

BHUTAN POSTAL CORPORATION ACT 1999

An Act to establish the Bhutan Postal Corporation

This Act was approved by the National Assembly at its 77th session held on 26th July, 1999, corresponding to the 13th day of 6th month of the Earth Rabbit Year.

PART 1: PRELIMINARY

Short Title

1. This Act may be cited as the *Bhutan Postal Corporation Act 1999*

Commencement and Vesting Dates

2.
 - (1) The Date of Commencement of this Act shall be 27th July, 1999
 - (2) The vesting date shall be 27th July, 1999

Interpretation - Definitions

3. In this Act, unless the context otherwise requires:
 - (1) “article” means any matter or thing and includes, for example:
 - (a) a letter;
 - (b) a message or information;
 - (c) a direction to pay an amount of money;
 - (d) an envelope, packet, parcel, container or wrapper containing any matter or thing (including a letter, message, information or direction to pay an amount of money); and

- (e) a message, information, or direction to pay an amount of money, that is not in written form;
- (2) “B h u t a n” m e a n s t h e K i n g d o m o f B h u t a n ;
- (3) “c o r p o r a t i o n” m e a n s t h e B h u t a n P o s t a l C o r p o r a t i o n ;
- (4) “D i r e c t o r G e n e r a l” m e a n s t h e D i r e c t o r G e n e r a l o f t h e D e p a r t m e n t o r a p e r s o n a p p o i n t e d b y t h e G o v e r n m e n t t o a c t i n t h a t c a p a c i t y f o r t h e p u r p o s e s o f t h i s A c t ;
- (5) “m a i l b a g” m e a n s a n y b a g , b o x , b a s k e t , p a r c e l o r o t h e r c o n t a i n e r i n w h i c h p o s t a l a r t i c l e s i n t h e c o u r s e o f t r a n s m i s s i o n b y p o s t a r e c o n v e y e d , w h e t h e r i t d o e s o r d o e s n o t c o n t a i n a n y s u c h a r t i c l e ;
- (6) “g o v e r n m e n t” m e a n s t h e R o y a l G o v e r n m e n t o f B h u t a n ;
- (7) “B o a r d” a s d e f i n e d u n d e r P a r t 3 : D i v i s i o n 2 o f B h u t a n P o s t a l C o r p o r a t i o n A c t 1 9 9 9 ;
- (8) “L e t t e r” m e a n s a n y f o r m o f w r i t t e n c o m m u n i c a t i o n t h a t i s d i r e c t e d t o a p a r t i c u l a r p e r s o n o r a d d r e s s , a n d i n c l u d e s :
 - (a) a n y s t a n d a r d p o s t a l a r t i c l e ;
 - (b) a n y e n v e l o p e , p a c k e t , p a r c e l , c o n t a i n e r o r w r a p p e r c o n t a i n i n g s u c h a c o m m u n i c a t i o n ;
 - (c) a n y e n c l o s e d w r i t t e n c o m m u n i c a t i o n t h a t i s d i r e c t e d t o a p a r t i c u l a r p e r s o n o r a d d r e s s ;
- (9) “g o v e r n m e n t a g e n c y” s h a l l i n c l u d e a n y M i n i s t r y o r D e p a r t m e n t o f t h e G o v e r n m e n t o r C o r p o r a t i o n , c o m p a n y o r o t h e r a g e n c y w h o l l y o w n e d b y t h e g o v e r n m e n t ;

- (10) “M inister” m eans the m inister, D eputy M inister or Secretary who is finally responsible to the government for the administration of this Act;
- (11) “M inistry” m eans M inistry of C om m unication;
- (12) “person” m eans any individual, partnership, com pany, government agency or other body of persons which is recognised as a separate Legal entity;
- (13) “postage” m eans the charge m ade for the transm ission of an article by post and includes any special charges or fees for supplementary services supplied in connection with the transmission of an article by post;
- (14) “postage stam p” m eans any im printed or printed m ark, label or design authorised under this Act or under the Law of any other country for the purpose of payment of postage;
- (15) “postal article” m eans an article that m ay be carried by post;
- (16) “posting box” m eans any box or other receptacle provided by the corporation in a public or private place for the purpose of receiving postal articles from customers;
- (17) “post office” m eans any building, house, room or vehicle at which postal articles are received, despatched or otherwise processed;
- (18) “standard article” m eans a postal article that satisfies all of the following conditions:
 - (a) it does not weigh more than 500 grammes;
 - (b) it is not more than 5 mm thick;

- (c) its other two dimensions form a rectangle, the shorter side of which is not more than 122 mm long and the longer side of which is not more than 237 mm long;
- (19) “Vesting Date” means the date on which all property, rights and liabilities of the Division of Posts in the Ministry of Communication, in respect of postal services are transferred to any vested in the corporation.

Interpretation - Meaning of Transmission by post

- 4. A postal article shall be deemed to be in the course of transmission by post from the time it is accepted by the corporation or deposited in a posting box until it is delivered as follows:
 - (1) to the addressee at the address on the article or another address, whether or not the addressee takes delivery of it in person;
 - (2) it is collected from the addressee’s private box ;
 - (3) it is delivered by any other means recognised in the terms and conditions of posting:
 - (4) it is disposed off under the terms and conditions relating to undeliverable articles or other provisions of this or any other Act.

