and objectives, including planning as to finances, insurance, employee benefits, investments and securities, taxation, estates, asset protection and retirement;
- 2.13 “**Independent directors**” means directors of an Investment Fund who, apart from receiving reasonable director's remuneration, have no material pecuniary relationship or transactions with the Investment Fund or its Management

Company, its controlling persons, its promoters, or the affiliates or related parties of any of them, or their subsidiaries, or any other allegiances, family relationships or conflicts of interest which, in the judgment of the Authority, may affect their independent judgment and ability to act solely in the interests of the unit holders of the Investment Fund.

2.14 **“Independent Oversight Entity”** means the independent directors of an Investment Fund acting as a body separate from representatives of the Investment Fund's Management Company who supervise operations of the Management Company and the Investment Fund ensuring compliance with applicable laws, regulations and the rules and policies of the Investment Fund to protect the interests of all unit holders.

2.15 **“Insider trading”** has the same meaning as in Section 39 of the Companies Act and any amendments thereto.

2.16 **“Investment Advisor”** means any person who is in the business of providing investment advisory services or investment management services with respect to investments that include in a substantial way investments in securities, but shall exclude:

2.16.1 Persons whose advice is solely incidental to the person's practice of law, accountancy or the teaching profession and involves no special compensation;

2.16.2 Persons whose advice is not directed to specific clients nor separately paid for by them, but is part of analysis or commentary appearing in general or specialized newspapers, magazines, other mass media or public discussion; and

2.16.3 An advisor that has fewer than 15 clients in Bhutan, none of which is an Investment Fund required to be licensed.

- 2.17 “**Investment advisory services**” means the provision, to a wide range of Advisees to include individuals, firms, and other entities, of advice of an investment or financial nature and includes, but is not limited to financial planning and/or investment research.
- 2.18 “**Investment discretion**” means legal authorization to select, obtain and dispose of an investment on behalf of a client without separate authorization for each transaction.
- 2.19 “**Investment Fund**” means funds pooled for purposes of collective investment in securities, raised in units, with a dividend or other return to each unit of interest in the fund, but does not include:
- 2.19.1 Pools with fewer than 25 participants unless offered in a public way to ordinary investors;
  - 2.19.2 Pools offered exclusively to “qualified investors”;
  - 2.19.3 Banks, insurers or pension funds subject to separate regulation;
  - 2.19.4 Ordinary industrial or commercial enterprises employing a holding company structure;
  - 2.19.5 Entities organized in accordance with rules adopted by the Authority solely to issue securities with a stated return designed to pass through to holders the revenue from a pool of mortgages, debt obligations or similar instruments; or
  - 2.19.6 Other pools defined by regulations of the Authority as not of the type contemplated by this section.
- 2.20 “**Investment management services**” means managing the investments of a client over which investment discretion has been secured, and includes such services provided by an Investment Advisor to its Advisees, and the services provided by a Management Company pursuant to an Investment Fund Management Contract;

- 2.21 “**Investment research**” means providing advice concerning securities, other than corporate finance advisory activities, and includes issuing or promulgating research reports and analysis.
- 2.22 “**Management Company**” means an entity licensed by the Authority as an Investment Advisor that manages licensed Investment Funds.
- 2.23 “**Open-End Investment Fund**” means an Investment Fund incorporated under the Companies Act of the Kingdom of Bhutan, 2000 with transferrable shares subject to regular redemption by the company allowing frequent or continuous redemption of the units issued by it.
- 2.24 “**Person**” shall mean a natural person (individual) or a legal entity.
- 2.25 “**Qualified investor**” means an institutional investor or high net worth individual investor who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, and is able to bear the economic consequences of investment;
- 2.26 “**Related party**”: In connection with a transaction of a company, “related party” means any person with the ability to control or exercise significant influence over such company in making business decisions, which includes:
- 2.26.1 An employee of such company with authority, or substantial influence over the decision, to enter a transaction by such company;
- 2.26.2 A control person of such company;
- Specifically in connection with a transaction of an Investment Fund, “related party” includes any employee, officer, director, or significant owner of such Investment Fund, its Management Company, and/or any affiliate.
- 2.27 “**Related-party transaction**” means a transaction between a company and a related party or affiliate, or a person whose relationship with such company is such,



as to provide reasonable suspicion that such person, in exercising his influence over the transaction, would place other interests ahead of those of the company.

2.28 **“Risk Capital”** means the financing made available to an enterprise during its early growth stages (i.e. start-up and development). It covers three types of financing - informal investment by business angels, venture capital, and private equity - and focuses on micro, small and medium sized enterprises and high growth companies, and can be in the form of equity and/or near- or quasiequity instruments.

2.28.1 “Equity capital” means common stock, preferred stock, royalty rights, limited partnership interest, limited liability company interests, and any other equity securities, instruments, or rights that evidence ownership or investment in private enterprises.

