

ANTI-CORRUPTION ACT OF BHUTAN 2006

THE ANTI-CORRUPTION ACT OF BHUTAN 2006

PREAMBLE

The People of Bhutan;

Recalling His Majesty's vision of a democracy that enshrines the philosophy of Gross National Happiness, that is responsive to people's aspirations and needs and that enhances transparency and accountability of governance;

Concerned about the seriousness of problem and threat posed by corruption to the stability and security of the society, undermining the institution and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law;

Convinced that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively;

Bearing in mind the principles of effective management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of intolerance for corruption;

Determined to make every effort to prevent, detect, punish and root out corruption;

Acknowledging the establishment of the Anti-Corruption Commission as an independent authority under the Constitution; and

The Anti-Corruption Act of Bhutan has been passed on the Eighth Day of the Fifth Month of the Fire Dog Year, corresponding to the Third Day of the Seventh Month of the Year 2006 during the 85th Session by the National Assembly, Kingdom of Bhutan as follows:

CHAPTER 1

PRELIMINARY

Title, Commencement and Extent

1. This Act shall:

- (a) Be called the ANTI-CORRUPTION ACT OF BHUTAN 2006;
- (b) Come into force on the Eight Day of the Fifth Month of the Fire Dog Year, corresponding to Third Day of Seventh Month, 2006; and
- (c) Extend to the whole of the Kingdom of Bhutan.

Application

2. This Act shall apply to public entity, corporation, person including nongovernmental organization, foundation, trust, charity and civil society using public resource.

CHAPTER 2

ANTI-CORRUPTION COMMISSION

Establishment

3. The Anti-Corruption Commission shall be established in accordance with the provision of the Constitution, which shall be an independent authority.

4. The Anti-Corruption Commission shall be supported by a secretariat. Independence
5. The Commission shall enjoy full organizational and functional independence including programming, investigation and reporting.
6. The Commission shall have full authority to determine and administer its organizational structure, budgetary and personnel requirement.
7. The State shall make adequate financial provision for the independent administration of the Commission.
8. The Commission's budget shall be approved by Parliament as a part of annual national budget. If the decision of Parliament on the national budget is delayed, the Ministry of Finance shall provide the Commission with an interim fund, which shall be at least equivalent to previous year's budget.

Composition

9. The Commission shall comprise a chairperson and two members.
10. The Secretariat shall be headed by a secretary.

Eligibility and Qualification

11. The Chairperson and members of the Commission shall:

- (a) Be a natural born citizen of Bhutan;
- (b) Not be married to a person who is not a citizen of Bhutan;
- (c) Suitably qualified for the post;
- (d) Have no political affiliation;
- (e) Not have been disqualified under any law;
- (f) Not have been terminated from public service;
- (g) Not have been convicted for criminal offence;
- (h) Not be in arrears of taxes or other dues to a public entity; or
- (i) Not hold any office of profit in any public or private company, corporation and non-governmental organization or such other organization.

Appointment

12. The Chairperson and members of the Commission shall be appointed by His Majesty from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.

Oath or Affirmation

13. The Chairperson and members of the Commission shall, upon assuming office, take an Oath or Affirmation of office and secrecy as provided in the Third and Fourth Schedule of the Constitution respectively before His Majesty the King or the Chief Justice of Bhutan.

Accountability of the Chairperson and Members

14. The Chairperson shall be accountable to His Majesty and Parliament. He shall submit himself to whatever scrutiny is appropriate to this Office.

15. The members of the Commission shall be accountable to the Chairperson. Terms and Condition of Service

16. The term of office of the Chairperson and members of the Commission shall be five years or until attaining the age of sixty-five years, whichever is earlier.

17. The Chairperson of the Commission shall not be eligible for reappointment.

18. The salary, tenure, discipline and other service conditions of the Chairperson and members shall be as prescribed by law, provided that their salary and benefit shall not be varied to their disadvantage after appointment.

19. The Commission shall determine its rules of procedure. Its decision shall be the views of the majority. In the event of only two members being present at a meeting and any dissent on an issue, the view of the Chairperson/officiating Chairperson shall prevail.

Resignation and Removal

20. The Chairperson or any member of the Commission may resign from his office before the expiry of his term by submitting before His Majesty a signed notice of resignation.

