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In pursuant to sections 5, 202 and 362 (e) of the Financial Services Act of Bhutan 2011, the Royal Monetary Authority of Bhutan hereby adopts the Private Money Lending Rule and Regulation 2016 to establish proper systems of permitting and regulating private money lending business in Bhutan.

## **1. Short title, commencement and extent**

1.1 This rule & regulation shall:

1.1.1 Be called “The Private Money Lending Rule & Regulation of Bhutan 2016”;

1.1.2 Come into force on \_\_\_ day of the \_\_\_ month of 2016; and

1.1.3 Apply to all persons as defined in this rule and regulation.

## **2. Purpose**

2.1 The purpose of this rule and regulation is to:

2.1.1 Regulate private money lending business;

2.1.2 Ensure that private money lending business is brought under the purview of the financial sector through the application of this rule and regulation; and

2.1.3 Minimize threat to the financial system and enhance the effectiveness of monetary policy and management; and

2.1.4 Prevent related litigations and adverse socio-economic consequences arising thereof.

## **Registration and scope of activity**

3.1 A person intending to engage in private money lending business shall obtain a registration certificate from the Authority as per the provisions laid down in this rule and regulation by submitting an application in the prescribed format given under ***Annexure A***.

3.2 Notwithstanding clause 3.1, a person can lend an amount not exceeding Nu. 90,000.00 without requiring to obtain a registration certificate from the Authority.

3.3 An Authorized Private Money Lender, with a registration certificate from the Authority, can lend a minimum of Nu. 90,000.00 and maximum of Nu. 500,000.00 to a single borrower.

3.4 An Authorized Private Money Lender shall not be permitted to lend beyond the maximum amount stipulated under clause 3.3 above.

3.5 An applicant shall provide non-refundable registration fee of Nu. 2,500.00 (Ngultrum Two thousand five hundred only) in cash/draft/cheque in favour of the Authority. The Authority shall review the quantum of fee from time to time.

3.6 The registration certificate under this Rule & Regulation shall be non- transferable to any person.

3.7 The Authority may approve or reject an application within a period of fifteen (15) working days from the date of submission of application with complete documents.

3.8 The registration certificate shall be valid for one year. Application to renew the registration certificate along with the renewal fee of Nu. 1,000.00 (Nu. one thousand only) shall be submitted thirty (30) days before the expiry of the current certificate.

3.9 If an Authorized Private Money Lender fails to renew the registration certificate before the expiry date of the current registration certificate, the same shall be automatically cancelled. However, if an Authorized Private Money Lender desires to carry out the business of money lending again, he shall apply for a new registration certificate, subject to fulfillment of all requirements stipulated in this rule and regulation.

3.10 Any lending carried out between the period after the expiry of the registration certificate and before obtaining the approval for renewal of the registration certificate shall be illegal.

3.11 A registration certificate shall not authorize an Authorized Private Money Lender to carry out business under more than one name or under any name which includes the word "bank".

3.12 The Authority reserves the right to reject the application for registration certificate based on the following grounds:

3.12.1 An applicant is not a citizen of Bhutan;

3.12.2 An applicant is a public official;

3.12.3 An applicant is incompetent, a minor or a person of unsound mind or is declared bankrupt, or who has a criminal record;

3.12.4 The earlier registration certificate of the applicant has been cancelled by the order of a Court;

3.12.5 An applicant has availed loan from one of the Financial Institutions and the loan has become Non-Performing Loan (NPL);

3.12.6 An earlier registration certificate has been cancelled on the ground of being transferred to another person;

3.12.7 Has failed to provide all the documents as required under ***Annexure A***; and

3.12.8 Has failed to fulfill any additional criteria as prescribed by the Authority from time to time.

3.13 An Authorized Private Money Lender shall commence operation of his business only upon submission of a copy of trade licence to the Authority.