2.28.2 “Near-equity capital” and “quasi-equity capital” mean subordinated and/or convertible loans, debt instruments, or securities, which may be secured, under-secured, or unsecured.

2.29 **“Securities”** means:

2.29.1 Equity shares and other similar instruments;

2.29.2 Bonds, debentures and other similar debt instruments;

2.29.3 Units of interest in an Investment Fund;

2.29.4 Futures contracts and similar instruments traded on a securities exchange, or otherwise, to the extent provided in regulations adopted by the Authority;

2.29.5 Hybrids of or options to acquire or dispose of any of the securities listed above and options on financial indices; and

2.29.6 Other instruments and contracts as defined by the Authority offered to raise funds from and provide a return to a body of investors not generally active in the management of the issuer or derivatives of these.

2.30 **“Securities exchange”** means the Royal Securities Exchange of Bhutan, Ltd. (RSEBL) or such other person in the business of operating an organized forum or marketplace (including an electronic marketplace) for transactions in securities that is licensed by the Authority as a securities exchange.

2.31 **“Significant owner”** of a company means a person who, either acting alone or through or in concert with one or more other persons, represents 10 percent or more of the capital or the voting rights at the general meeting of the company or exercises control over the management of the company, as determined by the Authority.

2.32 **“Unit”** means a unit of interest in an Investment Fund and shall represent the holder's ownership interest in the Investment Fund.

2.33 **“Venture Capital Fund”** means an Investment Fund that holds itself out as providing Risk Capital to, and helping to develop enterprises with high growth potential, high risk, and which may have limited operating histories.

### 3. Guiding Principles

These regulations shall be interpreted and administered to:

3.1 Promote the unfettered provision of risk capital to promising enterprises.

3.2 Insure the provision of complete, accurate, explicit, fairly presented information to investors concerning their investment options, the nature of the investments recommended to them, and the objectives, investment policies, investment strategies and financial responsibility of Investment Advisors, Investment Funds and their Management Companies.

3.3 Insure that investments are made in the best interests of all unit holders of Investment Funds and to prevent Investment Funds from being operated or their investments from being selected in the interest of their Management Companies, their directors, officers, promoters, or any of their affiliated persons.

3.4 License only responsible persons of high character, capacity and fitness to operate as Investment Advisors, Management Companies and/or directors, and to subject them to adequate independent scrutiny.

3.5 Promote sound methods of keeping investors' accounts and computing the earnings and the values of investments.

3.6 Require the consent of unit holders, investors and the Authority when control or management of an Investment Advisor, Investment Fund or its Management Company is transferred.

#### **4. Licensing Requirements**

4.1 No person may operate as an Investment Advisor, Management Company or Compliance Auditor unless licensed by the Authority to do so.

4.2 Any person applying for a license to operate as an Investment Advisor or a as Management Company shall meet the following requirements and conditions:

4.2.1 It shall be incorporated as a private limited company or as a public company and be registered under the Companies Act;

4.2.2 The applicant's promoter and/or owner, chief executive officer and all of its investment managers shall each have a minimum of 5 years of experience in an investment and/or finance related businesses and shall undertake to regularly upgrade their knowledge, skills and judgment;

4.2.3 Every control person, significant owner, director and key post holder of the applicant and any of its subcontractors shall fulfill the "fit and proper" criteria as required under **Annexure III** of these regulations;

4.2.4 Applicants intending to provide investment advisory services shall have a minimum paid up capital in the amount of \_\_\_\_\_,

4.2.5 Applicants intending to provide investment management services shall have a minimum paid up capital in the amount of \_\_\_\_\_,

- 4.2.6 Applicants intending to provide investment management services to an Investment Fund (i.e. Management Companies) shall have a minimum paid up capital in the amount of \_\_\_\_\_.
- 4.2.7 Paid up capital must be from legitimate sources and shall not be borrowed.
- 4.3 No Investment Fund shall be offered to the public unless licensed by the Authority.
- 4.3.1 Every Investment Fund shall be incorporated as a public company, registered under the Companies Act, and licensed by the Authority.
- 4.3.2 The management of every Investment Fund shall be contractually delegated to a Management Company under a contract requiring that the Investment Fund be managed in the interest of its unit holders.
- 4.4 Any person applying for a license to operate as a Compliance Auditor shall meet the following requirements and conditions:
- 4.4.1 It shall be incorporated as a private limited company or as a public company and be registered under the Companies Act;
- 4.4.2 It shall be an auditor approved by the Royal Audit Authority, or a credit rating agency licensed to operate in Bhutan.
- 4.5 No Investment Advisor, Management Company, Investment Fund or Compliance Auditor shall be considered as a Financial Institution.

