

THE JABMI ACT OF THE KINGDOM OF BHUTAN, 2003.

PREAMBLE

Justice being the primary source of peace in the Kingdom of Bhutan and reaffirming the noble goal in pursuit of Justice and recognising the importance of the assistance of a Jabmi to protect and establish rights in all stages of proceedings, we hereby, amend and consolidate the Law relating to Jabmis and law societies established in respect of the profession of legal practitioners of Bhutan and to provide for matters connected therewith:

CHAPTER 1 PRELIMINARY

Title, commencement and extent

1. This Act shall:
 - (a) Be called the *Jabmi Act* of the Kingdom of Bhutan, Water Sheep Year, 2003.
 - (b) Come into force on the Third Day of the Sixth Month, the Water Female Sheep Year, corresponding to the First Day of the Eighth Month, 2003; and
 - (c) Extend to the whole of the Kingdom of Bhutan.

CHAPTER 2 JABMI TSHOGDEY AND JABMI THUENTSHOG

Jabmi Tshogdey

2. There shall be *Jabmi Tshogdey* of the Kingdom of Bhutan.
3. The *Jabmi Tshogdey* of the Kingdom of Bhutan shall consist of the following members, namely:
 - (a) The Attorney General as *ex officio* member;
 - (b) Two retired *Drangpons* of the Supreme Court/High Court nominated by the National Judicial Commission;
 - (c) President of the *Jabmi Thuentshog*;

- (d) Chairperson of each Disciplinary Committee; and
 - (e) Three members elected from amongst *Jabmis*.
4. The members of the *Jabmi Tshogdey* shall be entitled to a sitting fee and other allowance in accordance with the applicable rules and regulations.
 5. The Attorney General shall be the *ex-officio* chairperson of the *Jabmi Tshogdey* of the Kingdom of Bhutan.
 6. The *Jabmi Tshogdey* shall discharge its function without fear or favour in accordance with the provisions of this Act.
 7. The *Jabmi Tshogdey* shall have a Secretariat to assist in the discharge of its functions.

Tenure

8. The term of office of a member of the *Jabmi Tshogdey* other than the Attorney General shall be three years.

Functions of *Jabmi Tshogdey*

9. The functions of the *Jabmi Tshogdey* shall be to:
 - (a) Assist the Courts in expediting cases and to ensure just, fair and prompt dispensation of Justice;
 - (b) Promote and support law reforms;
 - (c) Conduct *Jabmi* selection examinations;
 - (d) Prepare and maintain a roll of *Jabmis*;
 - (e) Conduct and promote legal education;
 - (f) Encourage and promote the efficiency and responsibility of the *Jabmis*;
 - (g) Organize legal aid to an indigent person (*Pro Bono*) in the prescribed manner;
 - (h) Uphold the integrity of *Jabmis*;
 - (i) Safeguard the rights, privileges and interests of *Jabmis* on its roll;
 - (j) Regulate and promote the uniform practice of law and of discipline among the *Jabmis*;
 - (k) Determine, maintain and enhance appropriate standards of professional practice, ethical conduct and etiquette on the part of *Jabmis*;
 - (l) Determine the maximum number of cases, which a *Jabmi* can deal at a time;

- (m) To regulate and check the time taken by a *Jabmi* for each case;
 - (n) Entertain and determine cases of misconduct against *Jabmis* on its roll;
 - (o) Manage and invest the funds of the *Jabmi Tshogdey*; and
 - (p) Perform all other functions conferred upon it by or under this Act.
10. The *Jabmi Tshogdey* shall fix and publish the date, time and place for the examination.

General power of the *Jabmi Tshogdey* to make rules

11. The *Jabmi Tshogdey* may make rules for discharging its functions under this Act, and in particular, such rules shall prescribe:
- (a) Qualifications for *Jabmis* to become a member of the *Jabmi Tshogdey* or the *Jabmi Thuentshog* and disqualification from such membership;
 - (b) The standards of professional conduct and etiquette to be observed by *Jabmis*;
 - (c) The *Tshogdey* fees which may be levied in respect of any matter under this Act; and
 - (d) *Jabmi* selection examinations rules and regulations.