3.14 The Authority shall cancel the registration certificate based on the following:

3.14.1 Failure to comply with any of the provisions under this Rule and Regulation;

3.14.2 Failure to renew registration certificate;

3.14.3 Declaration of bankruptcy by a Court of Law;

3.14.4 Cancellation of registration certificate by a Court of Law; or

3.14.5 Failure to fulfill other criteria specified by the Authority from time to time.

3.15 If the registration certificate has been cancelled by a court of law or because it was transferred to another person, an Authorized Private Money Lender shall not be eligible to apply for a registration certificate for a minimum period of two years.

## 4. **Duties of an authorized money lender**

4.1 It shall be mandatory for an Authorized Private Money Lender to execute a valid written contract with a borrower as per the provisions laid down in the Evidence Act of the Kingdom of Bhutan 2005 and Contract Act 2013.

4.2 An Authorized Private Money Lender shall carry out all due diligence exercises on the borrower’s credit worthiness, including obtaining credit reports from the Credit Information Bureau (CIB) and Central Registry.

4.3 An Authorized Private Money Lender shall not accept any money deposit in the form of cash, cheque or any other negotiable instruments from any person, entity or the public.

4.4 The onus to verify and confirm any property being pledged as security shall vest with an Authorized Private Money Lender. He shall not transact or carry out any act which is deleterious to the secured property under his custody.

4.5 An Authorized Private Money Lender shall keep all regular books of accounts for the purpose of personal income tax and regulatory purposes.

4.6 An Authorized Private Money Lender shall not publicly solicit business through advertisement or through the employment of agents.

4.7 An Authorized Private Money Lender shall issue a duly signed receipt to the borrower to acknowledge any loan repayment.

## **Duties of a borrower**

5.1 A borrower shall make timely repayment as agreed under the contract signed between an Authorized Private Money Lender and the borrower.

5.2 A borrower shall declare and provide the pledged property free of encumbrances with ownership title.

5.3 A borrower shall not take multiple loans by pledging the same security.

5.4 The borrower shall issue a duly signed receipt to an Authorized Private Money Lender to acknowledge any principal amount received.

## **6. Interest rate**

6.1 A loan contract document shall clearly stipulate the rate of interest charged, failing which no interest shall be chargeable or recoverable.

6.2 The interest shall be computed based on the simple daily product method (simple daily interest = principal x rate x time/100 x 365).

6.3 An Authorized Private Money Lender shall not charge an interest which is more than 15% per annum as stipulated by section 17(1) of the Movable and Immovable Property Act 1999.

6.4 If the rate of interest in the contract, whether paid or not, exceeds the maximum prescribed interest rate i.e. more than 15% p.a., the contract shall be voidable and an Authorized Private Money Lender shall get back the principal amount.

## **7. Filing a recovery suit**

7.1 An Authorized Private Money Lender may file a recovery suit in the court of law if the borrower fails to repay the loan per terms and conditions stipulated in the contract. However, the recovery suit must be filed within three years from the date of default.

7.2 Courts shall dismiss any monetary case during any stage of the hearing, if the Authorized Private Money Lender has violated any provisions of this rule & regulation.

## **8. Other requirements**

8.1 The applicant shall apply for a trade licence to the Department of Trade after obtaining a registration certificate from the Authority.

8.2 Upon receipt of a trade licence from the Department of Trade, the applicant shall submit a copy of the same to the Authority for record and verification.

8.3 The contract shall be effective according to its terms consented between an Authorized Private Money Lender and the borrower in line with the provisions of this rule and regulation.

## **9. Penalty**

9.1 In case of a failure to comply with this rule & regulation either by an Authorized Private Money Lender or the borrower, he shall be liable for fine(s) and/or criminal prosecution as per the relevant laws of the Kingdom.

## **10. Reporting, Inspection and disclosure**

10.1 An Authorized Private Money Lender shall submit to the authority on a quarterly basis, information on loan portfolio, including but not limited to the number of borrowers, loan outstanding in the prescribed format (Annexure B). The report shall be submitted within one month of the end of the reporting period.

10.2 The Authority shall at any time, with or without prior notice conduct the inspection on the books of accounts on the private money lending and other related documents.