## **5. Application for License**

- 5.1 A license is required to operate as an Investment Advisor, Management Company, Compliance Auditor, or Investment Fund. Application for a license shall be made in writing to the Authority, along with a non-refundable application fee in

cash/draft/cheque in favor of the Authority of \_\_\_\_\_, and shall contain the following documents:

5.1.1 Letter of Application specifying the type of license applied for (**Annexure I**);

5.1.2 Application Form (**Annexure II**); and

5.1.3 Biographical Report (**Annexure III**)

5.2 In addition to the above, an application to be licensed as an Investment Fund shall include the following documents:

5.2.1 Its charter and rules;

5.2.2 Its registration under the Companies Act (if any);

5.2.3 its contract with its proposed Management Company;

5.2.4 its contract with its proposed depositary; and

5.2.5 The most recent audited and unaudited financial statements of its Management Company;

5.2.6 If its Management Company manages another Investment Fund, such Investment Fund's most recent audited financial statements and its most recent compliance audit report; and

5.2.7 Such other documents that the Authority may require.

5.3 An application not complete in all respects and not conforming to the instructions specified in **Annexures II and III** of these regulations shall be returned and the applicant shall have 30 additional days from the date of its return to complete the application in all respects and rectify the errors, if any.

- 5.4 Every license granted under this regulation shall be renewed annually.
- 5.5 No license granted under this regulation may be assigned without the express written authorization of the clients affected and the prior written approval of the Authority.
- 5.6 Every applicant and every person licensed under this regulation shall promptly notify the Authority in writing of any change in the information submitted in any application, but not later than 14 days from the occurrence of any such change.
- 5.7 To ensure compliance with the Act and regulations under it, the Authority and any of its authorized representatives shall be afforded prompt access to the premises of any licensee under these regulations and shall be entitled to examine any of its books, records and other documents (including electronic documents) and any of its clients' accounts and transactions pertaining to the activities that it is licensed to engage in. Failure to afford such access or provide such books, records, documents, accounts and transactions shall be grounds for immediate revocation of any such license.
- 5.8 All persons licensed under these regulations shall be subject to inspection by the Authority and its authorized representatives without notice and may be subject, upon due notice, to investigation for cause.
- 5.9 Requirements which are pre-conditions for granting a license shall be met at all times during on-going business operations of licensees and their related parties.

## **6. Grant of License**

- 6.1 The Authority shall grant a license to an applicant, only if the Authority, amongst other things, is satisfied that:
- 6.1.1 The managerial capacity of the applicant is adequate to conduct the proposed operations;

- 6.1.2 The applicant will conduct its business in an honest and transparent manner and with the professional skills appropriate to the nature scope and scale of its proposed activities;
- 6.1.3 The applicant will conduct its business in a sound and prudent manner so as not to jeopardize performance of financial obligations;
- 6.1.4 The applicant will maintain adequate accounting and other records of its business with adequate systems of control.
- 6.1.5 With respect to an application to be licensed as an Investment Fund:
- 6.1.5.1 The control persons of its proposed Management Company and depositary are fit and proper persons; and
  - 6.1.5.2 Its contracts with its proposed Management Company and depositary and the fund rules provide that they may not be amended or assigned without the prior approval of the Authority.
- 6.1.6 With respect to an application to be licensed as an open-end Investment Fund:
- 6.1.6.1 The market for investments contemplated by it is sufficiently liquid to support the effective operation of such open-end Investment Fund;
  - 6.1.6.2 Its organizational form is legally sufficient to protect the interests of its unit holders; and
  - 6.1.6.3 Arrangements for redemption of its units are lawful, practical and not likely to cause harm to the Investment Fund by reason of the illiquidity of its investments.



6.2 After consideration of the documents and other investigations, the Authority, if satisfied, may issue an "In-Principle Approval". This approval shall be valid for the period of three months. During this period, the applicant shall take all necessary preliminary measures specified therein. The issue of "In-Principle Approval" does not bind the Authority to issue a license to conduct business.

6.3 An applicant in respect of which an "In-Principle Approval" has been granted should not commence business before the issue of a license. Every advertisement, notice, etc. issued prior to the issue of the license should specify that it has not been issued a license to operate its business.

6.4 A person that does not hold a license to operate as an Investment Advisor, a Management Company, an Investment Fund or a Compliance Auditor shall not take, use or, by inference, adopt the name, title or description of "Investment Advisor;" "Management Company", "Investment Fund", "Compliance Auditor;" as the case may be.

## **7. Duties and Responsibilities of Licensees**

7.1 The duties and responsibilities of an Investment Advisor include the following:

7.1.1 An Investment Advisor shall act in a fiduciary capacity, and shall fully disclose all conflicts of interest in writing, to its clients as and when they may arise.

7.1.2 An Investment Advisor shall not divulge, either orally or in writing, directly or indirectly, any confidential information about its clients without the specific prior written permission of its concerned client, except where such information is required by the Authority with respect to compliance with the Act and the regulations under it.

7.1.3 No Investment Advisor shall exercise investment discretion over the assets of a client without the specific written approval of the client as to the terms conditions and limitations of the Investment Advisor's authority, including that such assets will be held in the client's name and segregated from the

assets of the Investment Advisor; limitations on the amount of the commitments the Investment Advisor may make on behalf of the client and describing how such discretionary authority shall be terminated.

