**DRAFT REGULATION ON COLLECTIVE MANAGEMENT ORGANIZATION (CMO)**

## **Title**

1. This Regulation shall be called the Regulation on Collective Management Organization (CMO).

## **Commencement**

1. This Regulation shall come into force on the …….day of the ……Months of the ………..Year of the Bhutanese Calendar corresponding to ……Day of the …. Month of …..

## **Extent**

1. This Regulation shall extend to the whole of Bhutan.

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# **1. Registration:**

1. Association of persons who intend to operate a CMO shall be registered with the Ministry of Industry, Commerce and Employment (MoICE), hereinafter referred to as “Ministry”, with the prescribed fees and conditions.
2. When applying for the registration, an association of persons who intends to operate as a CMO shall submit to the Ministry:

(a) its statutes;

(b) its membership terms;

(c) standard licensing contracts and standard applicable tariffs, including discounts;

(d) names and addresses of the members of its board of directors, its general

manager and members of staff with managerial responsibilities;

(e) its regulations regarding the distribution of the amounts due to owners of the rights, including its policy on deductions from rights revenue for purposes other than

management fees, including deductions for social, cultural and

educational services, if any;

(f) its regulations regarding management fees;

(g) a list of the representation agreements it has entered into, and the names of

CMOs with which these representation agreements have been concluded;

(h) its regulations regarding the use of non-distributable amounts;

(i) its regulations regarding complaint handling and dispute resolution procedures;

and

(j) its contact information, including email address and office hours.

1. Suppose a CMO is being managed in contravention of the provisions of the Copyright Act or a manner detrimental to the interests of right holders or users of copyright works. In that case, the Ministry may refuse the registration of such a society.
2. When having refused to register in accordance with section 3, the Ministry shall notify the applicant thereof in writing with reasons.
3. The Ministry shall register only one CMO for one category of work.

# **2. Administration of rights of owner by CMO:**

1. Subject to such conditions as may be prescribed:

(i) A CMO may accept from the right holder's exclusive authorization to administer right by the issue of licenses or collection of license fees or both, and

(ii) Right holders shall have the right to withdraw such authorization without prejudice to the rights of the CMO under any contract.

(iii) A CMO must establish objective, transparent and non-discriminatory membership terms, and it is obliged to admit any person or entity who or which fulfils the

requirements established in those terms. Refusals to admit persons or entities as

members must be based on objectively justifiable criteria according to the statutes of

the organization, conditions set by the Minister for its approval, and its membership

terms. Reasons for refusal of membership must be communicated to the applicant in

writing within a reasonable time.

(iv) Membership terms may only oblige members to transfer all their rights within the

area for which the organization is authorized to manage rights when this is objectively

justified. Refusals to members who wish to retain rights in other territories or certain

categories of uses, which can be justified in an objective way, must be reasoned and

communicated in writing.

(v) Conditions for termination of membership must be indicated in the membership

terms. Regardless of whether the termination is made by the member or by the

organization, it requires a written notice.

1. A CMO may enter into an agreement with any foreign CMO managing rights protected under this Act, to mandate such foreign CMO to manage the rights it represents, and on a reciprocal basis, with approval from the Ministry.
2. Subject to such conditions as may be prescribed, a CMO shall: (role of CMO)

(i) issue licenses in respect of any rights under the Copyright Act.

(ii) collect fees in pursuance of such licenses; or

(iii) distribute such fees among rights owners after making deductions for operational expenses.

(iv) diligently promote and protect the interests of its members and in particular issue licenses, collect and distribute royalties or other remuneration accruing to them in respect of their rights provided for in the Copyright Act;

(v) license all uses of its repertoire in accordance with and subject to the scope of its

mandate;

(vi) monitor and pursue the use, and prevent infringements of the rights that it

represents;

(vii) promptly collect all licensing income due under the licenses it has granted and take

all appropriate steps to recover unpaid licensing income;

(viii) promptly collect any relevant information about works, performances, sound

recordings and broadcasts exploited by its licensees;

(ix) distribute its licensing income, after deduction of reasonable operation costs, to its

members on an objective and non-discriminatory basis and with no undue delay;

(x) maintain registers of its members and, when required, precise documentation of the

works, performances, sound recordings and broadcasts that it represents;

(xi) enter into representation agreements with similar foreign CMOs; and

(xii) when requested, provide accurate information about the rights it represents and give

evidence of its registrations of authors and ownership of these rights where there is a

dispute or an infringement.

