

The Anti-Corruption Bill 2010

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;

Acknowledging the establishment of an independent **and accountable** Anti-Corruption Commission by the Constitution of the Kingdom of Bhutan to take necessary steps to prevent and combat corruption in the Kingdom and **fundamental duty of every person to uphold justice and to act against corruption**;

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 fundamental principles of due process of law in criminal proceedings;

The Parliament of Bhutan has enacted as follows:

CHAPTER I PRELIMINARY

1. Short title and commencement

(1) This Act:

- (a) may be called the Anti-corruption Act 2010; and
- (b) shall come into force on the .. day of ... 2010 corresponding toof Bhutanese calendar.

2. **Principle objects of this Act**

(1) The principal objects of this Act are:

(a) to promote the integrity and accountability of administration, whether public or private, by establishing an independent and accountable Commission to:

(i) investigate corruption involving or affecting authorities and officials, whether public or private;

(ii) prevent corruption involving or affecting authorities and officials, whether public or private; and

(iii) educate authorities and officials, whether public or private, and members of the public about corruption and its evil effects on administration, whether public or private and on the community; and

(b) confer special powers on the Commission enabling it to function efficaciously.

3. **Subjects of corruption offences**

(1) The following shall be held liable for the commission of a corruption offence:

(a) persons authorized to fulfill functions of the State and local governments, including:

(i) public servants;

(ii) foreign public servants which also include officials of international or regional organizations;

(iii) members of the Armed Force;

(iv) members of the Police Force;

(v) employees of Civil Society Organizations, whether or not registered;

- (vi) leaders and members of political parties and candidates for political offices;
- (b) **employees** who hold positions related to fulfillment of organizational or administrative duties or who fulfill such duties under special authorization at enterprises, institutions or organizations of private form of ownership; and
- (c) any other Bhutanese or foreign citizens.

4. Definitions

(1) In this Act, unless the context otherwise requires:

- (a) “Advantage ” includes:
 - (i) a gift, loan, fee, reward, discount, premium or commission, consisting of money or of any valuable security or of other property or interest in property of any description, or other advantage other than lawful remuneration;
 - (ii) any office, employment or contract;
 - (iii) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether wholly or partly;
 - (iv) any payment of inadequate consideration for goods or services;
 - (v) any exercise or forbearance from the exercise of any right or any power or duty;
 - (vi) any other benefit, service or favor, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted; and
 - (vii) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of paragraphs (i) through (vi);
- (b) “Alleged person” means a **person 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.

- (c) “Armed Force” means the Royal Body Guards and Royal Bhutan Army;
- (d) “Associate”, in relation to a person means:
 - (i) a person who is a nominee or an employee of that person;
 - (ii) a person who manages the affairs of that person;
 - (iii) a firm of which that person, or his nominee is a partner or a person in charge or in control of its business or affairs;
 - (iv) a company in which that person or his nominee, is a director or is in charge or in control of its business or affairs, or in which that person, alone or together with his nominee, holds a controlling interest, or shares amounting to more than thirty percent of the total share capital; or
 - (v) the trustee of a trust, where the trust has been created by that person, or the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty percent of the total value of the assets of the trust;
- (e) “Chairperson” means the Chairperson of the Commission;
- (f) “Commission” means the Anti-corruption Commission established under the Constitution and/or this Act;
- (g) “Constitution” means the Constitution of the Kingdom of Bhutan;
- (h) “Confiscation” mean the permanent deprivation of asset by order of a court or other competent authority;
- (i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass to any individual or out of, through or into the territory of one or more foreign States, with the knowledge and under the supervision of the Commission, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

- (j) “Corruption” means an act which constitutes an offence under Chapter IV of this Act;
- (k) “Corruption proceeds” shall mean a property derived from or obtained, directly or indirectly, through the commission of an offence;
- (l) “Dealing” includes:
 - (i) a purchase, sale, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts, or extension of credit;
 - (ii) an agency or grant of power of attorney; and
 - (iii) an act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole of or in part of any property being conferred on any person;
- (m) “Declaration” means the assets, income and liabilities declaration made under this Act;
- (n) “Document” includes a tape or video recording, disc or any form of computer input or output and any other material, whether produced mechanically, electronically, manually or otherwise;
- (o) “Financial institution” includes a person whose regular occupation or business is the carrying out of any activity listed in the Financial Services Act;
- (p) “Foreign public servant” means:
 - (i) a person holding a legislative, executive, administrative or judicial office of a foreign country whether appointed or elected;
 - (ii) a person exercising public functions for a foreign country, including any person employed by a board, commission, corporation or other body or authority that performs a function on behalf of the foreign State; or
 - (iii) an official or agent of an international or regional organizations who is authorized by such organizations to act on behalf of that organizations;