7.1.4 No Investment Advisor or Management Company shall:

7.1.4.1 Guarantee that a specific result or return will be achieved;

7.1.4.2 Recommend or invest in any security as a result of any price sensitive non-public information, or knowingly assist any other person to invest on the basis of such information;

7.1.5 An Investment Advisor, in providing investment advisory and/or investment management services (insofar as permitted by its license), shall, prior to executing any transaction, disclose in writing to the client whether it is giving independent advice or whether it or any of its affiliates has any material interest in the investments being recommended or selected and the commissions, fees or other benefits that it will receive for the services provided including from any source other than the client.

7.1.6 An Investment Advisor shall not recommend the purchase of any security or investment to an Advisee unless he has a reasonable belief based upon a full understanding of the Advisee's circumstances and risk tolerance that the investment is suitable for that Advisee.

7.1.7 Every Investment Advisor and every Investment Fund shall ensure that a proper system of internal audit is adopted by them and practiced throughout their operations and that their internal control systems are adequate for the size, nature, complexities and conflicts of interest inherent in their relationships with their clients.

7.1.8 No Investment Advisor shall provide investment advice to any client unless it has adopted and implemented written policies and procedures reasonably designed to prevent violation of the Act and these regulations

by it and its supervised persons. It shall review the adequacy of the policies and procedures adopted, and the effectiveness of their implementation not less frequently than annually.

7.1.9 Every Investment Advisor and Management Company shall display their licenses at all places at which they carry on their businesses.

7.1.10 Every Investment Advisor shall prominently display a complete list of its charges in each of its offices and on its website, and shall provide a written copy of such list to each prospective Advisee prior to entering into a contract to provide services.

7.1.11 Every Investment Advisor shall establish, publish and advise clients of its written procedures for proper handling of client's complaints, including advising clients of further remedies available to them.

7.2 The duties and responsibilities of a Management Company include the following:

7.2.1 A Management Company shall act in a fiduciary capacity, and fully disclose all conflicts of interest in writing, to its clients as and when they may arise.

7.2.2 A Management Company shall manage the investment portfolio of the Investment Funds it has been contracted to manage;

7.2.3 A Management Company shall deal in securities and other investments of the Investment Funds it has been contracted to manage;

7.2.4 A Management Company shall arrange for the custody and segregation of the assets of the Investment Funds under its management, separately from its own assets, by a depositary which shall be a bank not affiliated with the Management Company or any of its affiliates, and which shall act independently and solely in the interests of the unit holders of such Investment Funds.

- 7.2.5 A Management Company shall determine the valuation methodology to be adopted by an Investment Fund managed by it and set it forth in the rules (By-laws) of the Investment Fund;
- 7.2.6 A Management Company shall administer the Investment Funds under its management and arrange for the transfer of units of such Investment Funds;
- 7.2.7 A Management Company shall arrange for a financial audit of the Investment Funds it manages;
- 7.2.8 A Management Company shall arrange for a Compliance Auditor to perform a compliance audit of all Investment Funds under its management and of itself;
- 7.2.9 A Management Company shall insure the fair and orderly allocation of purchases and sales of securities and other investments among Investment Funds under its management by adopting written rules and procedures, and causing any related Investment Advisor to adopt such rules and procedures.
- 7.2.10 A Management Company shall insure that all fees to be charged against the assets of any Investment Funds under its management for any services to be performed, and any charges, commissions or other payments to be charged to individual unit holders for specific services and/or transactions and the method of calculation of such fees, charges, commissions or other payments are fair and prominently disclosed.
- 7.2.11 A Management Company shall insure that all Investment Funds under its management have duly constituted boards of directors, 75 percent of the members of which are independent directors, who shall constitute the Independent Oversight Entity (IOE) of the Investment Fund, and that such independent directors, upon the expiration of their terms in office, shall nominate their successors.

7.2.12 A Management Company shall file with the Authority copies of all policies and procedures adopted by it in compliance with these regulations no later than January 31 of each year.

7.2.13 A Management Company shall insure that within 45 days of receipt of a compliance audit report, the Authority is provided with a copy of such report and the Investment Fund and its own responses to any recommendations or findings in the report requiring improvement in systems, procedures and internal controls and the activities undertaken by them to improve compliance with the laws and regulations and to upgrade their internal controls, systems and procedures.

7.2.14 A Management Company shall insure that there is in effect, at all times, a duly executed contract between itself and each Investment Fund it manages requiring it to perform all of the above referenced duties.

7.3 The duties and responsibilities of an Investment Fund, its board of directors and Independent Oversight Entity (IOE) include the following:

7.3.1 Insuring that a proper system of internal audit and internal controls are adopted by the Investment Fund's Management Company and practiced throughout its operations and that its internal control systems are adequate for the size, nature, complexities and conflicts of interest inherent in its relationships.