# **3. Determination of tariff scheme:**

# A registered CMO shall frame a tariff scheme for the nature and quantum of fees or royalties it proposes to collect regarding copyright or other rights administered by the CMO within six months of its registration.

# A tariff scheme shall be determined based on the negotiations between owners and users of copyright works.

# [A CMO should establish general tariffs and conditions, to the extent practicable, for the licensing of their repertoire. Such tariffs and conditions must be based on objective, fair and non-discriminatory criteria and be in accordance with the rights granted, as well as the limitations and exceptions provided, in the national law. Whenever possible, tariffs must be also set based on cross-sectoral tariff comparisons, economic research, the commercial value of the rights in use, or other objective and relevant criteria, including the benefits to licensees, taking into account:](Royalty-Collection-Tariff-in-English.pdf)

[(a) the purpose for which the rights are used;](Royalty-Collection-Tariff-in-English.pdf)

[(b) the context in which the rights are used;](Royalty-Collection-Tariff-in-English.pdf)

[(c) the manner or kind of use for which the rights are used; and](Royalty-Collection-Tariff-in-English.pdf)

[(d) the benefit to the licensee of being able to deal with a CMO, rather than with each individual owner of rights.](Royalty-Collection-Tariff-in-English.pdf)

1. A tariff scheme determined in sections 9, 10 & 11 shall be subject to the approval of the Ministry. (or the CMO Board).

# **4. Determination of distribution scheme:**

# A registered CMO shall frame a distribution scheme setting out the procedure for collecting and distributing fees or royalties specified in the tariff scheme among the owners of copyright or other rights administered by the CMO within six months of its registration.

# A distribution scheme shall be subject to the approval of the Ministry/Board

# The distribution of the fees collected shall be subject to a deduction for operational expenses incurred by the CMO.

# Split accounts: A CMO should manage and keep separate the Rights Revenue and any income derived from the investment of its own assets, the income derived from its management services or the income derived from any other activities.

# A CMO should maintain and publish a distribution scheme, as approved by the General Meeting, that sets out:

* + 1. the basis for calculating entitlements to receive payments from Rights Revenue collected. In establishing such a basis, a CMO should take into account, as far as possible, the actual use and manner of use of works or other subject matter. If not practicable, a statistically valid sample approximating the actual use of the works or categories of works can be used;
		2. the manner and frequency of Distributions to Members and Rightsholders; and
		3. the amounts that will be deducted from the Rights Revenue before Distribution on the basis of Operating Expenses and deduction policies as determined by the General Meeting, the Statute or the law.
1. A CMO should regularly, diligently and accurately distribute and pay amounts due to the Rightholders it represents, be it through membership, mandate – voluntary or statutory – or Representation Agreements with other CMOs, in accordance with its general policy on distributions and the agreements it has signed with other CMOs.
2. A CMO should carry out such distributions and payments no later than 12 months after the end of the financial year in which the Rights Revenue was collected, unless objective reasons, for instance, insufficient reporting by Users/Licensees, prevent it from meeting this deadline.
3. A CMO should clearly state its policy relating to undistributed monies.

# **5. Revenue deductions:**

1. A CMO should not be allowed, unless specifically authorized by the General Meeting or its Statute, or provided by law, to use Rights Revenue and any income from the investment of Rights Revenue for any purposes other than distributions to Rightholders or, if so decided by the General Meeting, social, cultural, educational, or cost reduction.
2. The General Meeting should decide on the rules on deductions from Rights Revenue.
3. The amounts deducted from the Rights Revenue for the purposes of social, cultural and educational purposes in the financial year and an explanation of the use of those amounts should be included in the annual report.
4. A CMO should strive to ensure that funds for social, cultural and educational purposes are only deducted from the Rights Revenue with the agreement of the Rightholders represented.
5. A CMO should ensure that its Operating Expenses are transparent and properly documented.
6. A CMO should ensure that each Rightholder it represents – whether directly through a membership contract or through a Representation Agreement will be entitled to apply for its social, cultural or educational services provided deductions were made on Rights Revenue attributed and distributed to such Rightholders.