10.3 In the event that registration certificate is cancelled by a court of law, the Authority shall be informed.

10.4 The Authority shall publish a list of all Authorized Private Money Lenders on the RMA website and in the media by 15th of January every year. Any addition or alteration in the list shall be published from time to time, as and when necessary.

## **11.** **Interpretation**

11.1 The Authority shall have the power to interpret any provision under this rule and regulation and its interpretation shall be final and binding upon all parties.

## **12**. **Rules of construction**

11.1 In this rule and regulation unless the context indicates otherwise, the singular shall include plural and the masculine gender shall include the feminine gender.

## **13. Amendment**

13.1 The addition, changes or repeal of any provision of this rule and regulation shall be made by the Board based on the recommendation of the Management.

## **14. Definition**

14.1 Unless a contrary intention appears from the context, the following words and expressions shall mean:

14.1.1 “Authorized Private Money Lender” means a person who is granted a registration certificate by the Authority to carry out the private money lending business.

14.1.2 “Authority” means the Royal Monetary Authority of Bhutan established by the Royal Monetary Authority Act of Bhutan 2010.

14.1.3 “Board” means the Board of the Authority established under section 28 of the Royal Monetary Authority Act of Bhutan 2010.

14.1.4 “Person” means a natural or juridical person intending to engage in private money lending business as per the provisions of this rule and regulation, except for the public officials and companies, as defined in the Companies Act of Bhutan.

14.1.5 “Private money lending business” means carrying out money lending business as per the provisions of this rule and regulation.

14.1.6 “Public official” means a natural person employed in the civil service, armed forces, autonomous agencies, constitutional offices, Financial Institutions, DHI and its companies, State Owned Enterprises/other agencies funded by the Government, Judiciary, National Assembly and members of Parliament.

14.1.7 “Registration” means authorization by the Authority to carry out the private money lending as per the provisions of this Rule and Regulation.

14.1.8 “Security” means both movable and immovable properties taken as collaterals and mortgages for the purpose of this Rule and Regulation.

***Annexure A***

**FORM A (Application to RMA)**

 (Please ensure that this form is filled properly. In case of any clarifications, please feel free to call or visit Financial Regulations & Supervision Department of RMA subject to prior appointment).

In accordance with Section 3 of the Private Money Lending Rules and Regulations of Bhutan 2016, application form is required to be submitted by the applicant to the Royal Monetary Authority for Registration Certificate to conduct the business of ……............................................................................................................

1. In case the applicant is a natural person:
2. Name ……………………………

1. Date of birth: ……………………
2. Citizenship ID card no (attach a copy): ………………………………..
3. Village: …………………
4. Gewog: ………………….
5. Dzongkhag: ………………….
6. Present address: ……………………

1. Present occupation: ……………………
2. Place of business: ………………………..
3. Total amount of capital to be invested: …………………
4. Source of capital: …………………..

1. In case the applicant is a juridical person:
2. Name of the institution: …..................................
3. Address: ……………………………………
4. Place of business: ……………………………..
5. Place of registration/incorporation:
6. Registration number/licence number:
7. Total amount of capital to be invested: …………

(C) The completed application shall be addressed to the Governor, Royal Monetary Authority of Bhutan with the following documents/information:

1. Affidavit from a court of law indicating that the applicant does not have any monetary case for the past two years on money lending;

2. Security clearance certificate;

3. Copy of the credit report from the Credit Information Bureau (CIB);

4. Copy of tax return filed, if applicable; and

5. Any other necessary documents as prescribed by the Authority from to time to time.

I, the undersigned, solemnly declare that the above information given in this application form and other documents submitted on behalf of the proposed private money lending business are true, complete and correct to the best of my knowledge and ability.

Name....................................... Signed.......................................

(Affix legal stamp)

Witness

Name:

CID No.

Address..............................

Date .........................................

***Annexure B***

|  |  |
| --- | --- |
|   | **Details on Loans** |
| **Sl no** | **Name of the borrower** | **CID No.** | **Sanctioned amount** | **Interest rate** | **Principal Outstanding** | **Interest Outstanding** | **Total Outstanding** |
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|  | **Total** |  | **0.00** |  | **0.00** | **0.00** | **0.00** |