Interpretation - Meaning of Expressions

- 5. Words in this Act:
 - (1) importing the masculine gender shall include the feminine gender;
 - (2) in the singular shall include the plural and vice versa.

Interpretation - Meaning of Equivalent Fine

6. The term “equivalent fine” in connection with a penalty prescribed for an offence under this Act shall mean a monetary penalty equal to the period of imprisonment specified multiplied by the National Wage rate applicable at the date of judgment and the amount so calculated shall be regarded as a maximum or minimum according to the wording of the penalty.

Territory

7. This Act shall apply to the Kingdom of Bhutan and outside that territory.

PART 2: FUNCTIONS, POWERS, OBLIGATIONS AND RESERVED SERVICES

Division 1: Functions

Functions

8. The functions of the corporation are:
- (1) to provide postal services within Bhutan and between Bhutan and other countries;
 - (2) to carry on any business or activity relating to postal services;
 - (3) to carry on any business or activity which is incidental to those mentioned in sub-sections(1) and (2) above.

Division 2: Obligations

Obligations - Commercial

9. The corporation shall operate in a manner consistent with sound business practice.

Obligations - Community Service

10. The corporation shall provide a basic letter within and outside Bhutan:
 - (1) that is reasonably accessible to all people in Bhutan;
 - (2) at a single uniform rate of postage for standard letters conveyed within Bhutan;
 - (3) at performance standards which reasonably meet the social, industrial and
 - (4) at the lowest price consistent, with meeting all of the costs of providing the basic letter service and contributing towards the financial objectives in sections 62 and 63.

Obligations - General Governmental

11. The corporation shall perform its functions in a manner consistent with:
 - (1) any general policies of the government which have been notified by the Minister;
 - (2) any obligations of Bhutan under any international convention.

Division 3: Powers**General Powers**

12. The corporation has the power to do all things necessary and convenient to be done for the performance of its functions.

Specific Powers

13. Without limiting the generality of section 12, the corporation has the power to:
- (1) to determine the prices of all its goods and services;
 - (2) to produce postage stamps and authorise others to produce postage stamps on its behalf;
 - (3) to determine terms and conditions for the provision of any postal service or goods;
 - (4) to determine terms and conditions of employment of its staff;
 - (5) to sue and be sued;
 - (6) to enter into contracts and agreements, including franchising agreement;
 - (7) to appoint agents or attorney and act as an agent for other persons;
 - (8) to acquire, hold, lease, develop and dispose of real and persona property;
 - (9) to form, and participate in the formation of companies;
 - (10) to participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;
 - (11) to borrow from the financial institutions in Bhutan, and to give security over assets and pay interest on loans;
 - (12) to invest money not immediately required for postal purposes;

- (13) to install posting boxes on public land and buildings provided that they do not interfere with the ordinary circulation of traffic;
- (14) to provide telecommunications value added services, including, for example, electronic mail, electronic data interchange and electronic funds transfer services.

Funds May be Provided by the Government

14. The Ministry for Finance may, on behalf of the government, provide the corporation equity for capital expenditure.

Powers in a State of Emergency

15. For the duration of a state of emergency which has been declared under the National Security Act. the Head of State shall have the power to:
 - (1) suspend the operation of the postal service in any part or all Bhutan, or to any country;
 - (2) authorise any person to perform postal services;
 - (3) require the corporation to perform services as directed.

Division 4: Reserved Services

Reserved Services

16. The corporation shall have the exclusive right:
 - (1) to convey the standard letters within Bhutan and between Bhutan and places outside Bhutan subject to section 17;
 - (2) to issue postage stamps.

Exclusions to Reserved Services

17. The services reserved to the corporation do not include:
- (1) the carriage of a letter relating to goods that is sent and delivered with the goods;
 - (2) the carriage of catalogues and leaflets relating to goods that is sent and delivered with the goods;
 - (3) the carriage of a letter otherwise than for reward;
 - (4) the carriage of a letter for which a charge in excess of ten times the basic rate of postage for a standard letter within Bhutan has been made;
 - (5) the carriage of a letter by the sender or an employee of the sender;
 - (6) the carriage of a letter on behalf of the corporation under an agreement with it;
 - (7) letters carried to or from the nearest or most convenient post office.

PART 3: CONSTITUTION AND STRUCTURE

Division 1: Constitution

Legal Status of the Corporation

18. The Bhutan Postal Corporation is a body corporate with perpetual succession and shall have a seal.

Custody of the seal

19. The seal shall be kept in such custody as the Board shall direct and shall be used only as authorised by the Board.

Division 2: The Board

The Board

20. There shall be a Board.

Constitution of the Board

21. The Board shall consist of:
- (1) The Chairman;
 - (2) a Deputy Chairman;
 - (3) the Managing Director; and
 - (4) not more than 4 other Directors.

Chairman

22. The Chairman of the Board shall be the Minister unless the Government decides otherwise.

Selection of Directors

23. Director shall be selected to maintain a balance of relevant skills and knowledge on the Board at the highest attainable level.