- (q) “Foreign State” means a country other than Bhutan, and includes:
- (i) a foreign territory;
 - (ii) all levels and subdivisions of government of such country; or
 - (iii) an agency of such country or territory or of a political subdivision territory; or of any such country or territory;
- (r) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or the Commission;
- (s) “Induce” includes to persuade, encourage, coerce, intimidate or threaten;
- (t) “Jabmi” means a Bhutanese legal counsel who is licensed to practice;
- (u) “Lawful source of income” includes salaries, wages, allowances, pensions, gratuities and other monies paid to a public servant by virtue of one’s appointment as a public servant and rentals;
- (v) “Member” means a Member of the Commission including the Chairperson unless otherwise stated;
- (w) “Office of profit” also includes where:
- (i) government exercises control over the appointment, removal, performance and functions of the holder of the office;
 - (ii) legislative, executive, administrative or judicial powers are exercised by the holder;
 - (iii) powers of disbursement of State funds, issue of licences, awarding of contracts involving State funds are exercised by the holder;
 - (iv) powers of appointment to posts under the control of Government or a Local Government, grant of scholarships involving State funds or State patronage are exercised by the holder;
 - (v) influence or power by way of State patronage is vested in the holder; or
 - (vi) remuneration other than compensatory allowance is given to the holder from the State funds;

- (x) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;
- (y) “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;
- (z) “Person in position of authority” means:
 - (a) the chief executive and/or a head of a public agency;
 - (b) the chief executive, director or a manager of a company as defined in the Companies Act;
 - (c) the chief executive, director or a manager of any bank or other Financial Institutions as defined in the Financial Services Act;
 - (d) any partner in a partnership;
 - (e) any person who has been appointed as chief executive or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organization, whether established by legislation, contract or any other legal means;
 - (f) any other person who is responsible for the overall management and control of any business of an employer;
 - (g) the members of Parliament; or
 - (h) any person contemplated in paragraphs (a) to (g), who has been appointed in an acting or temporary capacity;
- (aa) “Predicate offence” shall mean any offence under chapter IV of this Act as a result of which proceeds have been generated that may become the subject of an offence as defined in sections ...of this Act;
- (bb) “Public agency” includes:
 - (i) the government of Bhutan;
 - (ii) the local governments;
 - (iii) a statutory authority;

- (iv) a ministry, department, service or undertaking of the government of Bhutan or local governments;
 - (v) a civil society, whether or not registered;
 - (vi) a committee, association, federation or board that concern with sports;
 - (vii) a co-operative society whether or not registered;
 - (viii) a company or subsidiary company over which or in which any public agency has controlling power or interest; or
 - (ix) any person as the Commission may prescribe from time to time by an order;
- (cc) “Public property” includes a property belonging to Government, or to the people of Bhutan or a section thereof, or to a local Government, or to a Government Company, any commission or committee established by or under the Constitution or by or under any law, whether in Bhutan or elsewhere;
- (dd) Public servant” means a person holding a legislative, executive, administrative or judicial office whether appointed or elected, whether permanent or temporary, or whether paid or unpaid;
- (ee) “public revenue” includes, taxes, duties, fines, royalties, rents, fees, levies and charges payable to a public body;
- (ff) “Relative” in relation to a person, includes:
- (i) a spouse, concubine, conjugal partner or paramour of that person;
 - (ii) a brother or sister of that person;
 - (iii) a brother or sister of a spouse, concubine, conjugal partner, or paramour of that person; or
 - (iv) any lineal ascendant or descendent of that person;
- (gg) “Serious misconduct” means as any conduct that includes willful or deliberate behaviour inconsistent with the continuation of the employment in the Commission and causes imminent and serious risk to the reputation to the Commission;
- (hh) “Trustee” includes:
- (i) an executor, administrator, tutor or curator;
 - (ii) a liquidator or judicial manager;

- (iii) a person having or taking on the administration or control of property subject to a trust;
 - (iv) a person acting in a fiduciary capacity; and
 - (v) a person having the possession, control or management of the property of a person under a legal disability;
- (ii) “Unexplained wealth” includes assets of a person:
- (i) acquired at or around the time the person is alleged to have committed an act of corruption; and
 - (ii) whose value is disproportionate to one’s lawful sources of income at or around that time and for which there is no reasonable or satisfactory explanation.

CHAPTER II

THE ANTI-CORRUPTION COMMISSION

5. The Commission

- (1) There shall continue to be an independent authority to be known as the Anti-corruption Commission which is established under section (1) of article (27) of the Constitution.
- (2) No action or proceeding of the Commission shall be deemed illegal or be questioned in a Court of law on the grounds of:
 - (a) a vacancy in the position of a Member; or
 - (b) a procedural defect in constituting the Commission.

6. Operational independence of the Commission

- (1) The Commission shall act independently, impartially, fairly and in the public interest.
- (2) Subject to the provisions of this Act, the Commission shall not, **in exercising its**

powers or functions, be subject to the direction or control of any person or authority.

- (3) The **powers or** functions of the Commission are exercisable by a Member and an act done in the name of the Commission or on its behalf by the Member, or an act done by a person under their authority, shall be deemed to have been done by the Commission.

7. Financial security and independence of the Commission

- (1) The State shall, as provided for in section (13) of article (14) of the Constitution, make adequate financial provisions for the independent administration of the Commission which shall be approved by Parliament as a part of annual national budget.
- (2) 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.
- (3) Notwithstanding subsections (1) and (2) of this section, the Ministry of Finance shall ensure availability of funding for ad hoc cases and for complex investigation over and above the budget provided under subsection (1) of this section.
- (4) The Commission shall have the independence to decide and spend the allocated fund **within the broad principles of the** Financial Rules.