21. The Chairperson of the Commission shall not be removed from office except by way of impeachment as prescribed in the Constitution.

22. His Majesty may remove the members of the Commission on grounds of:

(a) Physical, mental, or other incapacity of a permanent nature;

(b) Any violation of this Act; or

(c) Conviction under any other law.

23. The removal may be effected only after conducting an inquiry into the alleged violation and findings thereon by a committee constituted by the Chairperson.

24. Members of the Commission shall not be imprisoned on an administrative decision.

25. The senior most member of the Commission shall act as the Chairperson in the absence of the latter. However, such a member shall not ordinarily continue to so act for a period not exceeding three months from the date he so acts.

26. In the event of death, resignation or removal of the Chairperson or any member of the Commission, the post shall be filled within a period of thirty days from the date of such vacancy.

27. The Commission shall prescribe the service conditions and personnel policies for the staff of its Secretariat broadly in accordance with the Civil Service Act.

CHAPTER 3

CODE OF CONDUCT AND ETHICS

Compliance

28. The Chairperson and members of the Commission shall ensure that their conduct is, both in appearance and in practice, in compliance with this code.

29. The Chairperson and members of the Commission shall maintain the highest standard of ethics, integrity and professionalism in discharging their duty.

30. The Chairperson and members of the Commission shall not only abide by the provision of this Act but also ensure that all public servants working under the Commission comply with the Code of Conduct and Ethics prescribed by the Commission.

31. The Chairperson and members of the Commission shall individually and collectively ensure and maintain the integrity of the Commission. Responsibility

32. The Chairperson and members of the Commission shall ensure that their conduct is consistent with the dignity, reputation and integrity of the Commission and the sovereignty, security, unity and integrity of the country.

Accountability

33. The Chairperson of the Commission shall have a duty to account for and be held accountable for the policy, decision and action of the Commission.

Confidentiality

34. The Chairperson and members of the Commission shall maintain confidentiality in cases where decision, document and deliberation should not be disclosed in the public interest. Integrity

35. The Chairperson and members of the Commission shall not be influenced in any manner whatsoever by any person or body of persons in the discharge of their official duty.

Selflessness

36. The Chairperson and members of the Commission shall take decision solely based on the public interest.

Transparency

37. The decision and action of the Chairperson and members of the Commission shall be transparent and they shall give reason for their decision.

Personal Conduct

38. The Chairperson and members of the Commission shall:

(a) Refrain from indulging in habit and behaviour that affects the performance of official duties or tarnish the image of the Commission or the country;

(b) Not conduct directly or indirectly, in abuse of their office or power, any act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any government policy;

(c) Not maintain or operate a bank account in any country outside Bhutan;

(d) Not provide information, which is detrimental to the prestige, integrity and sovereignty of the country; and

(e) Not accept any gift, present or benefit.

Conflicts of Interest

39. The Chairperson and members of the Commission shall ensure that no conflict arises or appears to arise, between their public duty and private interests, pecuniary or otherwise.

40. A conflict of interest may exist when the Chairperson or a member of the Commission is influenced or appears to be influenced by private interest. Private interest may include not only his pecuniary or vested interest but also that of his spouse or dependant or other person.

41. The Chairperson and members of the Commission shall:

(a) Declare their income, asset and liability, including the asset and liability in the name of their spouse and dependant, within three months upon taking office, annually thereafter and three months prior to vacation of office to the Secretariat of the Commission and include this declaration in the annual report submitted to His Majesty, the Prime Minister and Parliament;

(b) Not undertake any private trade or commercial activity or additional employment;

(c) Not hold any post in a public or private company or a nongovernmental organization or such other organization whether it carries remuneration or is honorary, other than as may be required in their official capacity as the Chairperson or a member of the Commission;

(d) Not act as a consultant to any public or private company, business or association nor provide assistance to any such body including a nongovernmental organization or such other organization;

(e) Not be a member or belong to, or take part in any society the membership of which is incompatible with the functions or dignity of the Commission; and

(f) Not make any unauthorized commitment or promise that purports to bind the Commission or the government.

42. The Chairperson and members of the Commission shall declare any potential conflict of interest before undertaking or during any investigation concerning a particular person or entity.