7.3.2 Insuring the adequacy of protections provided to unit holders;

7.3.3 Insuring unit holder complaints are addressed in a timely and fair manner;

7.3.4 Insuring the Investment Fund's brokerage fees are being used in the best interest of the Investment Fund's Unit holders;

7.3.5 Insuring the fairness of fees borne by the Investment Fund and the commissions, charges and other payments to be borne by its unit holders, and the adequacy, completeness and clarity of their disclosure;

- 7.3.6 Insuring the Investment Fund and its Management Company undergo an annual audit of its financial statements;
- 7.3.7 Insuring the adequacy of disclosures made by the Investment Fund and its Management Company;
- 7.3.8 Insuring the observance by the Investment fund of any restrictions on investments; and its investment policies and strategies; and
- 7.3.9 Insuring its Management Company and the Investment Fund undergoes a compliance audit at least annually.
- 7.3.10 Insuring the operations of its Management Company and depositary are performed solely in the interests of its unit holders.
- 7.3.11 Insuring procedures are adopted to facilitate the ability of its independent directors to carry out their duties in their capacities as IOE, including those that require the IOE to meet separately from other directors at least once per quarter to consider and recommend appropriate actions regarding the above.
- 7.3.12 Insuring that records and minutes of board of directors and IOE meetings are maintained, and that these records address, among other matters deemed appropriate by the board of directors: persons in attendance; topics discussed; recommendations made; decisions taken; and whether or not prior recommendations or decisions have been implemented, and if not implemented, the reasons for such lack of implementation.
- 7.3.13 Insuring that an Investment Fund does not directly or indirectly guarantee any return or investment result.
- 7.4 The duties and responsibilities of a Compliance Auditor include the following:
- 7.4.1 Conducting Compliance Audits that include a review of:

7.4.1.1 The completeness, observance, and effectiveness of the Investment Fund's, its IOE's and its Management Company's internal controls, systems and procedures and with all applicable laws and regulations for the protection of its unit holders and of investors more generally;

7.4.1.2 Any unit holder complaints and the effectiveness of responses to them;

- 7.4.1.3 The fairness of fees and expenses charged to the Investment Fund and to unit holders;
- 7.4.1.4 The fairness of related party transactions;
- 7.4.1.5 Whether and in what ways, if any, an Investment Fund's Investment transactions are being used to benefit its Management Company or any related Investment Advisor or affiliate of them;
- 7.4.1.6 The effectiveness of the segregation, safekeeping and security of fund assets;
- 7.4.1.7 The valuation of an Investment Fund's portfolio of investments;
- 7.4.1.8 Adherence to an Investment Fund's investment objectives and strategies, including its observance of limits on investments;
- 7.4.1.9 The adequacy, completeness and timeliness of disclosures; and
- 7.4.1.10 The qualifications of the officers, directors and key staff of the Management Company and of the Investment Fund.
- 7.4.2 Completing and delivering a compliance audit report within 45 days of completing a Compliance Audit. Such report shall be delivered to the Investment Fund, its Management Company and each of the Investment Fund's directors, and shall be written, dated, and signed by the party principally responsible for conducting such Compliance Audit, and shall :
- 7.4.2.1 State in detail its findings with respect to the compliance by the



Investment Fund, its IOE, its Management Company and depositary with the relevant laws, regulations and codes of conduct and the adequacy and observance, or lack thereof, of their internal controls and procedures for the protection of unit holders; and

7.4.2.2 Recommend concrete steps that should be taken, designating the appropriate parties, to rectify any deficiencies discovered.

7.4.3 The Authority shall have full access to information maintained or obtained by the Compliance Auditor.

7.4.4 The Authority may require changes and /or improvements to be made in the procedures and methodologies employed by a Compliance Auditor.

7.4.5 A Compliance Auditor shall be subject to disclosure and confidentiality requirements that are no less stringent than those applicable to the Authority.

7.5 The duties and responsibilities of a depositary shall include the following:

7.5.1 Receive, deliver, keep safe and value the securities and other investments held by an Investment Fund.

7.5.2 Administer the issuance and redemption of units of an open-end Investment Fund, seeing to the conduct of those operations in accordance with the Act and these regulations, the rules of the Investment Fund and the depositary's contract with the Investment Fund.

7.5.3 Conduct itself in accordance with the Act and these regulations, the rules of the Investment Fund and the depositary's contract with the Investment Fund.

## **8. Segregation and Safekeeping of Assets**

8.1 Money held by an Investment Advisor on behalf and for the benefit of a client (Advisee) shall be kept in a bank account separate from the Investment Advisor's own money, and be clearly designated as being held for the benefit of the client.

8.2 Securities and other investments held by an Investment Advisor on behalf and for the benefit of a client shall be held separately from the Investment Advisor's own securities and other investments in safe-keeping, in the client's name, either in a depository, or if such securities are listed and/or traded on a securities exchange, such other safe-keeping arrangements as shall be required by the Authority.