# **6. Control over the CMO by the owner of rights:**

# Every CMO which administers owners' rights under this Regulation shall be subject to the collective control of such owners and shall, in such manner as may be prescribed:

# obtain the approval of such owners for its procedures of collection and distribution of fees;

# obtain their approval for the utilization of any amounts collected as fees for any purpose other than distribution to the owner of rights; and

# provide to such owners’ routine, complete, and detailed information concerning all its activities in relation to the administration of their rights.

1. A CMO should notify its Members and Rightholders (if possible, electronically) that its Annual Report, including its income statement and accurate information about its collections, Operating Expenses and deductions, is available for download from its website or via other reasonable means.
2. A CMO should provide a Rightholder with a list of the members of the board and the category each of them represents. A CMO should also make available information regarding the total amount of remuneration and other benefits paid to the members of the board and its management team.
3. A CMO should make available information (if possible electronically) to each Rightholder to whom it has attributed Rights Revenue or made payments in the period to which the information relates and who is entitled to a Distribution. Such information should include:
4. a statement of monies attributed to such Rightholder, including information on Operating Expenses and deductions and the amounts subsequently paid to the latter;
5. a breakdown of Rights Revenue per main category of rights managed and per type of use;
6. a distinction between Rights Revenue earned nationally and Rights Revenue received on the basis of Representation Agreements; and
7. information regarding any amounts attributed to the Rightholder which are outstanding for the period concerned.
8. The CMO should make available the Distribution rules to its rightsholders, if possible by electronic means.

# **7. Governance of CMO:**

**General meetings:**

1. The statutes of a CMO should provide for an annual general meeting of the members of the organization and for the possibility of qualified numbers of members of the board of directors, or members of the organization, to demand the convocation of an extraordinary general meeting within not more than two months after the demand is made.
2. Any amendment of the statutes requires the consent of the general meeting, in accordance with the statutes.
3. The annual general meeting should have available at least one month before it convenes, the annual general report as well as the annual audited financial report, which must be accompanied by the auditors’ report. The annual reports should include information about the CMO’s type of investments, the investment policy, and the results based on that policy.
4. The general meeting should:
5. approve the general policies on the distribution of collected monies; deductions for social, cultural or educational purposes; and the use of non-distributable monies and investments;
6. approve the annual general report, the annual financial report, the auditors’ report and the information about investments referred to in section 34;
7. appoint and dismiss members of the board, and approve their remuneration and other benefits, pension awards, severance packages and other awards;
8. decide on the general investment policies of the CMO; and
9. appoint the independent external auditor. / RAA
10. The statutes of a CMO should entitle all members to participate in, speak and vote at its general assembly. Voting rights may only be restricted in the statutes and based on fair and proportionate criteria relating to:
11. the duration of each member’s membership, and
12. the amounts received or due to a member in relation to the specified financial period.
13. Any member of the CMO may appoint another member of the same category, if the organization has more than one category of members, as a proxy holder to participate in and vote at the general assembly.

**The Board of Directors:**

1. The statutes of a CMO should establish appropriate procedures and guidelines to avoid conflicts of interest and, when such conflicts cannot be avoided, to identify, manage and monitor conflicts of interest that might prevent members of the board of directors from discharging their responsibilities.
2. The members of the board of directors should be elected by the general meeting considering equal representation of the rightsholders and users, and the term of election shall not exceed X years.
3. The board of directors shall be chaired by the Director, DoMCIIP, MoICE.
4. The board of directors should appoint the general manager of the CMO and it shall decide on his or her salary and other terms of appointment.
5. The board of directors should monitor and guide the operations of the CMO in accordance with the legislation and the highest professional standards. The board shall be kept informed about all important matters and decisions made by the general manager and the staff of the organization and it shall be entitled to obtain complete and exhaustive information about any issue relating to the organization that it may request.
6. Each member of the board of directors as well as the general manager and any other staff with managerial responsibilities should every year for the annual general assembly prepare an individual statement of any actual or potential conflict between any personal interests and those of the CMO or between any obligations towards the CMO and any duty to any other natural or legal person.