43. The Chairperson of the Commission may exclude a member from an investigation if he considers there is a reasonable cause to suspect the existence of an element of conflict of interest.

Violation

44. Violation of this code by the Chairperson of the Commission shall be a ground for impeachment.

CHAPTER 4

POWER AND FUNCTION

Power and Function of the Commission

45. The Commission shall have the power to:

(a) Take all necessary actions to prevent and combat corruption;

(b) Investigate on its own initiative any suspected attempt or conspiracy to commit any act of corruption or whenever there is evidence of corruption;

(c) Investigate against a person abroad accused of corruption in Bhutan or non-Bhutanese residing in Bhutan charged in their countries of origin for corruption;

(d) Visit for the purpose of inspection, with or without notice, any place, examine any document and ask for such information and document, original or a copy, as it deems fit;

(e) Conduct or request to conduct an inquiry, comprehensive investigation or any other measure aimed at examining the legality of administrative act and proceeding with regard to relations between a public or private entity and a person;

(f) Examine the legality and the administrative correctness of acts which involve property entitlement;

(g) Request the Court for an order or judgment cancelling or revoking a right or document of title in respect of which a public servant has given approval or granted permission conferring rights or benefit or issued the document of title to a person in contravention of law or regulation or against the interest of the government;

(h) Examine the system, practice and procedure of public entities in order to advise and revise procedures and practice which may potentially breed corruption;

(i) Blacklist or debar any corrupt national or foreign firm from participating in government tender;

(j) Revoke work order, license, lease and contract agreement; and

(k) Monitor the implementation of anti-corruption national strategy, plan and programme by public and private entities.

46. The Commission shall have all such powers as given to the law enforcement officials under the Civil and Criminal Procedure Code of Bhutan or any other law with regard to investigation, arrest, search and seizure.

47. The power of the Commission under section 46 of this Act may be delegated to an investigating officer or any other official involved in an investigation through a written order from the Chairperson.

48. The Commission during the course of an investigation may grant prior or due authorization to a person on a reasoned decision to accept unlawful demand or bribe or give bribe to a public servant or any other person, either directly or indirectly.

49. The Commission may freeze the asset including financial account of a person under investigation or seize and impound travel document to prevent the person from fleeing the country, but shall obtain necessary approval from the Court of competent jurisdiction within seven days from the date of such action, failing which the effect of such action shall lapse.

50. The Commission shall have access to the asset declaration of any person serving under a public entity, any elected person and any person serving under a non-governmental organization or such other organization that uses public resource.

51. The Commission shall take measures to prevent corruption in the private sector by directing them to develop standards and procedures, including a code of conduct for correct, honorable and proper conduct of business and for promotion of good commercial practice and in the contractual relations of business with the government.

52. The Commission shall also take measures to prevent misuse of procedure regulating private entity including procedure regarding privatization, subsidy and license granted by the government for commercial activity. 53. The Commission may seek technical assistance, when necessary, for the purpose of carrying out its functions.

54. It shall be the duty of the Commission to:

(a) Exercise its power and discharge its function with utmost loyalty and dedication to Tsa-Wa-Sum, unaffected by any consideration for those in position of power and influence, showing full transparency and no discrimination whatsoever in its performance;

(b) Prepare a national strategy and programme to curb corruption and prevent misuse of public resource;

(c) Curb and root out corruption through timely and effective monitoring of embezzlement, misappropriation or other diversion of public resource by a person for his benefit or for the benefit of another person or entity;

(d) Receive any complaint of corruption and investigate such a complaint as provided under this Act;

(e) Inspect any disproportionate change in income, asset and liability of a person;

(f) Respect, promote and protect the freedom to seek, receive, publish and disseminate information concerning corruption in accordance with the law;

(g) Publish its annual performance report for public information;

(h) Advise, propose measures or recommendations to appropriate authority, for the purpose of improving the performance of public service in an endeavour to prevent and control corruption;

(i) Undertake public information and education programme;

(j) Promote active participation of civil society, non-governmental and community-based organizations, in the prevention of corruption and the fight against it, to raise public awareness regarding the existence of, causes and gravity of and threat posed by corruption, ultimately to foster a public culture of non-tolerance of corruption;

(k) Coordinate with public entities in particular with law enforcement agencies in combating corruption;

(l) Develop asset declaration guidelines and forms; and

(m) Carry out other functions as provided under this Act or other law. International Cooperation

55. The Commission may collaborate with other countries and international and regional organizations, in facilitating and supporting international effort in the prevention of and fight against corruption including asset recovery, assistance in investigation and sharing of information in accordance with the law and established procedure of the government.