8.3 Money held by a Management Company on behalf of and for the benefit of an Investment Fund (Advisee) shall be kept in a bank account separate from the Investment Advisor's own money, and be clearly designated as being held for the benefit of the Investment Fund.

8.4 Securities and other investments held by a Management Company on behalf and for the benefit of an Investment Fund shall be held separately from the Investment Advisor's own securities and other investments in safe-keeping, in the client's name, either in a depository, or if such securities are traded on a securities exchange, such other safe-keeping arrangements as shall be required by the Authority.

8.5 Notwithstanding anything to the contrary contained in the Bankruptcy Act, money held in a bank account clearly designated as being held on behalf of and for the benefit an Advisee, and securities and other investments held in safekeeping in the name of the Advisee, shall remain the property of the Advisee and shall not, in the event of a bankruptcy of any of the parties, be deemed the property of the Investment Advisor or Management Company.

## 9. Control of Related Party Transactions and Conflicts of Interest

9.1 A Management Company acting on behalf of an Investment Fund or an Investment Advisor acting on behalf of an Advisee may not grant personal loans out of the fund's or the Advisee's assets to any officer or director of the Investment Fund; of its Management Company; or of the Investment Advisor of an Advisee; or of any related or affiliated persons of any of them.

9.2 An Investment Fund may not participate in a related party transaction unless:

9.2.1 Each such proposed transaction has been presented in advance and explained in detail to the Investment Fund's independent directors;

9.2.2 They have found, in writing signed by each of them, that the transaction would be fair to the Investment Fund and its unit holders; and

9.2.3 In any joint ventures by an Investment Fund with a related party, the independent directors have found, in writing signed by each of them, that the Investment Fund would not be treated less fairly or differently than any other party.

9.3 In every case, fairness to the fund shall be determined by whether the consideration is what an independent party would accept in an arm's length transaction.

9.4 The details of each related party transaction by an Investment Fund shall be reported quarterly to the Authority and summarized in the fund's periodic reports to unit holders and on its website for one year, and the profit or loss on each transaction reported in the same manner one year after it has been completed.

9.5 A Management Company shall disclose to the independent directors of any funds it manages and seek their approval in advance for the resolution of:

9.5.1 Any conflicts of interest between it and any fund it manages; and

9.5.2 Any conflicts of interest with any funds it manages.

## **10. Public Offering and Advertising of an Investment Fund**

10.1 The offer of units in an Investment Fund shall only be in the form of a prospectus:

10.1.1 That provides clear easily understood information material to a decision to buy, hold or sell units;

10.1.2 Complies with the requirements of **Annexure V** of these regulations; and

10.1.3 Has been approved in advance by the Authority as to completeness, adequacy, timeliness and clarity of disclosure.

10.2 The Authority shall have 60 days from the submission of a prospectus to approve it or provide written comments as to any deficiencies to the issuer. No offer of units or shares shall be made under a prospectus unless the issuer has responded to the comments of the Authority. Such prospectus shall be filed with both the Authority and the Registrar of Companies. Only upon its approval and acceptance by each of them shall the units or shares be offered to the public.

10.3 A request for the permission to offer units to the public shall include;

10.3.1 The terms and conditions of the proposed offer;

10.3.2 Subscription forms;

10.3.3 Redemption forms for an open-end fund;

10.3.4 Current copies of all documents required relating to the licensing of an Investment Fund;

10.3.5 A draft prospectus that complies with **Annexure V**;

- 10.3.6 A copy of the request for listing of the units of a closed-end Investment Fund on a securities exchange; and
- 10.3.7 The agreement of the securities exchange to list the units of a closedend fund.
- 10.4 A Management Company shall notify the Authority in writing of any material changes made in documentation submitted in support of the application for the offering of units in an Investment Fund.
- 10.5 A Management Company shall secure the written consent of the Authority prior to making any material change in the terms and conditions of an offering of units of an Investment Fund.
- 10.6 An open-end Investment Fund shall update its prospectus annually.
- 10.7 Any advertising material, including on media, to be used by an Investment Advisor or Investment Fund shall be submitted in advance to the Authority for its approval.
- 10.8 All promotional material written or oral used to promote an Investment Fund must be honest and factual and not misleading or deceptive.
- 10.9 No advertisement or promotional material for an Investment Fund may be used unless:
- 10.9.1 The fund's prospectus has been approved by the authority;
  - 10.9.2 Such advertisement or promotional material prominently advises prospective investors to consider the Investment Fund's investment objectives, risks, charges and expenses carefully before investing;
  - 10.9.3 Explains that the prospectus contains this and other information about the Investment Fund;

10.9.4 Identifies a source from which a prospective investor may obtain a prospectus; and

10.9.5 States that the prospectus should be read carefully before investing.

## 11. Valuation of Investment Fund Assets

11.1 The current net asset value of an Investment Fund and its net asset value per unit based upon the current fair market value of its assets shall be calculated by applying the methodology determined in good faith by the Investment Fund's Board of Directors and approved by the Authority in accordance with the Investment Fund's constitutive and offering documents consistently applied and disclosed in its offering documents and periodic reports.