Vacation of office

12. The member of the *Jabmi Tshogdey* shall be deemed to have vacated office upon:
- (a) Death;
 - (b) Resignation;
 - (c) Removal; or
 - (d) The expiration of the term of office.

Removal

13. The member of the *Jabmi Tshogdey* shall be removed upon:
- (a) Grave incapability of performing the duties of office by reason of physical or mental infirmity;
 - (b) Grave personal conduct that brings disrepute to the legal profession and the *Jabmi Tshogdey* passing a resolution thereon;

- (c) Declaration by the *Jabmi Tshogdey* of which the person is the member that he/she has been absent without sufficient reason from three consecutive meetings;
- (d) Removal from the roll of *Jabmi*;
- (e) Ceasing to hold the post, which he/she holds at the time of appointment to the *Jabmi Tshogdey*;
- (f) Been convicted of an offence involving moral turpitude;
- (g) Been convicted of criminal offence;
- (h) The Supreme/High Court rendering a decision terminating ones membership; or
- (i) Otherwise not qualified under this Act.

Jabmi Thuentshog

- 14. There shall be the *Jabmi Thuentshog* of Bhutan established in accordance with the relevant Act.
- 15. The *Jabmi Thuentshog* shall be headed by an elected President, who shall also be the Vice-Chairperson of the *Jabmi Tshogdey* and serve for a term of three years.
- 16. The *Jabmi Thuentshog* shall be composed of the *Jabmis*, who have been enrolled on the roll maintained by the *Jabmi Tshogdey*.
- 17. The executive body of the *Jabmi Thuentshog* shall be elected by its members and exercise its functions without interference.

Functions of the *Jabmi Thuentshog*

- 18. The functions of the *Jabmi Thuentshog* shall be to:
 - (a) Assist the Courts in expediting the cases and to ensure just, fair and prompt dispensation of Justice;
 - (b) Uphold the integrity of the *Jabmis*;
 - (c) Cooperate with the others to ensure effective and equal access to legal services;
 - (d) Encourage and promote the efficiency and responsibility of the *Jabmis*;
 - (e) Maintain the records of *Jabmis*, who have been put on the roll;
 - (f) Follow the directives of the *Jabmi Tshogdey*; and
 - (g) Convene annually a general meeting of the members of the Association.

CHAPTER 3
ENROLMENT, ELIGIBILITY, REMOVAL AND RE-ADMISSION OF
JABMIS

Enrolment

19. Every *Jabmi* shall, in order to practice before any Court of law in the Kingdom of Bhutan be enrolled in the roll of *Jabmis* prepared and maintained by the *Jabmi Tshogdey*.
20. No person shall be qualified to practice as a *Jabmi* except in accordance with the provisions of this Act.

Certificate of enrolment

21. The *Jabmi Tshogdey* of Bhutan shall issue a certificate of enrolment in the prescribed form to every person whose name is entered in the roll of *Jabmis*.
22. Any person admitted and enrolled in the roll of *Jabmis* shall pay a prescribed fee to the *Jabmi Tshogdey*.

Eligibility for registration of *Jabmis*

23. A person to be admitted as a *Jabmi* shall:
 - (a) Be a Bhutanese citizen;
 - (b) Be a person of integrity, good character and reputation;
 - (c) Be a person not addicted to drugs;
 - (d) Not be a person of unsound mind or of mental infirmity;
 - (e) Not be a person, who is adjudged bankrupt;
 - (f) Not have been sentenced for criminal offences;
 - (g) Have legal qualification recognized by the *Jabmi Tshogdey* of Bhutan;
 - (h) Have undergone the National Legal Course; and
 - (i) Have passed the Bar selection examinations.