Role and Responsibility of Secretariat

56. The Secretariat of the Commission shall be responsible for the efficient conduct of business of the Commission. It shall assist the Commission in investigation and gathering of data, conduct study and research on causes and prevention of corruption, coordinate with public, private or any other entity in the overall effort towards combating corruption, promoting public participation in combating corruption and studying the best practice in other countries or organizations.

57. The Commission may, through a written order, delegate any of its functions and powers under this Act or Rules to the Secretariat.

58. The Secretariat shall carry out such other responsibilities as may be assigned by the Commission.

CHAPTER 5

COMPLAINT

Lodging Complaint

59. Any person has the right to lodge with the Commission a complaint against a public servant, public entity or other person who has committed or is attempting to commit an offence of corruption.

60. Investigation of a complaint shall be subject to review of facts and evidence by the Commission.

61. A complaint shall at least contain the following particulars:

(a) Name and address of the person lodging the complaint;

(b) Name and address of the person against whom the complaint is filed;

(c) Allegation and circumstance under which the alleged offence was committed or attempted to commit, any injury sustained, together with clear and sufficient evidence to facilitate effective investigation; and

(d) If the complaint is lodged on behalf of another injured person, the signature of such person.

Procedure

62. A complaint may be made orally or in writing, in person or through any means of communication to an officer of the Commission and if made orally it shall be reduced to writing and read over to the complainant.

63. A complaint whether in writing or reduced to writing shall be signed by the complainant.

64. Every complaint shall be kept secret and shall not be disclosed except to the investigation officer, the Attorney General or any other prosecuting agency.

Exception

65. The Commission shall receive anonymous complaint. Reporting of False Information

66. A complainant or informer who knowingly gives or causes to be given any false or misleading information relating to the commission of any offence of corruption by an entity or a person with malicious intent shall be guilty of an offence and liable to the penalty provided for such offence under the Penal Code of Bhutan.

CHAPTER 6

INVESTIGATION, ARREST, SEARCH AND SEIZURE

Investigation

67. An investigation shall be conducted under this Act, when:

(a) His Majesty Commands;

(b) An offence of corruption is reported by the Royal Audit Authority;

(c) A complaint, lodged in accordance with this Act, gives rise to reasonable suspicion of corruption; or

(d) In the opinion of the Commission there is credible information on corruption.

Time Limitation

68. No person shall be subjected to an investigation for corruption under this Act relating to his business after a lapse of five years from the date of vacating the office, if the offence is petty misdemeanor or below as prescribed under the Penal Code of Bhutan.

69. Section 68 of this Act shall not apply for the offence of misdemeanor and above as prescribed under the Penal Code of Bhutan.

Power to Summon

70. The Commission or an investigating officer investigating an offence under this Act may, through subpoena:

(a) Order any person to attend before it or him for the purpose of investigation in relation to any matter which may, in its or his opinion, assist in the investigation into the offence; and/or

(b) Order any person to produce before it or him any book, document or any certified copy thereof, or any other article which may, in its or his opinion, assist in the investigation into the offence. Bank secrecy law shall not apply.

71. Any person who fails to appear at the time and place mentioned in the summons, shall be arrested.

Procedure

72. Investigation shall be conducted in accordance with the provisions of the Civil and Criminal Procedure Code of Bhutan.

73. The Commission may authorize an officer in writing to search, seize or arrest.

74. The Commission shall issue an identity card to the officer attesting that he is an officer of the Commission.

75. The Commission or an investigating officer may seek assistance from any law enforcement agency in the course of investigation, seizure, search and arrest. It shall be the duty of the law enforcement agency to extend necessary assistance.

76. The Commission may under this Act conduct a joint investigation with other law enforcement agencies.

Suspension

77. Whenever the Commission finds a prima facie case, the alleged person shall be suspended from service and/or his business frozen.