Ineligibility for appointment as a Director

24. The following shall not be eligible for appointment as a Director:
- (1) Directors or officers of private companies in the postal and related industries;

- (2) Directors of officers of private companies being major suppliers or customers of the corporation;
- (3) persons who have been made bankrupt within the past five years or who are undischarged bankrupts;
- (4) persons who have been charged or convicted of a criminal offence;
- (5) persons who are of unsound mind;
- (6) persons who are under any other legal or physical disability affecting the performance of the duties of a Director.

Appointment of directors

25. Directors including the Managing Director shall be appointed in writing by the Government and may be appointed at any time after the commencement of this Act.

Duration of Appointments of Directors

26. The duration of the appointments of Directors shall be as follows:
- (1) the Minister shall hold office as Chairman while he remains appointed as a Minister;
 - (2) the Managing director shall hold office as a Director while he remains appointed as Managing Director;
 - (3) all other Directors shall be appointed for a period of 3 years and shall be eligible for reappointment for one further period of 3 years, subject to sub-section(4);

- (4) two of the initial Directors shall be appointed for a term of 4 years and 6 months and shall be eligible for reappointment for one further term of 3 years.

Termination of Appointment of a Director

27. The appointment of a Director may be terminated by the Government in the following circumstances;
 - (1) the Director is absent from meetings of the Board on more than three consecutive occasions without reasonable excuse;
 - (2) the Director engages in behaviour likely to bring the Corporation into disrepute;
 - (3) the Director is incapable of discharging his duties;
 - (4) the Director contravenes any of the terms of his appointment or of the provisions of this Act;
 - (5) the Directors resigns in writing to the Minister.

Obligations of Directors

28. Directors shall:
 - (1) act honestly with due skill and care in the best interests of the Corporation at all times;
 - (2) not make improper use of their position or information acquired in their capacities as Director for private gain or otherwise;

Remuneration of Directors

29. Directors shall be remunerated for each meeting attended as determined by the Board and their expenses incurred in attending shall be reimbursed and such remuneration and expenses shall be paid out of corporation funds.

Disclosure of Interest

- 30.
- (1) If:
 - (a) a Director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board: and
 - (b) the interest could conflict with the proper performance of the Director's duties in relation to the consideration of the matter; the Director shall, as soon as practicable after the relevant facts come to the Director's knowledge, disclose the nature of the interest at a meeting of the Board.
 - (2) A disclosure under subsection(1) shall be recorded in the minutes of the meeting and, unless the Board otherwise determines, the Director shall not:
 - (a) be present during any deliberation of the Board in relation to the matter; or
 - (b) take part in any decision of the Board in relation to the matter.
 - (3) For the purpose of the making of a determination by the Board under sub-section (2) in relation to a Director who has made a disclosure under subsection(1), a Director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
 - (a) be present during any deliberation of the Board for the purpose of making the determination; or

- (b) take part in the making by the Board of determination.

- (4) Subsection (1) does not apply in relation to the matter relating to the supply of goods or services for the Director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

Responsibilities of the Board.

31. The Board is responsible for:
- (1) the objectives, policies and strategies of the corporation;
 - (2) to ensure that the corporation performs its functions and discharges its obligations in a proper, efficient and economical manner.

Power of the Board to Delegate

- 32.
- (1) The Board may delegate any of its powers under this Act, including this power of delegation, but excluding its powers under Division 3 of Part 3, to the Managing Director or any officer of the corporation.
 - (2) A delegation under this section may be revoked at any time.
 - (3) The existence of a delegation under this section does not prevent the exercise of the delegated power by an employee who is higher in the direct chain of command than the delegated employee or the Board.

Meetings of the Board

33. Meetings of the Board shall be held as follows:
- (1) the initial meeting of the Board shall be convened by the Minister, as soon as practicable after the commencement of this Act;
 - (2) subsequent meetings shall be on a schedule agreed by the Board at its first meeting, subject to the right of the Chairman to convene extraordinary meetings if it appears to him that sufficient reason exists;
 - (3) there shall be not less than four meetings in a year.

Quorum

34. The participation of four Directors shall be the minimum necessary for a valid meeting of the Board.

Voting

35. Each Director present at a meeting of the Board shall have one vote and decisions shall be taken on a simple majority of votes, provided that in the event of an equality of votes the Chairman may exercise a casting vote.

Validity of Board Decisions

36. A decision or determination of the Board shall be valid notwithstanding any defect in the appointment of a Director.

Absence of Chairman from a Meeting of the Board.

37. In the absence of the Chairman from a meeting of the Board, the Deputy Chairman shall chair the meeting and in the absence of both the Chairman and the Deputy Chairman the Directors shall elect a Director to chair the meeting from among their member.

Absence of Chairman on Leave

38. In the absence of the Chairman on leave or on duty abroad he may appoint the Deputy Chairman or another Director to act as Chairman for the duration of that absence.

Minutes

39. The Board shall cause to be kept proper minutes of its meetings.

Resolutions Without Meetings

40. Where, in the opinion of the Chairman, circumstances exist which require a Board decision before a physical meeting of the Board can be arranged, he may authorise the following procedure:
- (1) If at least the required minimum number of Directors sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the Directors do not sign it on the same day, on the day on which the last Director signs the document;
 - (2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the Board, each Director shall immediately be advised of the matter and given a copy of the terms of the resolution;
 - (3) For the purpose of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more Directors, shall be taken to constitute one document;
 - (4) For the purposes of subsection (1) a facsimile of a document signed by a Director shall be acceptable.