Ex-Drangpon

24. No retired *drangpon* shall practice before any Court of law as a *Jabmi*.

Oath

25. Any person having been selected to the roll of a *Jabmi* shall take the following Oath or affirmation before a *Drangpon*.

“I..... in the name of the *triple Gem* and the guardian deities of the Kingdom of Bhutan do solemnly swear and affirm that I will preserve, protect and defend the Law of Bhutan, and that I will conduct myself, as a *Jabmi* uprightly and according to the laws of the Kingdom of Bhutan”.

Removal of a *Jabmi*

26. The *Jabmi Tshogdey* may remove the name of any *Jabmi* from the roll, if a *Jabmi* has:

- (a) Intentionally given false statements in the application for enrolment in the roll of *Jabmis*;
- (b) Grave personal conduct that brings disrepute to the legal profession and the *Jabmi Tshogdey* passing a resolution thereto;
- (c) Been declared by the *Jabmi Tshogdey* to be incompetent and incapable;
- (d) Been struck off the *Jabmis* roll;
- (e) Been adjudged a person of unsound mind by a competent medical authority;
- (f) Been convicted of an offence involving moral turpitude;
- (g) Been convicted of criminal offence;
- (h) Declared by a Court to be incompetent and incapable of practicing before the Court; or
- (i) Barred from practicing under this Act or other laws.

27. A *Jabmi*, who is suspended, shall be under same disability during the period of such suspension as a *Jabmi* whose name has been removed from *Jabmis* roll.

Readmission and enrolment

28. The *Jabmi Tshogdey* may, on application, readmit and/or order the enrolment of any person, who was previously admitted and enrolled as a *Jabmi* and has been struck off the roll, if:

- (a) In the opinion of both the *Jabmi Tshogdey* and the Court, such person is deemed fit and proper to be readmitted and re-enrolled; and
- (b) The *Jabmi Tshogdey* is satisfied that the applicant fulfills the qualifications required for the enrollment.

CHAPTER 4 RIGHTS AND PRIVILEGES OF JABMIS

Rights

29. Any person, who fulfills the prescribed qualification and is put on the roll of *Jabmis* by the *Jabmi Tshogdey* shall become a member of the *Jabmi Thuentshog*.
30. Every *Jabmi* whose name is enlisted on the roll shall be entitled as of right to practice before any:
 - (a) Court in the Kingdom of Bhutan;
 - (b) Board, tribunal or similar institution in or before which a client is entitled to appear;
 - (c) Person legally authorized to take evidence; and
 - (d) Other authority or person before whom such *Jabmi* is by or under any law for the time being in force entitled to appear.

Guarantees for the functioning of *Jabmis*

31. *Jabmis* shall not be identified with their clients or their client's causes, as a result of discharging their functions.
32. *Jabmis* shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
33. All organisations shall recognize and respect any communication and consultation between *Jabmis* and their clients within their professional relationship, which are deemed confidential.
34. In exercising such rights, *Jabmis* shall always conduct themselves in accordance with the law and recognized standards of the profession.