8. Security and independence of adequate human resources

- (1) **The Commission shall determine its organizational structure and administer it independently.**
- (2) The Commission shall have independence and powers to regulate appointments, management and dismissal of its staffs other than a Member in accordance with the **Anti-corruption Commission Staff Service Rules.**

9. Cooperation with other national agencies

- (1) In exercising its powers or functions relating to the investigation of an offence under this Act the Commission:
 - (a) shall, as far as practicable, work in cooperation with police or other law enforcement agencies; and
 - (b) may work in co-operation with the **Royal Audit Authority**, the Royal Monetary Authority, the Department of Revenue and Customs, the Financial Institutions and such other persons and **public agencies** as the Commission thinks appropriate.
- (2) The Commission may consult with and disseminate intelligence and information to law enforcement agencies, the Royal Monetary Authority and the Department of Revenue and Customs and such other persons and **public agencies** as the Commission thinks appropriate.
- (3) If the Commission disseminates information to a person or **public agencies under** this section on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section (34) of this Act in relation to the information.
- (4) **The Commission may, as deemed fit, conduct a joint investigation of an offence under this Act with other law enforcement agencies.**

10. Composition of the Commission

- (1) The Commission shall, as provided for in section (1) of article (27) of the Constitution, comprise of a Chairperson and two other Members.

11. Selection of the Chairperson and Members

- (1) A joint recommendation for the appointment of Members shall be made, as provided for in section (2) of article (27) of the Constitution, by the following persons:

- (a) the Prime Minister;
 - (b) the Chief Justice of Bhutan;
 - (c) the Speaker of the National Assembly;
 - (d) the Chairperson of the National Council; and
 - (e) the Leader of the Opposition Party.
- (2) The recommendation under subsection (1) of this section shall be submitted to the *Druk Gyalpo* for appointment under section (13) of this Act.

12. Eligibility and qualifications of Members

- (1) A person shall be qualified for appointment as a Chairperson if the person fulfils the qualification as provided for in sections (1) and (3) of article (31) of the Constitution.
- (2) A person shall, in addition to the qualification as provided for in subsection (1) of this section, be qualified for appointment as a Chairperson if the person fulfils the qualification criteria spelt out in paragraphs (c), (d) and (f) through (i) of subsection (3) of this section.
- (3) A person shall be qualified for appointment as a Member, if the person:
- (a) is a natural born citizen of Bhutan;
 - (b) is not married to a person who is not a citizen of Bhutan;
 - (c) has a minimum qualification of Bachelor's Degree;
 - (d) has a minimum work experience of 20 years in respect of a candidate for the Chairperson and 15 years in respect of a candidate for a Member;
 - (e) has no political affiliation;
 - (f) is not terminated or compulsorily retired from the public service on disciplinary grounds;
 - (g) is not convicted of a criminal offence;
 - (h) is not in arrears of taxes or other dues to a public entity; or
 - (i) is not holding any office of profit whether public or private or in Civil

Society Organizations.

13. Appointment of the Chairperson and Members

- (1) The *Druk Gyalpo* shall, as provided for in section (2) of article (27) and paragraph (h) of section (19) of article (2) of the Constitution, appoint the Members by warrant under His hand and seal, from a list of names recommended under **section (11)** of this Act.

14. Oath or affirmation of office

- (1) The Chairperson shall, before assuming office, take an oath or affirmation of office, as provided for in section (7) of article (32) of the Constitution.
- (2) The Members shall, before assuming office, take an oath or affirmation of office in a form prescribed in the third Schedule of the Constitution.
- (3) The Chief Justice of Bhutan shall administer the oath or affirmation of office under subsections (1) and (2) of this section.

15. Terms and conditions of service

- (1) The Members shall serve on a full time basis and they are required to hold it on that basis, except to the extent permitted by law.
- (2) Except the Chairperson, the Members shall be eligible for re-appointment for one more term after the expiry of their **first** term to keep, at least, one experienced Member at any point of time subject to their good performance.
- (3) The term of office of Members shall, as provided for in **section (3) of article (27) of** the Constitution, be five years or until they attain the age of sixty-five years, whichever occurs earlier.

16. Salary, allowances and benefits of Members

- (1) The salary, allowances, benefits and other service conditions of Members shall be

as prescribed by the Entitlements and Service Conditions Act of the Holders, Members and Commissioners of the Constitutional Offices, provided that their salary and benefits shall not be varied to their disadvantage after their appointment. The Commission shall develop a code of conduct for its Members and its staff which shall be considered as a part of their employment terms and conditions.

17. Code of conduct

- (1) The Commission shall develop a code of conduct for its Members and its staff which shall be considered as a part of their employment terms and conditions.
- (2) The Commission shall at all times follow and promote the code of conduct by leadership and example.

18. Meetings of the Commission

- (1) The Commission shall determine the procedures to be followed at its meetings.
- (2) The presence of 2/3 of the Members shall form the quorum of a meeting.
- (3) Except the acting or officiating Chairperson, in the event of a tie, the Chairperson shall have a casting vote.
- (4) The Commission shall regularly monitor its decisions and recommendations are being properly implemented.

19. Resignation of Members

- (1) The Members may resign from their office by giving one month's prior notice to the *Druk Gyalpo*.
- (2) Members other than the Chairperson shall send a copy of their resignation letter to

the Chairperson for information.

- (3) Notwithstanding subsection (1), the *Druk Gyalpo* may, if necessary, order the resigning Member to continue his/her duties until a replacement Member assumes office.