78. The alleged person shall be suspended and/or his business frozen until the period of detention; if a case is filed against him, he shall be suspended and/or his business frozen until the proceeding of the case is over.

Arrest

79. Arrest of any person by the Commission shall be in accordance with the Civil and Criminal Procedure Code of Bhutan.

80. The power of the Commission to enter a private dwelling to arrest a person without warrant is limited to instances of immediate necessity or other exigent circumstances.

81. Any person arrested and detained with/without warrant shall be produced before a court within twenty-four hours of the arrest exclusive of the time necessary for the journey from the place of arrest and government holidays.

82. Any person arrested by the Commission shall first be taken to a police station for necessary documentation of the arrest.

83. When detention of an alleged person is necessary at any time, he shall be kept in police custody.

84. Custody of the accused under the police shall be governed by the Prison Act or any other rule or regulation pertaining to custody and control of a prisoner. This, however, does not preclude any other mutually-agreed arrangement between the Commission and the police so long as such arrangement is not in conflict with the Prison Act or any other rule or regulation.

85. Where temporary suspension of detention of the alleged person is required within twenty-four hours of the arrest, it shall be granted by the Commission.

86. The Commission shall be responsible for obtaining the necessary warrant or remand order from the Court in respect of a person arrested and detained in police custody when it is necessary, including release of the detainee. Search and Seizure

87. The Commission may search and seize or attach the property of an alleged person in accordance with the Civil and Criminal Procedure Code of Bhutan.

CHAPTER 7

FINDING AND PROSECUTION

Verification

88. Investigation report shall be submitted to the Commission for verification and endorsement, which shall then forward it to the Office of the Attorney General or any other prosecuting agency for prosecution.

Prosecution

89. No person shall be liable to penalty for an offence under this Act or any other law unless found guilty and convicted by a court of law.

90. The prosecution of any case based on an investigation report of the Commission shall be carried out expeditiously by the Office of the Attorney General or any prosecuting agency in the Court of competent jurisdiction.

91. The Commission when it deems necessary and expedient, may prosecute a person charged with corruption or take over a prosecution process from the prosecuting agency or police when the case is delayed without a valid reason, manipulated or hampered by interference.

92. In the event the Commission takes over the prosecution process, the police or the prosecuting agency shall be obliged to hand over the case file and related documents and evidence within fourteen days of the receipt of the Commission's request.

93. In any civil or criminal proceeding under this Act, evidence shall not be admissible to show that any such gratification as mentioned in this Act is customary in any profession, trade or vocation.

CHAPTER 8

GENERAL AND SPECIAL DUTY OF COOPERATION

94. In accordance with the Constitution, the Commission, within its scope of activity under this Act, is entitled to cooperation from any public entity or any person.

95. Notwithstanding any other law, on a written order of the Chairperson a public or private entity or a person is under the duty to provide the Commission with information, documents or any other material it or he possesses.

96. The Commission may require a public entity or any other organization to carry out investigation, inquiry, expert inspection, analysis, examination or any other necessary measures within its power.

CHAPTER 9

SAFETY AND SECURITY

Protection to Alleged Person

97. The Commission shall give due regard to the personal safety and security of a person under custody during investigation and give reasonable protection whenever necessary.

Protection to Informer and Witness

98. The Commission shall ensure the identity protection of an informer.

99. The State shall be required to protect an informer, a witness and members of their family from physical, economic or any other threat.

100. In any trial of an offence of corruption, a witness shall not be obliged to disclose the name and address of any informer or state any matter that might lead to disclosure of his identity.

101. Where any documentary evidence contains the name and address of an informer, the Court shall cause all such passages to be concealed or to be obliterated so far as may be necessary.

102. Identity protection can only be withdrawn if such grant of protection was granted based on false information or if disclosure is essential in the interest of the public. Such a disclosure shall in no way undermine section 98 of this Act.

103. A person or entity shall not take any retaliatory action against an employee or a person for the disclosure or the threat to disclose to a lawful authority of an action of the person or entity which the employee or other person reasonably believes to be in violation of this Act.

Immunity from Prosecution

104. The Chairperson and members of the Commission, investigating officers or any other official involved in an investigation or inquiry shall enjoy immunity from prosecution for any lawful act arising from due discharge of their duty under this Act.