Preparatory Arrangements by the Board

41. After the date of commencement of the Bhutan Postal Corporation Act 1999 and before the vesting date, the Board may:
- (1) determine prices;
 - (2) determine terms and conditions for the provision of services and goods;
 - (3) determine operational procedures;
 - (4) make arrangements for the engagement of employees;
 - (5) make arrangements for the transfer of assets and liabilities;
 - (6) prepare and submit to the Minister, financial estimates;
 - (7) prepare and submit to the Minister changes to regulations; provided that any changes resulting from these activities shall not come into force until the vesting date or such later as the Board shall determine.

Costs of Preparatory Arrangements

42. The Ministry may authorise payment by the department of costs incurred by the Board in connection with its activities under section 41.

Division 3: The Managing Director

Managing Director

43. There shall be a Managing Director of the Bhutan Postal Corporation.

Appointment of the Managing Director

44. The Managing Director shall be appointed in writing by the Government.

Duration of Appointment

45. The Managing director shall hold office at the pleasure of the Government.

Retirement Age

46. The Managing Director shall retire as per the Civil Service Regulation of the Government.

Terms and Conditions of Appointment of the Managing Director

47. The terms and conditions of appointment of the Managing Director shall be as determined by the Board.

Termination of Appointment

48. The appointment of the Managing Director may be terminated by the Government if:
- (1) any of the circumstances of section 27 apply to him;
 - (2) the Minister and the Board so resolve.

Duties of the Managing Director

49. The Managing Director
- (1) shall manage the corporation under the direction of the Board;

- (2) shall ensure that all of the obligations of the corporation under this and any other are met, including without loss of generality:
 - (a) that the service performance, efficiency and financial performance of the corporation are continuously improved;
 - (b) that the provision of section 65 concerning the uses of corporation money are observed.
- (3) may act on behalf of the corporation and in its name.

Acting Managing Director

50. In the absence from duty in Bhutan of the Managing Director for any reason or during a vacancy in the office of Managing Director, the Chairman may appoint in writing an officer or a Director of the corporation or any other person as acting Managing Director for the times specified in the instrument of appointment.

Division 4: Employees

Employees

- 51.
- (1) The corporation may employ such persons as it considers necessary for the performance of its function.
 - (2) The terms and conditions of employment shall be as determined by the corporation.

General Responsibility of the Corporation as an Employer

52. The corporation shall endeavour to achieve high standards in relation to terms and conditions of employment, occupational health and safety and non-discriminatory practices.

Definition - Officer of the Division

53. For the purposes of the Part, a person shall be deemed to be an officer of the Division if he was so employed immediately before the vesting date whether or not the person was on leave or seconded to another Division or agency at that time.

Transfer of Officers as Employees of the Corporation - Director General's Recommendation

54. The Director General, in consultation with the Royal Civil Service Commission and the Ministry of Finance shall draw up a list recommending which Officer of the Division should be transferred as employees of the corporation, which shall remain in the Civil Service.

Ministerial Approval of the Transfer

55. The Minister, after consulting with the Director General of the Division, may approve the list prepared by the Director General in pursuance of section 54.

Conditions of Transfer

56. Officers who transfer as employees of the corporation shall have the following obligations, right and entitlements:
- (1) They shall resign from the Civil Service at the end of the last day before the vesting date.
 - (2) They shall be paid by the Government their separation gratuity and paid by the Government in lieu of any unused leave entitlements.

- (3) They shall be eligible to elect to receive their Provident Fund account balance provided that:
 - (a) the election must be made to receive the full balance only;
 - (b) the election may be made not later than the date appointed by the Director General for this purpose and is irrevocable after that date;
 - (c) an officer who does not make an election by the appointed date shall retain his Provident Fund account balance in the Fund;
- (4) The Royal Insurance Corporation shall take action in accordance with the written advice of the Director General in accordance with the outcome of the procedures in this section in the case of each officer transferring to the corporation.

Provident Fund Entitlements

57. Employees who are engaged on or after the vesting date, including officers who transfer to the corporation, shall be entitled to remain or become member of the Royal Insurance Corporation of Bhutan Provident Fund on the same terms and conditions as Civil Servants.

PART 4: FINANCE

Division 1: General Provisions

Initial Capital - Determination

58. The initial capital of the corporation shall be as determined in writing by the Minister:
 - (1) as soon as possible after the commencement of this Act;

- (2) after consultation with the Minister for Finance;
- (3) taking into account any relevant advice given by the Board;
- (4) taking into account the determination of assets and liabilities under Division 2.

Form of Initial Capital

59. The initial capital of the corporation determined under section 58 shall be deemed to be the equity of the government in the corporation.

Ongoing Capital

60.

- (1) the capital of the corporation shall be equal to the sum of:
 - (a) the initial capital determined under section 58;
 - (b) any part of the corporation's liabilities to the government at the commencement of this Act that is subsequently converted into capital at the direction of the Ministry;
 - (c) any amount paid to the corporation by the government after the commencement of this Act for the purpose of providing capital less any amount repaid to the government by the corporation at the direction of the Ministry;
 - (d) any part of the corporation's reserves that are converted into capital at the direction of the Ministry.
- (2) In making a direction under this section, the Ministry shall have regard to the advice of the Board;

- (3) Any direction under this section shall be in writing.