20. Removal of the Chairperson

- (1) The Chairperson shall be removed from his or her office only by way of impeachment in accordance with article (32) of the Constitution.

21. Removal of the Members

- (1) Members of the Commission shall be removed from their office only **on the grounds of:**
 - (a) incapacity to perform their official functions whether arising from infirmity of body or mind;
 - (b) **incompetence to perform their official functions;** or
 - (c) serious misconduct.
- (2) The Chairperson shall commission a Disciplinary Inquiry Committee drawing diverse memberships which may include a member from Civil Society Organizations to investigate allegations of serious misconduct.
- (3) The senior most Justice of the Supreme Court shall **hear the disciplinary proceedings** if formal charges against the Members are filed for **incompetence to perform their official functions** or serious misconduct.
- (4) Infirmity of body or mind of a Member shall be determined by a head of Medical Department who shall obtain an advice of a relevant medical specialist.

- (5) The *Druk Gyalpo* shall, based on the recommendations under subsections (3) and (4) of this section, remove a Member from his/her office.

22. Filling of vacancy

- (1) The positions of Members become vacant if the Members:
 - (a) die;
 - (b) complete a term of office and is not re-appointed,
 - (c) resign from office under section (19); or
 - (d) are removed from office under sections (20) and (21).
- (2) Where the positions of Members become vacant, a person shall, subject to this Act, be appointed to fill the vacancy within thirty days after such positions have become vacant.

23. Post-employment restrictions on the Chairperson and Members

- (1) The Members shall not be eligible to hold any office of profit in the Kingdom whether public or private for a period of one year at the end of their **employment in the Commission.**
- (2) **The Government shall pay to the Members such sum of money by way of compensation while they remain under such post-employment restriction period.**

24. Acting Chairperson

- (1) The Member who is senior in term of service in the Commission shall act as the acting Chairperson in the event of latter's death, resignation or removal.
- (2) The Chairperson shall designate one of the Members as the **officiating** Chairperson in the event of latter's absence from his/her office.

25. Chairperson of the Commission

- (1) The Chairperson is a holder of constitutional office as provided for in **paragraph (f) of section (2) of article (31) of the Constitution of the Kingdom.**
- (2) The Chairperson, as head of the Commission, shall be responsible for:
 - (a) the effective performance of the functions and the proper exercise of the powers of the Commission set out in this Act;
 - (b) the management of the Commission and conduct of its staffs;
 - (c) the direction, control and supervision of all matters relating to the Commission;
 - (d) the provision of strategic leadership and encourage high standards of propriety **by the staffs of the Commission**, including adherence by Members to the applicable code of conduct;
 - (e) formally representing the views of the Commission to the general public;
 - (f) overseeing the work of the Secretariat of the Commission; and
 - (g) assigning particular affairs of the Commission to the Members.

26. Mandate and powers of the Commission

- (1) The principal mandates and powers of the Commission are as follows:
 - (a) **develop, maintain, revise and monitor the implementation of effective, coordinated anti-corruption policies and practices;**
 - (b) **publish manuals of guidance and develop** model codes of conduct and advise public or private bodies as to adoption of such codes as may be suited to such bodies;
 - (c) make recommendations to Government for future legislative reform as it considers necessary to minimize corruption and on the adoption and ratification of anti-corruption international instruments;

- (d) commence an inquiry on its own motion even without a complaint and without informing any person or authority;
- (e) subpoena powers to obtain documentation, information, testimonies or other evidence;
- (f) exchange information with appropriate bodies, domestically and internationally, involved in anti-corruption work, including the relevant law enforcement agencies as may be required;
- (g) blacklist or debar any corrupt individual or entity whether national or foreign from participating in contractual relations with Government;
- (h) revoke work order, **appointment order**, license, lease or contractual transaction that is obtained by corrupt means;
- (i) co-operate and collaborate with foreign Governments, regional and international institutions, agencies and organizations in the fight against corruption; and
- (j) **any other powers as may be** necessary for the prevention of, and fight against, corruption in the opinion of the Commission.

27. Functions of the Commission

- (1) The principal functions of the Commission are as follows:
 - (a) educate the public on the dangers of corruption and the benefits of its eradication and to enlist and foster public support in combating corruption;
 - (b) examine the practices, procedures and systems of public or private sector entities to facilitate the discovery of offences under Chapter IV of this Act and to secure the revision of such practices, procedures or systems which in the opinion of the Commission may be conducive to corruption;
 - (c) **advise** and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person;
 - (d) advise heads of public or private entities of any changes in practices, procedures or systems compatible with the effective discharge of their

- duties as in the opinion of the Commission necessary to minimize or eliminate the occurrence of corruption;
- (e) undertake studies and research to identify the trends, causes, types, pervasiveness and seriousness or impacts of corruption;
 - (f) receive and consider any complaints of the commission of corruption offence under Chapter IV of this Act referred to it by any person or authority and investigate such of the complaints as the Commission consider practicable;
 - (g) detect and investigate any suspected offence, suspected attempt or suspected conspiracy to commit a corruption offence under Chapter IV of this Act; and
 - (k) **any other functions as may be** carry out any other activities necessary for the prevention of, and fight against, corruption in the opinion of the Commission.