CHAPTER 5 DUTIES AND RESPONSIBILITIES OF JABMIS

General duties and responsibilities

35. A *Jabmi* shall:
 - (a) Conduct himself in a manner befitting the noble fraternity of *Jabmis*;

- (b) Conduct in such a way as to enhance the regard and respect as between the members of the profession and strive to maintain the honour and dignity of the profession;
- (c) Be an officer of the Court to ensure the proper administration of justice;
- (d) Seek to uphold the rights and fundamental duties recognized by law of the Kingdom of Bhutan;
- (e) At all times act freely and diligently in accordance with the law;
- (f) Set standards consistent with due and proper attendance to the matters of clients;
- (g) Adhere to the principles of honesty, good morals, ethics and conduct, befitting a professional person;
- (h) Maintain an attitude of courtesy and politeness, irrespective of his personal views as to the cause of the client;
- (i) Conduct correspondence in a courteous, dignified and restrained language and be confined to a concise statement of the relevant facts of the case and the points of argument bearing on the subject relevant to the question under discussion;
- (j) Seek to uphold legal rights at all times freely and diligently in accordance with the law and recognize standards of legal profession;
- (k) Not create disputes but settle them instead. The *Jabmi* must try to be a peacemaker and promote amicable settlement of dispute;
- (l) Not express any unfavourable opinion as to the ability, reputation or standing in the profession of another *Jabmi*;
- (m) Not hold direct communication with the client of another *Jabmi* in regard to any matter in which oneself may be engaged, or interview the client of another *Jabmi* without the permission of that *Jabmi*;
- (n) Not hold meetings with the client of another *Jabmi* to persuade or attempt to persuade a client of that *Jabmi* or any person whom he/she knows to be represented by that *Jabmi* to agree to a compromise or to accept any suggestion in regard to a matter in controversy which may possibly ensure to the prejudice of that person's interest or to persuade or attempt to persuade a client of another *Jabmi* or any person whom one knows to be represented by another *Jabmi* to do or omit to do anything contrary to his/her own *Jabmi's* advice; and
- (o) Not in any manner advertise or solicit work by advertisement or otherwise.

Duties and responsibilities to clients

36. *Jabmis* have a duty to their clients to give due attention to the matters of the clients at all stages. A *Jabmi* shall:

- (a) Advise clients as to their legal rights and obligations and the working of the legal system in so far as it is relevant to the rights and obligations of their clients;
- (b) Assist clients in every appropriate way and take legal action to protect their interests;
- (c) Assist clients before the Courts wherever appropriate;
- (d) Always respect the interest of his/her clients and not represent them where there is a conflict of interest;
- (e) Always represent the clients with sincerity and commitment in expediting the case without any undue delay;
- (f) Report to the client regarding the money or other trust property of the client coming into his possession in the client's matter, and except with the client's consent in writing such property should not be mixed or mingled with his/her private property or be used by him/her;
- (g) Give objective advice to the client and, if the *Jabmi* is or likely to become interested in the cause of action of the client he/she should disclose such interest to the client;
- (h) Conduct all assignments entrusted with the utmost care, diligence and to the best of skill and ability with honesty and regard to the client's interest taking utmost care of all money and property belonging to the clients entrusted to *Jabmi's* care and neither concealing from the clients anything of which they should be informed, nor disclosing to others information imparted to the *Jabmi* by the clients in confidence;
- (i) Account for money strictly and return the unexpended balance, reply the client's letters honestly, not hesitate to communicate an unfavourable results and give the papers back to clients when the case is over and represent the clients with undivided fidelity;
- (j) While giving opinions, in the interest of justice advise the clients, objectively, discreetly and honestly to the best of their ability, though certain consequence be the loss of large prospective gains;
- (k) Not withdraw from the case once accepted, without the consent of the clients or the leave of the court; and
- (l) Not mislead the clients or put the clients on the wrong stand in regard to the case.

Duty to the opponent

37. While dealing with the opponent in any case, a *Jabmi* shall not:
- (a) Mislead the opponent by concealing or withholding positions in the opening argument upon which the opposing *Jabmi* must reply;
 - (b) Attempt to overreach the opponent;
 - (c) Lose temper even if the opponent attempts to mislead him/her and the Court;
 - (d) Speak ill of the performance of the opposing Counsel;
 - (e) Mislead an opponent or put the opponent on the wrong stand regarding any point in the cases; and
 - (f) Assault the opponent physically or morally or in any manner single out the opponent as his/her client's adversary.