CHAPTER 10

OFFENCE, PENALTY AND BAIL

Offence

105. Any offence defined in this Act shall be deemed to be a cognizable offence within the meaning of the Civil and Criminal Procedure Code of Bhutan.

106. Any person who has committed an offence of corruption or who fails to comply with any provision of this Act or any other law shall be guilty of an offence.

107. Any person who, being or having been a public servant or a person having served or serving under a non-governmental organization or such other organization using public resources:

(a) Maintains a standard of living that is not in commensurate with his lawful source of income; or

(b) Is in control of pecuniary resource or asset disproportionate to his lawful source of income;

shall unless he gives a satisfactory explanation to the Commission or the Court, be guilty of an offence and shall be liable for value-based sentencing in accordance with the Penal Code of Bhutan.

108. Where the Court is satisfied in proceedings for an offence under subsection 107 (b) of this Act that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person is holding pecuniary resource or asset in trust or otherwise on behalf of the accused or acquired such resource or asset shall, in the absence of evidence to the contrary, be deemed to belong to the accused.

109. A person is guilty of an offence if he, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, corruptly, directly or indirectly:

(a) With the intent to obtain such contract from any public entity, offers any gratification to any person who has made a tender for the contract, as an inducement or as a reward for his withdrawal from the tender;

(b) Accepts or agrees to accept any gratification for withdrawing a tender made by him for such contract; or

(c) Upon an invitation to submit a tender for such contract, colludes or makes an offer with intent to cause the tenderer or person organizing the tender to accept a particular offer.

110. The offence under section 109 of this Act shall be a value-based sentencing in accordance with the Penal Code of Bhutan.

111. Any person who has received or given a bribe from or to another person, as an inducement or a reward for his withdrawal from the tender in relation to a contract under section 109 of this Act, reports the matter to the Commission or to a lawful authority within twenty four hours of the receipt of such a bribe, shall not be liable for any penalty.

112. Any person who is granted prior or due authorization to accept or give unlawful demand or bribe from a public servant or any other person under section 48 of this Act induces or encourages another public servant or any other person to commit a crime by making a false representation designed to induce the belief that the conduct is not prohibited by law shall be guilty of an offence of entrapment and liable to penalty under the Penal Code of Bhutan.

113. Any person who discloses the identity of an informer shall be guilty of an offence.

114. Any person or entity that takes any retaliatory action against an employee or a person for the disclosure or the threat to disclose to a lawful authority of an action of the person or entity which he reasonably believes to be in violation of this Act shall be guilty of an offence.

115. Any public servant or a person serving under a non-governmental organization or such other organization using public resource who fails to declare or makes a false declaration of income, asset and liability under this Act shall be guilty of an offence of violation and liable to penalty as provided under the Penal Code of Bhutan. Failure to declare for a second time shall be a ground for termination from service.

116. In accordance with section 115 of this Act, the head of the entity designated by the Commission, shall impose a fine or terminate the public servant or the person. Non-compliance of this section by the head shall be guilty of an offence as prescribed under section 118 of this Act.

117. Any person who agrees to provide information on the prosecution of an offence of corruption may enter into a plea bargain in accordance with the Civil and Criminal Procedure Code of Bhutan.

Obstruction

118. Any person or public entity who fails to comply with the lawful demand of the Commission including implementation of anti-corruption strategy and measures and makes difficult the execution of its tasks shall be guilty of an offence.

Liability of Public Servant for Offence Committed Outside Bhutan

119. Any public servant who commits an offence of corruption under this Act or any other law outside Bhutan shall be prosecuted for that offence as if it had been committed within Bhutan.

120. Any proceeding against any person under this section which would be a bar to subsequent proceeding against that person for the same offence, if the offence had been committed in Bhutan, shall be a bar to further proceeding against him, under any law for the time being in force relating to the extradition of a person, in respect of the same offence outside Bhutan.

Penalty

121. Any person who is found guilty of an offence of corruption shall on conviction be liable to punishment provided for such offence under the Penal Code of Bhutan or other law.