28. The Secretariat of the Commission

- (1) The Secretariat shall comprise a head of the Secretariat and such staff as the Commission may require.
- (1) The Commission shall appoint or employ staff under the Anti-corruption Commission Staff Service Rules established by the Commission.
- (2) Subject to the provisions of this Act, staffs of the Commission shall be considered as civil servants or public servants, as the case may be, of the Royal Government of Bhutan.
- (3) Upon commencement of this Act, every staff appointed under the Anti-Corruption Act 2006, shall be deemed to be a staff of the Commission appointed under this Act.

- (4) The Secretariat of the Commission shall, as delegated by the Commission, have the following duties and responsibilities:
- (a) plan human resources policies of the Commission with a view to securing the highest standards of efficiency, competence, and integrity;
 - (b) initiate organizational development of the Commission;
 - (c) prepare five year plans of the Commission, including mid-term and strategic plans;
 - (d) drawing and disbursing powers with respect to the finance of the Commission;
 - (e) plan annual budget of the Commission;
 - (f) regulate appointments, management and dismissal of staff of the Commission; and
 - (g) any other duties and responsibilities other than matters related to investigation.

29. Oath or affirmation of office

- (1) Staffs of the Commission shall, on first joining the Commission and before assuming the duties and responsibilities of their office, take such oath as may be prescribed by the Commission.

30. Service conditions of staff of the Commission

- (1) The appointment, terms and conditions of service of staffs of the Commission shall be determined by the Anti-corruption Commission Staff Service Rules.

31. Identification for staff of the Commission

- (1) The Commission shall issue identity card to a Member and a staff of the Commission which shall be signed by the Chairperson.

32. Impersonation of staffs of the Commission

- (1) A person who impersonates a Member or a staff of the Commission, including the Secretary, is guilty of an offence.
- (2) A person guilty of an offence under this section, shall, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.

33. Delegation of functions to staff of the Commission

- (1) Staffs of the Commission shall have such powers or functions as may be delegated to them by the Commission and shall be subject to the direction, control and supervision of the Commission.
- (2) Staffs to whom the Commission has delegated such functions or functions shall discharge their duties in compliance with such directions or instructions as may be specified, orally or in writing, by the Commission.

34. Confidentiality of information

- (1) The Members and staffs of the Commission shall maintain confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act that becomes known to them, or comes in their possession or under their control.
- (2) Notwithstanding subsections (1), the Commission may disclose, for the purposes of publication in the media, such information as it considers necessary in the public interest.
- (3) For the purposes of an investigation in respect of an offence committed in Bhutan under this Act, the Commission may, impart to an agency in Bhutan or elsewhere,

such information, other than the source of the information, as may appear to it to be necessary to assist an investigation into an offence.

35. Power to use independent professionals and experts

- (1) The Commission may, where it considers it expedient to do so, hire or retain the services of such professionals, consultants, experts, independent investigators or informers as may be necessary for the proper and effective performance of its functions.
- (2) Such professionals, consultants, experts, independent investigators or informers hired or retained under this section by the Commission shall be bound by section (34) of this Act.
- (3) A person who, without lawful excuse, fails to comply with this section shall be guilty of an offence.
- (1) A person guilty of an offence under subsection (3), on conviction, be liable to imprisonment for a term not less than one year to more than three years.

36. Functional immunity

- (1) No legal proceeding or suit shall lie against any member of the Commission or its staffs or a person acting for the Commission in respect of their official duties done in good faith or intended to be done pursuant to the provisions of this Act.
- (2) Such immunity shall not cover corrupt acts committed by any Member of the Commission or its staffs or a person acting for the Commission in connection with the discharge of their official duties.

CHAPTER III

PUBLIC EDUCATION, AWARENESS AND CORRUPTION PREVENTION

37. Public service code of conduct

- (1) **The Commission shall develop** a model public service code of conduct and advise public agencies as to its adoption which will:
 - (a) spell out the standards of integrity and conduct to be complied with by public servants;
 - (b) help the public servants meet those standards; and
 - (c) inform the public of the conduct it is entitled to expect of public servants.
- (2) The public service code of conduct shall be considered as a part of the employment terms and conditions of the public servant and its breach shall result in disciplinary action.
- (3) Agency heads or the senior management in individual agencies shall be responsible for implementing the code by developing their own code **and compliance program**, based on this code, tailored to the functions and responsibilities they are expected to carry out and to suit their particular requirements and circumstances.
- (4) Where the conduct involved also constitutes a criminal offence and is punishable under any other law, this code shall not be considered as a limitation.

38. Anti-corruption measures

- (1) **Public agency heads shall have a duty to develop, maintain and implement anti-corruption measures in their individual agency, whether or not as a result of investigation of corrupt conduct in their agencies.**

- (2) The Commission shall monitor the implementation of such anti-corruption measures by public agencies and may require such public agencies to report to it on its implementation status.

39. Business codes of conduct

- (1) 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.

40. Assets, income and liabilities declaration

- (1) Public servants or other individuals using public resources shall prepare, declare accurately and truly and file their personal assets, income and liabilities, as well as, those of their spouses and/or dependants.
- (2) The schedule I public servants, as **determined by the Commission from time to time**, shall file their declarations to the Commission.
- (3) The **non-schedule I public servants, as may be determined by the Commission from time to time**, shall file their declarations to heads of their individual agency.
- (4) Where public servants or other individuals using public resources who is required by this Act to file their declaration knowingly fails to do so within a prescribed period of time, shall be levied a fine equivalent to one day's daily minimum wage each day such failure subsists.
- (5) Where public servants or other individuals using public resources who is required by this Act to file their declaration knowingly fails to do so, shall be levied a fine equivalent to one year's daily minimum wage.