11.2 The current net asset value and net asset value per unit of closed-end Investment Funds shall be calculated and published at regular intervals, but not less frequently than monthly.

11.3 The current net asset value and net asset value per unit of open-end Investment Funds shall be calculated and published at regular intervals, but not less frequently than weekly.

11.4 Net asset value (NAV) per unit shall be calculated using the following formula:

$$\text{NAV} = \frac{\text{total current fair value of assets} \pm \text{adjustments (accrued fees, expenses)}}{\text{number of units issued}}$$

11.5 Securities listed on a securities exchange, but not traded for at least 30 days, shall be valued within the range of closing bid/ask prices.

11.6 Unlisted or unquoted securities shall be valued at their "reasonable value" (i.e., the amount for which the asset or liability could be traded in an arm's length transaction between a knowledgeable and willing buyer and seller, alternatively,

if permitted by the Authority, they may be valued at cost subject to adjustment for market comparables, independent appraisals from professionals, or any other information from independent sources.

11.7 The value of any asset shall be determined by the depositary, in accordance with the methodology adopted and consistently applied by the Investment Fund and approved by the Authority.

## **12. Issue and Redemption of Units of Open-End Investment Funds**

12.1 Every open-end Investment Fund shall establish a fair, efficient, consistent and transparent system for effecting the issue and redemption of units. Such system shall include:

12.1.1 A procedure for account opening and entering a contract with the purchaser;

12.1.2 A process for collecting and dating orders and redemptions;

12.1.3 A process to rectify and amend errors in the order and redemption processes;

12.1.4 Verification of orders for accuracy and complete disbursement;

12.1.5 Issuance of written confirmations of orders ;and

12.1.6 Control of receipt and disbursements of money, including relevant documents.

12.2 After an initial public offering of an open–end Investment Fund, orders and redemptions shall be calculated by applying “forward pricing” (i.e., persons

applying to buy or redeem units do so at the closing NAV per unit price at the next date after submitting their order that such unit price will be calculated);

12.3 An open-end Investment Fund may not suspend redemptions without the advance written consent of the Authority.

12.4 The subscription/redemption of units shall be made in accordance with Annexure IV.

### **13. Compliance Audit**

13.1 Every Investment Fund and its Management Company shall undergo a compliance audit at least annually by a Compliance Auditor who shall be independent of such Investment Fund, its Management Company, depositary and the directors and affiliates of each of them.

### **14. Investments, Policies and Strategies of Investment Funds**

14.1 The following shall be described in the rules (By-laws), Management Company contract and prospectus of an Investment Fund

14.1.1 The Investment Fund's investment policy, general objectives and investment strategy;

14.1.2 The extent to which it invests in securities not listed on a securities exchange in Bhutan; and

14.1.3 The maximum percent of its assets it will invest in another Investment Fund.

14.2 An Investment Fund shall not invest more than 25 percent of its total assets in any instruments issued by a single company, nor may it own more than 25 percent of any single company. This limitation shall not apply to a Venture Capital Fund.

14.3 An Investment Fund shall not make loans to any of its officers, directors, affiliates or those of its Management Company, its depositary or any of their affiliates.



14.4 An Investment Fund shall not issue any debentures or preference shares.

14.5 A closed-end Investment Fund shall not incur any debt. An open-end Investment Fund may, upon receiving written permission from the Authority, borrow an amount up to 10 percent of its total net asset value, for the sole purpose of meeting redemptions.

14.6 An Investment Fund shall not invest in securities issued by its Management Company or by any related Investment Advisor, nor shall it invest in any Investment Fund managed by its Management Company.

**15. Maintenance of Books and Records**

15.1 Every Investment Advisor, Investment Fund, Management Company, and Compliance Auditor shall:

15.1.1 At all times keep such records as are necessary to exhibit clearly and correctly the state of its affairs, to explain its transactions and financial position, and to enable the Authority to determine whether it has complied with the provisions of these regulations. These records shall provide a clear and readily accessible audit trail, and must be such that they can be reproduced in legible form when required.

15.1.2 Maintain and submit to the Authority an adequate and appropriate disaster recovery and business continuity plan indicating its procedures to assure the preservation of its records and provide for the continuation of its operations in emergency circumstances.