122. Every person convicted of an offence of corruption under this Act or any other law, for which no penalty is specifically provided under the Penal Code of Bhutan or any other law, shall be liable to a fine or to imprisonment, or to both, as graded by the Courts.

Confiscation and Recovery

123. When a defendant is convicted for corruption, any property constituting criminal proceeds, articles used or any benefit derived from such an offence shall be subjected to confiscation or recovery in accordance with this Act or any other law.

Thrimthue

124. Except for recidivist and accustomed or habitual offender, the Court may make an order to pay fine in lieu of imprisonment, if the offence is not a felony.

Bail

125. A defendant shall be admitted to bail subject to the provisions of the Civil and Criminal Procedure Code of Bhutan.

CHAPTER 11

MISCELLANEOUS

Annual Report

126. The Commission shall submit an annual report to His Majesty, the Prime Minister and Parliament on its policy and performances including up-to-date data relating to complaints filed with the Commission, investigations conducted, convictions and acquittals with regard to such cases by a court of law or a tribunal.

Asset Declaration

127. A public servant or a person serving under a non-governmental organization or such other organization using public resource shall declare his income, asset and liability and that of his spouse and dependent in accordance with the guideline and form prescribed by the Commission.

128. The head of the entity as designated by the Commission shall ensure that the declaration of asset under section 127 is made in accordance with this Act.

129. A person holding the following positions shall declare to the Commission his income, asset and liability and that of his spouse and dependent within three months after taking office, annually thereafter, and three months prior to vacation of office in accordance with the guideline and form prescribed by the Commission:

- (a) Prime Minister;
- (b) Chief Justice of Bhutan;
- (c) Speaker and members of the National Assembly;
- (d) Minister;
- (e) Chairperson and members of the National Council;
- (f) Constitutional office holder;
- (g) Secretary to the government;
- (h) Ambassador and Consul;
- (i) Members of the Constitutional office;
- (j) Head of autonomous agency;
- (k) Head of armed forces;
- (l) Chief of Police;
- (m) Chairperson of Dzongkhag Tshogdu, Gewog Tshogde and Thromde Tshogde;
- (n) Dzongda and Drangpon;
- (o) Chairperson and chief executive of corporation and financial institution;
- (p) Head of an NGO and other such organization that uses public resource; and
- (q) Any other public official that the Commission may prescribe from time to time.

130. The Commission may verify the accuracy of declaration of income, asset and liability submitted by a public official as per section 129 of this Act including his spouse and dependant.

131. Violation of this requirement under section 129 shall be a ground for his impeachment or removal, as the case may be except that no person shall be imprisoned on an administrative decision.

132. Upon application to the Commission or the concerned organization and subject to its satisfaction that such information will not be used maliciously but for the interest of the general public, access to such declaration may be allowed.

Rule Making Power

133. The Commission may make rules for effective administration of the Commission or as it deems necessary for effective implementation of this Act. Establishment of a Tribunal

134. A tribunal may be established in accordance with the Constitution to facilitate expedient adjudication of corruption cases.

Amendment of Schedule

135. The Commission shall have the power to make any addition, variation or deletion to the Schedule.

Amendment

136. The amendment of this Act by way of addition, variation or repeal may be effected only by Parliament.

Authoritative Text

137. The Dzongkha text shall be the authoritative text, if there exists any difference in meaning between the Dzongkha and the English text of this Act.

Definition

138. In this Act unless the context otherwise requires:

(a) "Abuse of authority" means improper use of position and power or nonperformance of an act required by law for the purpose of obtaining an undue advantage for himself, his relative, another person or entity or favouring another person or entity.

(b) "Abuse of privileged information" means use of privileged information and knowledge including insider trading that a public servant or a person serving under a non-governmental organization or such other organization using public resource, possesses as a result of his office to provide unfair advantage to another person or to obtain a benefit, or to accrue a benefit for himself or another person or entity.

(c) "Alleged person" means an individual or legal entity against whom a complaint has been lodged in accordance with this Act or any other law whom under the circumstance apparent to the Commission as indicating an act which constitutes a basis for conducting an investigation under this Act or any other law.

(d) "Asset" means property of all kinds, whether moveable or immovable, tangible or intangible, whether situated in Bhutan or elsewhere, or any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such asset.

(e) "Commission" means the Anti-Corruption Commission of Bhutan.