Duty to the Court

38. The *Jabmi* shall:
- (a) Assist the Courts in expediting the cases and to ensure just, fair and prompt dispensation of Justice;
 - (b) Be respectful to the Court;
 - (c) Attend all the hearings and not absent without the leave of the court;
 - (d) Not exhibit in court familiarity with the *Drangpon*;
 - (e) Not communicate or argue privately with a *Drangpon* about the merits of a pending case;
 - (f) Not do anything that may even remotely tend to suggest that he/she is impairing the dignity or impartiality of the *Drangpon*;
 - (g) Not display temper in the Court (or outside) because of an adverse ruling or decision;
 - (h) Avoid maligning a *Drangpon*, or party to any accusation against the *Drangpons* during the Judicial Proceeding;
 - (i) Not offer engagements to relations of the *Drangpons*, who will hear their cases;
 - (j) Not without just cause, interrupt Counsel on the opposite side;
 - (k) Not be repetitive in arguments to the annoyance of the *Drangpon*;
 - (l) Not mislead a *Drangpon*;
 - (m) Not prepare and present to the Court, documents containing statements which he/she knew or must have suspected, to be false;

- (n) Always be regular in attendance and preparation;
- (o) Avoid any abusive or offensive expression relating to any Member of the Judiciary; and
- (p) Act responsibly and exercise due care and caution, where a serious allegation is made against a member of the Judiciary or against any person in authority.

Duty of *Jabmi* during negotiation

- 39. The *Jabmi* negotiating a case out of Court shall not resort to fraudulent means, intimidation and distortion of facts in the course of negotiations of a case. The *Jabmi* shall not misuse any property that is in dispute between the two parties whose case the *Jabmi* is negotiating.
- 40. The *Jabmi* negotiating a case shall not make or have any agreement that will contravene any law of the land.
- 41. No *Jabmi* shall acquire in any manner whatever, any personnel interest in the subject matter of litigation, which he/she is conducting.

Norms of courtesy between *Jabmis*

- 42. Except as agreed between the parties, a meeting between two or more *Jabmis* on opposite sides to discuss or attend to any official business may generally be held at the office of the senior-most *Jabmi*.

**CHAPTER 6
REMUNERATION**

Fees

- 43. The fees shall be fixed prior to taking of the case. A *Jabmi* shall not determine the fees upon the result of the case.
- 44. A *Jabmi* and a client shall voluntarily execute legal agreement as to a reasonable fee despite the duration taken for the case.
- 45. The payment of the reasonable fee for a *Jabmi* shall be in accordance with the legal agreement executed between a *Jabmi* and his/her client.
- 46. The fees shall not be deducted or paid from the property, which is the subject matter of that case.

47. A *Jabmi* has a right to his fees and, if not paid of the stipulated fees as per the agreement, the *Jabmi* may retain the documents or papers until the fees have been paid fully.
48. A *Jabmi* shall be entitled to a proportionate amount of fees, if:
- (a) In good-faith and with the consent of the client and prior leave of the Court withdraws from representing the client case;
 - (b) Is unable to represent the case due to some infirmity or disability; or
 - (c) Withdraws in the best interest of the client.
49. In case where a concerned *Jabmi* indulges into an unprofessional, dishonourable and unworthy conduct, the *Jabmi* shall reimburse the fees received.

CHAPTER 7 DISCIPLINARY COMMITTEE

Disciplinary committee

50. For the purpose of maintaining professional and other ethical conducts by *Jabmis* under this Act, the *Jabmi Tshogdey* may appoint one or more Disciplinary Committees each comprising five members.
51. The members of the disciplinary committee shall be appointed from the members of the *Jabmi Thuentshog*, one of who shall be appointed as a Chairman.

Tenure

52. The Disciplinary Committee shall hold office till the next Annual General Meeting of the *Jabmi Thuentshog* provided however, that in the event of a matter before it not being disposed of, such Disciplinary Committee shall continue till such time as the matter is disposed. No new matters shall be placed before it after the expiry of the term for which it was appointed.
53. In case of death, disability or for any other reason any member of such Disciplinary Committee is unable to act, the remaining Members of the committee shall continue and complete the enquiry. In no case shall the remaining members number be less than three.