Payment of Dividends

61. The corporation may pay dividends to the government on its capital, as determined by the Ministry having regard to the advice of the Board and in accordance with normal commercial practice.

Financial Objective - Initial

62. For the first three years after the vesting date the corporation shall generate sufficient revenue to cover all of its operating expenditure and the capital expenditure required to maintain and develop existing operations.

Financial Objective - Ongoing

63. From the fourth year of operation, the corporation taking one year with another, shall generate sufficient profits to pay dividends to the Government at a normal commercial rate of return as determined by the Ministry and subject to section 64.

Financial Objective - Community Service Obligation Adjustment

64. The calculation of a dividend under section 63 may be adjusted to take into account the costs of providing uneconomical services to meet the community service obligation in section 10.

Expenditure

65. Expenditure may be incurred by the corporation only in the performance of its functions and shall be properly authorised in accordance with procedures approved by the Board.

Use of Funds Not immediately Required

66. The Board shall determine in writing a policy for the investment of funds not immediately required and to be invested under subsection 13(12).

Accounting System

67. An accounting system in accordance with generally applicable commercial accounting standards shall be maintained.

Financial Year

68. The financial year shall commence on 1 January or as otherwise determined by the Ministry of Finance.

Audit

69. The Auditor General or a person authorised in writing by him shall audit the accounts of the corporation.

A u d i t o r ' s C e r t i f i c a t e

- 70.
- (1) Each year within 6 weeks of the submission of the annual accounts for audit the auditor shall provide to the Board a certificate stating whether in his opinion:
 - (a) the accounts of the corporation give a true and fair view of its transaction during the period of audit and its current financial situation;
 - (b) whether the books of the corporation have been kept in accordance with this Act and the relevant accounting standards;
 - (c) whether or not the transactions of the corporation have been within the powers of the corporation;

- (d) any other matter which he considers should be brought to the attention of the Board.
- (2) The auditor may at any time during the year prepare and submit to the Board a supplementary audit report.

Conduct of Audits

71.. For the purposes of audit the auditor may:

- (1) have access for examination to all accounts, records, documents, stocks and premises of the corporation at any reasonable time;
- (2) require any person to furnish him such information and explanation as he may require.

Provision of Information to the Auditor

72. A person shall not refuse or fail to comply with a request of the auditor under section 71 or provide false or misleading information on purporting to comply with such a request.

Maximum Penalty: one year imprisonment or equivalent fine.

Cost of Audits

73. The cost of audits shall be borne by the corporation unless otherwise determined by the Ministry of Finance.

Provident Fund

74. The corporation shall have the power to establish a provident fund scheme for its employees, or to contribute to a scheme or fund established by others for this purpose.

Gratuity Fund

75. The corporation shall establish a Gratuity Fund for its employees and the fund shall be operated and maintained as follows:
- (1) Funds from the general revenues of the corporation shall be contributed to the Fund so that its balance at any time equals or exceeds the liability of the corporation if all of its employees were to separate at that time;
 - (2) Funds of the Fund may be invested in accordance with a policy determined by the Board but not in the assets or operations of the corporation;
 - (3) The Board may appoint a person to manage the Fund on its behalf in accordance with the policy in subsection(2);
 - (4) Payments from the Fund may only be made for the operating expenses of the fund including the fees of any person appointed under subsection (3), and to employees on separation.

Taxation

- 76.
- (1) The corporation shall be exempted from all taxes and duties for the first three years after the vesting date;
 - (2) After the expiration of three years from the vesting date the corporation shall pay taxes on the same basis as a company under the Companies Act 1989 as amended or replaced from time to time.

Division 2: Transitional Provisions

Transfer of Assets and Liabilities

77. The Ministry of Finance shall transfer, or caused to be transferred, all of the assets and liabilities of the department in respect of postal services into the name of the corporation.

Definition of Assets and Liabilities

78. For the purposes of section 77, the assets and liabilities of the department shall include, for example:
- (1) all land, buildings, vehicles, plant, equipment, stores, and any other thing, employed in respect of the postal service;
 - (2) any cash on hand, cash at bank, security, or other financial entitlement of the postal service;
 - (3) any building under construction or item for which an order has been placed but not yet fulfilled where that building or item is intended for the use of the postal service;
 - (4) any debt or financial obligation under contract or otherwise.

Method of Valuation of Assets and Liabilities

- 79.
- (1) all tangible assets and liabilities shall be valued at book value for the purposes of determining the initial capital of the corporation;
 - (2) all intangible assets shall be value on actuarial principles;
 - (3) the initial value of depreciated assets shall be the original purchase price;
 - (4) where capital expenditure has been incurred on an asset during its life, that capital expenditure shall be treated as a separate asset purchased at the date of the expenditure for the purpose of determining the book value of the asset;

- (5) the rate of depreciation used for determining book value shall be the standard rates of depreciation prescribed in the Financial Manual 1988 as amended from time for time.
- (6) any building or item described under section 78(3) shall be paid for by the Government when payment is due and valued at the total purchase price paid by the Government.

Date of Effect

- 80. The date of effect of the transfer of assets and liabilities shall be the vesting date.