(f) "Complainant" means a person who lodges a complaint with the Commission on an offence of corruption.

(g) "Corporation" means a body corporate including the financial institution incorporated under the Companies Act of the Kingdom of Bhutan, which is wholly or partly owned by the government.

(h) "Corruption" means:

(i) Any person with a corrupt intention accepts or obtains or agrees to accept or attempts to obtain; gives or agrees to give or offers any gratification to any person or entity as an inducement or reward for doing or forbearing to do an act relating to the exercise or non-exercise of power in office or in the course of official duty, rendering the gratification an undue gratification. "Corrupt intention" includes any action motivated by or resulting inter alia in the following:

(1) Unethical and dishonest act;

(2) Abuse of authority;

(3) Use of position of trust for dishonest gain;

(4) Giving or enabling a person to receive preferential treatment; or

(5) Abuse and misuse of public resources.

(ii) The commission or an attempt to commit, conniving in or acquiescing to commit, aiding or abetting to commit any act in the Schedule.

(i) "Dependant" means an individual including children entirely dependent on the earnings of a person.

(j) "Disproportionate asset" means having an unusually large quantity of income and asset as opposed to known source of income; unusual decrease of liability; or unlawful acquisition of income and asset as a consequence of performance or non-performance of duty and/or exercise of power in office or in the course of duty.

(k) "Gratification" means pecuniary or material benefit estimable generally in money including:

(i) Any gift, loan, fee, commission, valuable security or other asset or interest in asset;

(ii) Any office, employment or contract;

(iii) Any payment, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;

(iv) Any other service, favour or advantage, including protection from any penalty or disability incurred or apprehended or from any action or proceeding of a disciplinary or penal nature, whether or not already instituted and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

(v) Any offer, undertaking or promise of any gratification within the meaning of subsections (i), (ii), (iii), and (iv).

(l) "Informer" means an individual who informs the Commission of the commission or an attempt to commit an offence of corruption by a person.

(m) "Injured person" means a person aggrieved by the commission of an offence of corruption.

(n) "Investigation" means investigation within the meaning of Civil and Criminal Procedure Code of Bhutan.

(o) "Jabmi" means a Bhutanese legal counsel who is licensed to practice.

(p) "Person" includes an individual, partnership, corporation, organization, enterprise, agency, or other legal entity whether public or private and successor, representative, or agent of one of them.

(q) "Public duty" means a duty in the discharge of which the State, public or community at large has an interest.

(r) "Public entity" means the three branches of the government, a constitutional body, armed force, police, autonomous agency or corporation.

(s) "Public resource" includes public fund, property, human resource, authority, information, time, natural resource and other resource mobilized through domestic and external source.

(t) "Public servant" means any:

(i) Person appointed, elected or co-opted into the service or on the pay roll of the government or remunerated by the government by fees or commission for the performance of any public duty;

(ii) Person in the service or on the pay roll of a corporation under the government or a government company as defined in the Companies Act of the Kingdom of Bhutan;

(iii) Person authorized by a court of law to perform any duty, in connection with the administration of justice, including a liquidator, receiver or member appointed by such a court; or

(iv) Person who holds an office by virtue of which he is authorized or required to perform any public duty.

(u) “Thrimthue” means payment of fine in lieu of imprisonment. Rule of Construction

139. In this Act, unless the context indicates otherwise, the singular shall include the plural and the masculine shall include the feminine.

Schedule

- Unethical and dishonest act;
- Abuse of authority;
- Use of position of trust for dishonest gain;
- Giving or enabling a person to receive preferential treatment;
- Abuse and misuse of public resources;
- Committing fraud in public election;
- Leaking revenue, privileged information and knowledge;
- Abuse of privileged information;
- Acting with malafide intention to derive wrongful gain;
- Falsifying document;
- Tampering with or destroying public entity’s document;
- Breaching of confidentiality of official duty or documents;
- Indulging in illegal commerce and business including fronting;
- Giving false report;
- Causing damage to public property;
- Retaining gift;
- Coercing a person to commit an offence of corruption;
- Acquiring property wrongfully;
- Evading tax;
- Delaying of decision and action deliberately for wrong motives; or
- Facilitation of payment.