- (6) For the purposes of subsection (2), non-filing of declarations means declarations not filed after **one** month from the due date.
- (7) Agency heads who are required to perform **their** functions in relation to the administration of declarations in their agencies fails to do so, shall be levied a fine equivalent to one year's daily minimum wage.
- (8) The Commission shall, in consultation with agencies concerned, make Asset Declaration Rules for effective and efficient regulation of asset declarations prescribing, amongst others,:
 - (a) the frequency at which a public servant shall declare one's personal assets and liabilities, as well as, those of his/her spouses and/or dependants;
 - (b) the asset declaration form and the contents of such form including e-declaration system;
 - (c) the way in which particulars of declarations shall be examine, audited and investigated;
 - (d) the manner of processing of declarations, registration and maintenance, the contents of such register, the period for which the information in the declarations must be maintained, and public access thereto;
 - (e) the acts which amount to breach of this Act and penalties thereof including for unlawful obtain or uses of declarations; and
 - (f) such other guidance as may be necessary in the opinion of the Commission for the effective implementation of this section.

41. Power to ask private individuals to declare their assets, income and liabilities

- (1) The Commission may ask any private individuals, whether or not such individuals are under investigation for an offence under this Act, to prepare, declare accurately and truly and file their personal assets, income and liabilities to the Commission.

42. Integrity in Government contractual transactions

- (1) A public agency or public servant shall solicit offers from, award contracts to and consent to subcontracts and supply agreements only with a responsible person or entity.
- (2) Suspension and/or debarment shall be for a period commensurate with the seriousness of an act constituting a cause for suspension and/or debarment which may range from a minimum of three (3) to a maximum of five (5) years, except that an individual or entity who commits an act constituting a cause for debarment for more than once shall be compulsorily debarred for a period up to five (5) years.
- (3) The Commission shall, in consultation with agencies concerned including the private sector, make Debarment Rules, amongst others, prescribing:
 - (a) the manner in which a debarment committee should be established, constituted, composed and chaired including the requirements for quorum, rules of proceedings and making decisions;
 - (b) the way in which the complaints should be managed and investigated;
 - (c) the causes for, effects, period, scope and extension of suspension and/or debarment;
 - (d) the requirement for the Committee to follow or guarantee the parties involved a minimum due process;
 - (e) the manner in which suspension and/or debarment proceedings should be conducted and decided guaranteeing the parties involved a minimum due process or procedural fairness,

- (f) the way in which the standard and burden of proof should be met and the consequences of suspension and/or debarment;
- (g) the manner of administration of the suspension and/or debarment registration system, the contents of such register, the period for which the information in the register must be maintained, and public access thereto; and
- (h) such other guidance as may be necessary in the opinion of the Commission for the effective administration of debarment system.

43. Anti-corruption public awareness and education

- (1) The Commission shall endeavor to:
 - (a) inform a person on the Anti-corruption Act and other anti-corruption related laws, and ensure free access to such information by person;
 - (b) involve research and training institutions, and Civil Society Organizations in conducting corruption-related research work and the production of books, training and promotional materials, training programs and manuals;
 - (c) ensure that training and educational institutions have legal and ethical subjects in their curriculum, teach and educate their trainees or students about the social harm and dangers of corruption, and actions needed to prevent it, and instill in them intolerance for corruption;
 - (d) ensure those non-formal educational institutions and training, vocational and educational institutions, religious organizations and citizens to explain to their students or staffs the social harm and dangers of corruption, and assist them in acquiring of proper knowledge and awareness of corruption and its prevention; or
 - (e) encourage media organizations to regularly disseminate news and information, pursuing publication and editorial policies to promote an atmosphere of intolerance for any form of corruption among the general

public.

CHAPTER IV CORRUPTION OFFENCES AND PENALTIES THEREFOR

44. Possession of unexplained wealth

- (1) Any person who, being or having been a public servant or serving or having served in a Civil Society Organization or such other individual or organization using public resources:
 - (a) maintains a standard of living that is not commensurate with one's present or past lawful sources of income; or
 - (b) is in control of assets disproportionate to one's present or past official lawful sources of income shall be guilty of an offence.

- (2) A person shall not be guilty of an offence under this section, if such person furnishes a satisfactory explanation to the Court:
 - (a) as to how he or she was able to maintain such a standard of living; or
 - (b) how such assets came under one's **lawful** control.

- (3) In a proceeding under **this section**, if the Court is satisfied that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding assets in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such assets shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.

- (4) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than one year **to not** more than three years.
- (5) In addition to any penalty imposed under subsection (4), the Court may order a person convicted of an offence under subsection (1) of this section to pay into the Consolidated Fund:
 - (a) a sum not exceeding the **value** of the pecuniary resources; or
 - (b) a sum not exceeding the value of the **assets**, the acquisition by him or her of which was not explained to the satisfaction of the Court.