Certificate of Transfer of Assets and Liabilities

- 81. The Ministry of Finance or an officer of the Government authorised by it in writing may certify that a particular asset or liability transferred under section 77 has been so transferred and judicial notice shall be taken of such a certificate notwithstanding that any other document or certificate of title has not been amended or re-issued to show the change in ownership.

Contracts and Arrangements

- 82. Contracts and other arrangements in force for the department immediately prior to the vesting day shall continue to have effect from the vesting day as if the corporation had entered into the contract or made the arrangement.

Provident Funds

- 83. At the vesting date the corporation shall assume all of the responsibilities, liabilities and duties of the department and the Government towards the Royal Insurance Corporation Provident Fund in respect of officers of the department who transfer as employees of the corporation

PART 5: OPERATIONS

Accountability Document

84. An annual accountability document shall be prepared by the Board not later than four weeks before the commencement of each financial year. This document shall be submitted to the government.

Contents of Accountability Document

85. The accountability document shall contain at least the following information:
- (1) the nature and scope of activities;
 - (2) the proposed financial structure;
 - (3) rates of return, service performance targets and other key performance indicators;
 - (4) dividend policy;
 - (5) policy towards subsidiaries, partnerships and joint ventures;
 - (6) an estimate of net worth at the end of the financial year.

Annual Report

86. Not later than four months after the close of each financial year the Board shall publish an annual report of the operations of the corporation, including:
- (1) the annual financial statements;
 - (2) a statement of corporate objectives and policy;

- (3) an assessment of the extent to which corporate objectives and policies have been achieved during the year;
- (4) an evaluation of the achievement of performance against standards during the year;
- (5) a summary of operational results for the year;
- (6) the names and qualifications of all Directors and top management.

Trading Name - Bhutan Post

87. The Trading name Bhutan Post is reserved for the exclusive use of the corporation.

Copyright

88. Making a copy of an item for the purpose of postal transmission by the telecommunications or similar means shall not constitute an infringement of copyright notwithstanding the provisions of any other Act.

Undeliverable Items

89. In respect of any item which the corporation has been unable to deliver or return to the sender thereof using its best efforts:
- (1) The corporation shall have the right to open and examine it for the purpose of determining from the contents the identity and address of the addressee or sender;
 - (2) Opening of items under subsection(1) shall be done only by an officer authorised in writing by the Managing Director or authorised by an office acting under the delegated authority of the Managing Director;

- (3) If the corporation is able to find the information described in subsection (1) it shall re-seal the item with an explanation of the reasons and authority for opening it and deliver it without further delay;
- (4) If the corporation is unable to find the information described in subsection (1) it shall hold the item for 6 months after the date of opening, and on being satisfied at any time within that period with the entitlement of any person enquiring for the item, shall deliver it to that person;
- (5) If no enquiry has been received after the expiration of six months from the date of opening the item, it shall have the right to:
 - (a) destroy the item or any part of the item;
 - (b) sell any of the contents of an item and credit the amount to its operating revenue;
- (6) A record shall be kept of the disposal of any item under subsection (5) for 12 months after the date of disposal.

Unclaimed Money

90.

- (1) If:
 - (a) an amount has been received by the corporation for transmission to a person; and
 - (b) the amount has not been claimed within one year after becoming payable to the person; the amount shall be paid into an account kept by the corporation called the Unclaimed Money Fund.

- (2) If the corporation is satisfied that a person is entitled to an amount that is in the Unclaimed Money Fund, it shall pay the amount to the person from the Fund;
- (3) Amount that have remained in the Unclaimed Money Fund for a period of 5 years shall be paid out of the Fund into the corporation's general money and shall be forfeited by the person to whom it was payable;
- (4) The corporation shall be entitled to transfer to general revenue any earnings of the Unclaimed Money Fund.

Liability of Corporation in Respect of Postal Services etc.

91.

- (1) The corporation and its employees shall not be liable in respect of any injury, loss or damaged suffered by any person by reason of:
 - (a) any loss, mis-delivery or delay of or damage to any postal article in the course of transmission by post;
 - (b) any failure to provide or delay in providing any postal service or any equipment associated therewith or service ancillary thereto;
 - (c) any failure, interruption, suspension or restriction of any postal service or service ancillary thereto or delay of or fault in, any communication by post;
 - (d) any loss of secrecy in communication arising from the use of any postal service;
 - (e) any wrong payment or delay in payment in connection with any remittance of money through the corporation or any other irregularity in any document used in connection with the remittance;

- (2) Notwithstanding subsection (1), in the event of the loss of or damage to any article enclosed in or forming part of a parcel or insured postal article, or the loss of any registered postal article while in the custody of the corporation, the corporation may pay an indemnity in accordance with the provisions from time to time of the Acts of the Universal Postal Union or any International agreement to which the Kingdom of Bhutan is a party;

- (3) Notwithstanding subsection (1), the corporation may, in its sole direction, pay compensation in respect of any of the events described but the payment of such compensation shall not be construed as an admission of liability;
- (4) Notwithstanding Section(1):
 - (a) employees are not exempted from liability for the consequences of any misconduct, deliberate omission or malicious act in relation to matters described in subsection (1);
 - (b) any liability of an employee under this section shall not prevent the corporation from applying any penalty under its terms and conditions of employment which may result from the same event.