15.1.3 The records required by this Section must be kept for a period of at least ten years.

15.1.4 Keep any other records as may be required by the Authority.

## **16. Fees and Charges**

- 16.1 A Management Company of an Investment Fund may be paid or receive, directly or indirectly, from the Investment Fund, for its management services, only the fee stipulated in the Investment Fund's prospectus which also shall be stipulated in the Investment Fund Management Contract.
- 16.2 Managing an Investment Fund shall include providing or arranging for all administrative and service activities required to conduct the Investment Fund's business including, for example, bookkeeping of independent accounts of each unit holder, investment research, analysis and selection of investments (including by subcontractors) maintaining documentary records for portfolio management and records of transfer of ownership of sold or redeemed units, providing periodic reports, payment of dividends, interest and commissions and responding to the unit holders' queries.
- 16.3 Fees, commissions or charges to individual investors or unit holders relating to the acquisition or redemption of units of an open-end Investment Fund shall not, in total, exceed 8.5 percent of the initial purchase price of the units (i.e., the total price paid including any sales commissions or loading fees).

## **17. Periodic Reports**

- 17.1 Every Licensee shall prepare its accounts in accordance with generally accepted accounting principles, shall appoint an auditor empanelled by the Royal Audit Authority of Bhutan to audit its accounts in accordance with generally accepted auditing standards, and shall file its audited financial statements with the Authority within 90 days of the end of its fiscal year.
- 17.2 An Investment Fund shall file annually, within 90 days of the end of its fiscal year, with the Authority, and the securities exchange on which it is traded, and provide its unit holders with a copy of its audited financial statements.

17.3 An Investment Fund shall file the following information with the Authority, in the form required by the Authority, within 45 days of the end of each quarter, and shall disclose to its unit holders:

17.3.1 The total net asset value of the Investment Fund;

17.3.2 The number of units outstanding and the net asset value per unit;

17.3.3 The investments and any other assets held by the Investment Fund (i.e. a listing of investments, number of and value of shares or securities - if applicable - of each investment held, the total value of each holding, and the total value of the investment portfolio);

17.3.4 A description of each related party transaction during the preceding 12 month period, including the parties to the transaction involved and their relationship to one another; the amount paid or received by the Investment Fund; the security or other thing of value received by or sold to the other party and its current value at the end of the most recent quarter;

17.3.5 The Investment Fund's balance sheet and statement of profits and losses quarterly, semi-annually and annually.

17.3.6 The total amount of fees paid to the Management Company out of Investment Fund assets both in total and as a percentage of total Investment Fund net assets during the quarter.

17.3.7 Such other information as the Authority may require in the interest of the protection of investors and the integrity of the Investment Fund.

17.4 An Investment Fund shall disclose to its unit holders in writing quarterly, within 45 days of the end of each quarter, the number of units owned by that unit holder, the net asset value per unit and the total net asset value of each unit holder's holdings at the end of the quarter.

17.5 An Investment Fund and its Management Company shall file a certified copy of its written compliance audit report with the Authority within 90 days of the completion of its Compliance Audit.

17.6 Every Management Company shall file with the Authority copies of all policies and procedures adopted by it in compliance with these regulations no later than January 31 of each year.

## **18. Cancellation and Suspension of Licenses**

18.1 With Notice - The license of an Investment Advisor, Management Company, Investment Fund or Compliance Auditor may be cancelled or suspended, after due notice and after a reasonable opportunity of being heard, if the licensee:

18.1.1 Violates the provisions of the Act or rules or regulations thereunder;

18.1.2 Fails to furnish any information relating to their activities as required by the Authority;

18.1.3 Furnishes wrong or false information; or conceals or fails to disclose material facts in their applications submitted for obtaining a license;

18.1.4 Does not co-operate with any inspection or enquiry conducted by the Authority;

18.1.5 Fails to maintain the capital requirements in accordance with the provisions of these regulations;

18.1.6 Fails to pay the fees or the reimbursement of expenses under these regulations;

18.1.7 Violates the conditions of their license; or

18.1.8 Does not carry out their obligations as specified in these regulations.

18.2 Without Notice - The license of an Investment Advisor, Management Company, Investment Fund or Compliance Auditor may be cancelled or suspended without notice, if the licensee:

18.2.1 Is found guilty of fraud, or is convicted of a criminal offence;

18.2.2 Is found to have engaged in money laundering or financing of terrorism;

18.2.3 Commits such defaults, which require immediate action in the opinion of the Authority, provided that the Authority has communicated the reasons for the cancellation in writing; or

18.2.4 Has not commenced the business within three months of being granted a license.

An order of cancellation or suspension of a license shall be published in the media and on the Authority's website as the Authority may consider fit.

## **19. Registers**

19.1 The Authority shall maintain separate registers of Investment Advisors, Management Companies, Investment Funds and Compliance Auditors.

19.2 Such registers shall record, for each type of licensee and its responsible officers, their name, address, contact information and such other information, if any, regarding each of them as the Authority determine would be useful for the public.

19.3 All registers shall be made available for inspection by the public during the RMA's business hours.

## **20. Submissions**

All enquiries, applications and information as pursuant to these regulations shall be submitted to the Authority at the following address:

Hon'ble Governor, Royal Monetary Authority of Bhutan

P.O. Box 154,

Chhophel Lam, Kawajangsa

Thimphu, Bhutan

Telephone: +975-2-23111/219

Fax: +975-2-322847