45. Active bribery of public servant

- (1) A person who **with intention**, promises, offers or gives any **undue advantage** to a public servant as an inducement to or reward for or otherwise on account of such public servant:
 - (a) performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public servant;
 - (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his capacity as a public servant; or
 - (c) assisting, favoring, hindering or delaying or having assisted, favored, hindered or delayed, any person in the transaction of any business with a public agency shall be guilty of an offence.
- (2) For a person to be guilty under this section, it does not matter whether or not the **undue advantage** promised, offered or given:
 - (a) is for such public servant who is to perform, or has performed, the acts as

- defined in paragraphs (a), (b) and (c) of subsection (1) or for another person or entity;
- (b) is by the person directly or through intermediaries;
 - (c) relates to acts within the public servant's assigned competencies or functions; or
 - (d) actually influenced the public servant's acts as defined in paragraphs (a), (b) and (c) of subsection (1).
- (3) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term **not less than five years to not more than nine years.**

46. Passive bribery of public servant

- (1) A public servant who **with intention** solicits or accepts any undue advantage as an inducement to or reward for or otherwise on account of such public servant:
- (a) performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public servant;
 - (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his capacity as a public servant; or
 - (c) assisting, favoring, hindering or delaying or having assisted, favored, hindered or delayed, any person in the transaction of any business with a public agency shall be guilty of an offence.
- (2) For a person to be guilty under this section, it does not matter whether or not the advantage solicited or accepted:
- (a) is for the benefit of such public servant who is to perform, or has performed, the acts as defined in paragraphs (a), (b) and (c) of subsection

- (1) or for another person or entity;
 - (b) is by the public servant directly or through intermediaries; or
 - (c) actually influenced the public servant's acts as defined in paragraphs (a), (b) and (c) of subsection (1).
- (3) A public servant guilty of an offence under this section shall, on conviction, to imprisonment for a term not less than five years to not more than nine years.

47. Active bribery of foreign public servant

- (1) A person who **with intention** promises, offers or gives to a foreign public servant any **undue advantage**, in order:
- (a) to obtain or retain contract, business or an advantage in the conduct of **international business**; and
 - (b) that the foreign public servant act or refrain from acting in the exercise of such foreign public servant's official duties in a manner that breaches an official duty or uses such foreign public servant's or another person's position to influence any acts or decisions of the foreign state or public international organization concerned.
- (2) For the purposes of this section, international business includes the provision of **international aid**.
- (3) For a person to be guilty under this section, it does not matter whether or not the **undue advantage** is promised, offered or given:
- (a) for the benefit of the foreign public servant who is to act or refrain from acting or for another person;
 - (b) by the foreign public servant directly or through intermediaries; **or**

- (c) actually influenced the public servant's actions or omissions.
- (4) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than five years to not more than nine years

48. Passive bribery of foreign public servant

- (1) A foreign public servant who **with intention** solicits or accepts any **undue advantage** in order that the foreign public servant acts or refrains from acting in the exercise of his or her official duties shall be guilty of an offence.
- (2) For a person to be guilty under this section, it does not matter whether or not the **undue advantage** solicited or accepted:
 - (a) is for the benefit of the foreign public servant who is to act or refrain from acting or for another person;
 - (b) is by the public servant directly or through intermediaries; and
 - (c) actually influenced the public servant's acts or omissions.
- (3) A foreign public servant guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.

49. Embezzlement of funds or property by public servant (287-8, 265-6)

- (1) A public servant who has been entrusted to take care, keep custody, or under control of any property, funds, securities or any other thing of value; directly or indirectly:
 - (a) willfully uses those property, funds, securities or any other thing of value for a purpose other than that for which they are intended or legally required

- to be used;
- (b) does not remit or deposit a collection of money into the place to which the collection is intended to be remitted or deposited;
 - (c) fails to produce account or account the use of those property, funds, securities or any other thing of value upon demand by a lawful government authority; or
 - (d) convert those property, funds, securities or any other thing of value to one's own benefit or for another person's benefit shall be guilty of an offence.
- (2) A public servant guilty of an offence under this section shall, on conviction, be **imprisonment** for a term not less than three years to not more than five years.

50. Active trading in influence

- (1) A person, who, **directly or indirectly**, promises, offers or gives any **undue advantage** to another person to use his real or supposed influence to obtain work, employment, contract or other benefits from a public agency shall be guilty of an offence.
- (2) The person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than three years **to not more than five years**.

51. Active trading in influence involving public servant

- (1) A person who, **directly or indirectly**, promises, offers or gives any **undue advantage** to another person, to cause a public servant to use **that public servant's** real or supposed influence to obtain any work, employment, contract or other benefit from a public agency shall be guilty of an offence under this section.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to **imprisonment for a term not less than three years to not more than five years**.

- (3) A person who, **directly or indirectly**, promises, offers or gives any undue advantage to a public servant to cause that public servant to use his or her real or supposed influence, to obtain work, employment, contract or other benefit from a public agency, shall be guilty of an offence under this section.
- (4) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than three years to not more than five years.

52. Passive trading in influence

- (1) A person who, **directly or indirectly**, solicits or accepts any **undue advantage** from any other person for himself or herself, or for any other person in order to make use of his or her real or supposed influence to obtain any work, employment, contract or other benefits from a public agency shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than **three years to not more than five years**.

53. Passive trading in influence involving public servant

- (1) A public servant who, **directly or indirectly**, solicits or accepts any **undue advantage** from any other person for himself or herself, or for another person in order to make use of his or her real or supposed influence to obtain any work, employment, contract or other benefits from a public body shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than three years to not more than five years.