PART 6: OFFENCES

Division 1: General Provisions

Definition - Employee

92. In this Part, unless the context otherwise requires, “employee” shall include, in relation to the corporation, any Director, employee, agent, contractor, franchisee or any other person authorised to supply goods or services to or on behalf of corporation.

Jurisdiction of Courts

93. Unless otherwise specified under this or another Act, a Court shall have jurisdiction over offices in the Act.

Powers of Authorised Employees

94. Employees authorised in writing by the Managing Director or by an employee delegated under section 32 for this purpose shall have the power to open and examine letters in accordance with the provisions of this Act.

Offences by Bodies Corporate

95. A body corporate, its managers and any officers or employees responsible for the commission of an offence under this Act shall be jointly and severally liable to punishment to the full extent of any penalty specified under this Act or under another Act for an offence in connection with postal services.

Aiding, Abetting, Conspiring or Attempting to Commit an Offence

96. A person shall not aid, abet, conspire or attempt to commit an offence under this or any other Act in connection with postal services.

Maximum Penalty: 3 years imprisonment or equivalent fine

Division 2: Revenue Offences

Forgery - General Prohibitions

97. A person shall not:
- (1) forge a postage stamp;
 - (2) knowingly possess, sell, use or attempt to use forged stamps;
 - (3) knowingly possess any of the means of production of postage stamps, including paper used for the printing of postage stamps;

- (4) reproduce postage stamps without the written approval of the corporation.

Maximum penalty: 5 years imprisonment or equivalent fine plus the repayment to the corporation of any financial loss to it or the equivalent further term of imprisonment.

Forgery - Extent of Prohibitions

98. The prohibitions in section 97 extend to:

- (1) the postage stamps of any country;
- (2) all stamps issues, past and current;
- (3) Money Order and other valuable postal stationery as if they were postage stamps.

Other Revenue Offences

99. A person shall not:

- (1) re-use a postage stamps with intended to defraud;
- (2) remove a postage stamp from a postal article;
- (3) remove a cancellation mark from a postage stamp or knowingly possess such a stamp;
- (4) evade the due postage on any article posted by him;
- (5) sell a postage stamp below its face or retail price except that the corporation may sell a postage stamp to one of its authorised agents at a price below its face or retail value;

- (6) Misappropriate or steal any money of the corporation, including money held by the corporation as a trustee or agent;
- (7) pay money of the corporation that has not been properly authorised in accordance with section 65.

Maximum Penalty: 5 years imprisonment or equivalent fine plus the repayment to the corporation of any financial loss to it or the equivalent further term of imprisonment.

Revenue Offences by employees

100. An employee shall not:

- (1) demand or accept postage or any other payment due to the corporation other than at properly authorised scales of charges provided that an authorised employee of the corporation may offer discounts in accordance with approved policy;
- (2) take part in the decision to award a contract where he has a direct or indirect financial interest on the outcome provided that the Managing Director may approve in writing the participation of an employee after the full facts have been disclosed to him and he is of the view that the participation of the employee is in the best interest of the corporation.

Maximum Penalty: 2 years imprisonment or equivalent fine.

Infringement of Reserved Services

101.

- (1) Where a person has engaged, or is proposing to engage, in conduct that involves, or would involve, an infringement of the exclusive right that the corporation has under

Division 4 of Part 2, the corporation may apply to the High Court for relief;

- (2) The relief that may be granted includes:
 - (a) an injunction; and
 - (b) at the option of the corporation, either damage or an account of profits; and
 - (c) where the person is a foreigner trading in Bhutan under a license from the Ministry of Trade or another Agency of the Government, an order for cancellation of that license;
 - (d) where that person is a company registered under the Companies Act 1989 as amended or replaced from time to time, an order for the cancellation of that registration.
- (3) Where the High Court has ordered the cancellation of a licence or registration under subsection (2), the person shall not be eligible again for licensing or registration for five years from the date of cancellation of the licence or registration;
- (4) Where, in the opinion of the High Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1);
- (5) The power of the High Court to grant an injunction restraining from a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or continue to engage in conduct of that kind;
 - (b) whether or not the person has previously engaged in conduct of that kind;

- (c) whether or not there is imminent danger of substantial damage to the corporation if the person engages in conduct of that kind.

Dutiable Imports

- 102. Where an employee has a reasonable suspicion that an attempt is being made to avoid payment of customs or other duties on a postal article he shall make his suspicion known to the Government agency responsible for the collection of duty through the procedures established by the corporation for this purpose.

Division 3: Protection of the Mail and Postal Property

Protection of the Mail

- 103. In relation to postal articles, postal messages and mail bags, a person shall not:
 - (1) deliberately or knowingly and without authority damage, destroy, delay, or violate them;
 - (2) steal, hide or dispose of them in any way without authority;
 - (3) deliberately or knowingly obstruct their acceptance, carriage or delivery;
 - (4) obtain delivery of them by false representation or pretences;
 - (5) receive them knowing them to be stolen;
 - (6) deliberately or carelessly deliver them incorrectly;
 - (7) forge or falsify any postal article or message;

- (8) intercept any postal message.

Maximum Penalty: 5 Years imprisonment or equivalent fine.

Protection of Postal Property and Information

104.