Complaint

54. Any complaint against a *Jabmi* shall be in writing.

Inquiry

55. The *Jabmi Tshogdey* may inquire into cases of alleged unprofessional, dishonorable or other misconduct on the part of any *Jabmi* whose name has been placed on the roll of *Jabmis*.

Power to reject

56. The *Jabmi Tshogdey* may reject the complaint if it is of the opinion that there is no prima facie case.

Complaint to proceed

57. The *Jabmi Tshogdey* shall not be obliged to drop a complaint solely by reason of its having been withdrawn, settled or otherwise compromised or that the complainant does not want to proceed with the inquiry.

Show cause

58. After the complaint has been referred to the Disciplinary Committee, the Chairman thereof shall send a notice to the concerned *Jabmi* along with a copy of the complaint and relevant papers requiring him/her to show cause by a specified date on the complaint made against him/her and to submit a statement of defense along with documents and affidavits in support of such defense.

Time, date and place

59. The Disciplinary Committee shall fix the date, hour and place of the inquiry. The Chairman shall give notice thereof to the complainant or other person aggrieved and the concerned *Jabmi*.

Notice

60. The notice of any proceeding or Order may be sent ordinarily through a messenger or by Registered Post with due acknowledgement to the *Jabmi* concerned.

Ex-parte

61. The Committee may proceed ex-parte, if in an inquiry on a complaint received, either the complainant or the respondent does not appear before the Disciplinary Committee despite the service of notice.

Setting aside

62. Any ex-parte Order may be reviewed by the Disciplinary Committee on sufficient cause being shown and on an application made to that effect supported by an affidavit within thirty days of the service of such ex-parte Order.

Hearing

63. The Disciplinary Committee shall hear the complainant or complainant's *Jabmi*, the member concerned or the *Jabmi*, if they desire to be heard, frame charges and determine the matter on documents and affidavits, unless it is of the opinion that it would be in the interest of Justice to permit cross-examination of the deponents or take oral evidence, in which case the procedure for the hearing of civil suits shall as far as possible be followed.

Findings

64. The findings of the majority members of the Disciplinary Committee shall be the findings of the Disciplinary Committee. Reasons shall be given in support of the findings and in case of a difference of opinion, any member dissenting shall be entitled to record his dissent giving his own reasons.

Report

65. The Disciplinary Committee shall after full investigation of the case submit a written report to the *Jabmi Tshogdey*.

CHAPTER 8

PUNISHMENT FOR PROFESSIONAL OR OTHER MISCONDUCT

Punishment for professional or other misconduct

66. Where a *Jabmi* engages in professional, unethical act or other misconduct, the *Jabmi Tshogdey* may:
- (a) Admonish/reprimand the *Jabmi*;
 - (b) Suspend the *Jabmi* from practicing for such period as it may deem fit; or
 - (c) Bar the *Jabmi* from practice, if convicted of a criminal offence or otherwise.
67. In case where a concerned *Jabmi* indulges in an unprofessional, dishonourable and unworthy conduct, the *Jabmi* may face disciplinary action or be prosecuted in the Court of Law and shall be liable for punishment or fine in accordance with Acts or other laws of Bhutan.
68. The *Jabmi Tshogdey* shall submit to the Court a list of the *Jabmis*, who have been suspended/banned from practicing under this Chapter.

Unauthorized practice

69. Except a member of a family, any person not qualified to practice as a *Jabmi* under the provisions of this Act, who represents as a *Jabmi*, shall be liable to pay a fine for three months calculated in accordance with *Chathrim* for national wage rate for three months. If a person repeats the same offense, the offender shall be punished in accordance with the Bhutan Penal Code.

**CHAPTER 9
AMENDMENT & AUTHORITATIVE TEXT**

Amendment

70. The addition, variation or repeal of this Act shall be made by the National Assembly.

Authoritative Text

71. The *Dzongkha* text shall be the authoritative text, if there exists any difference in meaning between the *Dzongkha* and the English text.