# **8. Accounts and audit:**

# A CMO shall maintain proper accounts of the fees and royalties collected in a financial year, payments made from such collections to the owners of rights, and other expenditures incurred for meeting administrative expenses and related matters with the approval of owners of rights.

# A CMO shall be audited by private auditors annually/RAA

# In respect of each financial year, a CMO should distribute or make available an annual report (if possible, electronically) to its membership well in advance of its general meeting. The Annual Report should contain:

# a financial statement, which should include a balance sheet or a statement of assets and liabilities as well as an income and expenditure account for the financial year;

# a report of the CMO’s activities in that financial year;

# a statement of Rights Revenue broken down per category of rights managed and per type of use including the total amount of Rights Revenue collected, but not yet attributed to rightsholders, and the total amount of Rights Revenue attributed but not yet distributed to rightsholders;

# a breakdown of the Operating Expenses;

# a breakdown of the deductions for the purposes of social, cultural and educational services in the financial year and an explanation of the use of those amounts, with a breakdown per social, cultural and educational expenditure;

# information on the total amount of remuneration paid, and other benefits granted to, the persons who manage the business of the CMO and the board members in the financial year;

# A general statement setting out, in respect of the transactions between a CMO and each partner CMO with which it has a representation agreement the:

a) name of such partner CMOs, and the dates of the relevant contracts;

b) the total amount paid in the financial year to the partner CMOs;

c) total Management Fees and other specified deductions; and

d) the total amount received from the partner CMOs.

1. The financial records of a CMO should be inspected annually by at least one external auditor/ RAA appointed by the General Meeting.

# **9. Submission of Returns and Reports:**

# A CMO shall submit to the Ministry such returns as prescribed in the regulation.

# The Ministry may call for any report and records of any CMO regarding the fees collected in respect of rights administered by them.

# The Ministry may order the CMO to take any measures necessary for improving administration for the protection of right holders or users when there is a fact known to prejudice the interests of right holders or users.

# A CMO should, not later than [date, month] in each year, prepare and submit to the Ministry the following documents in respect of its operation for the preceding year:

1. a general report of its activities in the preceding year; and
2. its annual audited financial report which shall show among others;
3. the total revenue during the period of the report;
4. the total sum and a breakdown according to the general nature of expenses;
5. a statement of rights revenue broken down per category of rights managed

and per type of use, including the total amount of rights revenue collected, but

not yet attributed to the owners of the rights, and the total amount of rights

revenue attributed but not yet distributed to owners of the rights;

1. the total sum of payment of royalties to members in accordance with the

organization’s distribution policy;

1. a breakdown of the deductions for the purposes of social, cultural and

educational services in the financial year, if any, and an explanation of the use of

those amounts, with a breakdown per social, cultural and educational

expenditure;

1. information on the total amount of remuneration paid, and other benefits

granted to, the persons who manage the business of the CMO and the board

members in the financial year;

1. a breakdown of rights revenue paid and received from each foreign CMO

with which the organization has reciprocal representation contracts, as well as

information for each such organization regarding the total management fees and

other specified deductions; and

1. a balance sheet showing the assets and liabilities of the CMO.

# **10. Cancellation of the Registration****:**

# The Ministry may cancel the registration of a CMO in writing and with reasons, andafter a reasonable deadline for the elimination of the problem if:

# the CMO violates this regulation;

# the registration of CMO under this regulation is obtained by dishonest means.

# the CMO has not started operation within one year from the registration; or

# the CMO has not been operating continuously for more than one year.

**Definition:**

collective management organization: means any organization which is authorized by law or by way of assignment, license or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those rightsholders, as its sole or main purpose, and which fulfils one or both of the following criteria:

(i) it is owned or controlled by its members;

(ii) it is organized on a not-for-profit basis.