- (1) A person shall not falsify or destroy without authority postal documents or records;
- (2) A person shall not knowingly and without authority damage, destroy, deface, steal or infect with a computer virus any postal property;
- (3) A person shall not disclose any information concerning commercial dealings, employee records, plans, finances or performance of the corporation except under the following circumstances:
 - (a) by a Director or employee in the course of his duties;
 - (b) when authorised by law and due process has been followed;
 - (c) as a Court witness under summons;
 - (d) to an authorised law enforcement officer.
- (4) A person shall not imitate the identity of the corporation, including without loss or generality:
 - (a) the erection of unauthorised signs purporting to be the corporation or an agent, franchisee or contractor of the corporation;
 - (b) the unauthorised use of any trading name, mark, sign, symbol, uniform or other identifying feature of the corporation;

- (c) claiming falsely in writing or otherwise to be an employee, agent, franchisee or contractor of the corporation.

Maximum Penalty: 5 years imprisonment or equivalent fine.

Division 4: Privacy

Opening and Detention of Postal Articles

105. A person shall not open a postal article in the course of transmission by post except:
- (1) by an employee authorised by the corporation for the purposes of subsection (3), (4) or (5);
 - (2) by an officer or an employee of a Government agency authorised under any other law for the purposes of that law;
 - (3) to reduce any threat to the life, health or property or any person;
 - (4) to present the contents of the article for inspection by an officer or employee described in subsection (2);
 - (5) to detect the carriage of items which are prohibited under section 111.

Maximum Penalty: 7 years imprisonment or equivalent fine.

Disclosure of Contents or Existence of Postal Articles

106. An employee shall not disclose the contents or existence of any postal article, except;

- (1) in the course of the performance of his duties as an employee;
- (2) to an authorised employee for purposes authorised under this Act;
- (3) when otherwise authorised by law and due process has been followed;
- (4) as a court witness under summons;
- (5) to an authorised law enforcement officer.

Maximum Penalty: 2 years imprisonment or equivalent fine.

Mailing Lists

107. Notwithstanding section 106, an employee may disclose a list of postal addresses provided that in the case of each address, the owner or occupier of that address has given his consent in writing to the corporation for such disclosure.

Examination without Opening

108. An employee may examine any postal article without opening it for the purpose of the detection of items or matter prohibited in the post under section 111.

Disposal of Articles and Contents After Inspection.

109. Where a postal article has been opened for inspection under the provisions of this Part, it shall be disposed off as follows:
- (1) where nothing has been found in contravention of any law, it shall be immediately prepared for sending and sent without delay to the addressee together with a notice advising that the article has been opened in the course of transmission by post and under what authority;

- (2) where an item or matter has been found which contravenes the provisions of this Act, the item may be retained by the corporation, destroyed, sold, returned to the sender or otherwise disposed off according to procedures established by the corporation and the addressee and sender shall be advised of the action taken without delay;
- (3) where an item has been sold or retained under subsection (2), the proceeds may be retained by the corporation;
- (4) where an item or matter has been found which is not in contravention of this Act but in contravention of another law, the item shall be dealt with under the provisions of the law.

Corporation and Employees Not Liable for Actions Done in Good Faith.

110. The corporation and its employees shall not be liable for the consequences of any action under this Part which has been performed in good faith.

Division 5: Prohibited Items

Prohibited Items

111. A person shall not send by post:
- (1) any article or matter which may expose any person to danger, or soil or damage other articles or postal property or equipment;
 - (2) any narcotic or psychotropic substances;
 - (3) live animals;
 - (4) any explosive, flammable or other dangerous substances:

- (5) any radioactive material;

Maximum Penalty for subsection (1) to (5): 10 years imprisonment or equivalent fine.

- (6) any obscene or immoral article;
- (7) articles, the importation or uttering of which is prohibited in the country of destination;
- (8) any coin, bank note, currency note, security payable to bearer, precious stones, jewels or platinum, gold, silver objectives except in an insured parcel;
- (9) any communication which menaces a person.

Maximum Penalty for subsection (6) to (9): 3 years imprisonment or equivalent fine.

Hoax Explosives

112. A person shall not falsely claim to send or have sent a postal article containing explosive material.

Maximum Penalty: 6 years imprisonment or equivalent fine.

PART 7: MISCELLANEOUS

Rules

113. The Ministry may make rules under this Act prescribing matter required or permitted under this Act or necessary or convenient for giving effect to this Act and such rules may include, for example:

- (1) transitional arrangements for the transfer of postal services and operations from the Division to the corporation, including for example the transfer of legal obligations and employees;
- (2) arrangements for collecting duties of customs and other duties payable in relation to articles carried by post;
- (3) arrangements for dealing with articles that may contain goods on which duty is payable;
- (4) arrangements for the opening and examination of articles, and the examination of the contents or articles, carried by post;
- (5) arrangements with respect to the forfeiture and destruction of articles carried by post; and
- (6) prescribing fines not exceeding Nu. 10,000 for offences against the rules.

PART 8: INTERPRETATION

114. In the event of any dispute arising out of the interpretation of the various provisions under this Act, the interpretation shall be as per the Dzongkha version of this Act adopted by the National Assembly at its 77th session held on 26th July, 1999 corresponding to the 13th day of 6th month of the Earth Rabbit Year.