54. Commission amounting to abuse of functions

- (1) A public servant who knowingly abuses functions or position by performing an act, in violation of laws, in the discharge of his or her functions, to obtain **undue advantage** for himself or herself or for another **person shall** be guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to **imprisonment for a term not less than three years to not more than five years.**

55. Omission amounting to abuse of functions

- (1) A public servant who knowingly abuses functions or position by omitting to perform an act, in violation of laws, in the discharge of his or her functions, to obtain any **undue advantage** for himself or herself or for another **person shall** be guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to **imprisonment for a term not less than three years to not more than five years.**

56. Active commercial bribery (292-3)

- (1) Any person who, in the course of economic, financial or commercial activities, **with intention** promises, offers or gives, directly or indirectly, of any **undue advantage** to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to **imprisonment for a term not less than five years to not more than nine years.**

57. Passive commercial bribery

- (1) A person who directs or works, in any capacity, for a private sector entity, in the

course of economic, financial or commercial activities, **with intention** solicits or accepts, directly or indirectly, of any **undue advantage**, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting shall be guilty of an offence.

- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.

58. Embezzlement of fund or property in the private sector

- (1) A person who directs or works, in any capacity, in a private sector shall be guilty of an offence if such a person, in the course of economic, financial or commercial activities, intentionally embezzles private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than three years to not more than five years.

59. Active bribery in relation to bid (ACA. 109 here)

- (1) A person who **with intention** promises, offers or gives any **undue advantage** as an inducement to or reward for:

- (a) refraining from submitting a tender, proposal, quotation or bid;
- (b) withdrawing or changing a tender, proposal, quotation or bid; or
- (c) submitting a tender, proposal, quotation or bid with a specified price or with any specified inclusions or exclusions shall be guilty of an offence.

- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.

60. Passive bribery in relation to bids

- (1) A person who **with intention** solicits or accepts any **undue advantage** as an inducement to or reward for:
 - (a) refraining from submitting a tender, proposal, quotation or bid;
 - (b) withdrawing or changing a tender, proposal, quotation or bid; or
 - (c) submitting a tender, proposal, quotation or bid with a specified price or with any specified inclusions or exclusions shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to **imprisonment for a term not less than five years to not more than nine years.**

61. Active bribery in relation to contract

- (1) A person who **with intention** promises, offers or gives any **undue advantage** to a public servant in consideration of that public servant giving assistance or using influence in:
 - (a) promoting, executing, or procuring a contract with a public agency for the performance of a work, the supply of a service, or the procurement of supplies;
 - (b) the payment of the price provided for in a contract with a public agency;
 - (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to **imprisonment for a term not less than five years to not more than nine years.**

62. Passive bribery in relation to contract

- (1) A public servant who **with intention** solicits or accepts any **undue advantage** from

another person, for himself or for any other person or entity, for giving assistance or using influence in:

- (a) promoting, executing, or procuring a contract with a public agency for the performance of a work, the supply of a service, or the procurement of supplies;
 - (b) the payment of the price provided for in a contract with a public agency;
 - (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement shall guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.

63. Concealment of corruption proceeds

- (1) A person, who, knowing that property is the result of proceeds of corruption offence established in accordance with this Act (excluding obstruction of justice) but without actual participation in the commission of an offence:
- (a) enters into or causes to be entered into any dealing in relation to such property or any part thereof; or
 - (b) uses or causes to be used, or retains, receives or conceals such property or any part thereof, shall be guilty of an offence.
- (2) For a person to be guilty of an offence under this section, it does not matter whether or not such concealment:
- (a) is by the person directly or through intermediaries; or
 - (b) is for the person's benefit or for another person or entity.

- (3) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.

64. Failure to declare conflict of interest

- (1) A public servant shall be guilty of an offence if he/she knowingly fails to declare conflict of interest as required by laws or rules.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.

65. False declarations with a view to conceal

- (1) Public servants or other individuals using public resources shall be guilty of an offence if they knowingly make false declarations with a view to conceal their assets, income and liabilities.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.

66. Offences relating to witnesses

- (1) A person who, directly or indirectly, intimidates, threatens or uses physical force or improperly persuades or coerces another person with the intent to:
- (a) influence, delay or prevent the testimony of that person or another person as a witness in a trial, hearing or other proceedings before any Court, judicial officer, committee, Commission or any officer authorised by law to hear evidence or take testimony; or
- (b) cause or induce another person to:
- (i) testify in an untruthful manner in a trial, hearing or other proceedings before any Court, judicial officer, committee,

commission or officer authorized by law to hear evidence or take testimony;

- (ii) withhold testimony or to withhold a record, document, or other object at such trial, hearing or proceedings;
- (iii) give or withhold information relating to any aspect **at such** trial, hearing or proceedings;
- (iv) alter, destroy, mutilate, or conceal a record, document or other object with the intent to impair the availability of such record, document or other object for use at such trial, hearing or proceedings;
- (v) evade legal process summoning that person to appear as a witness or to produce any record, document or other object at such trial, hearing or proceedings;
- (vi) be absent from such trial, hearing or other proceedings shall be guilty of an offence.

- (2) A person guilty of an offence under this section shall, on conviction, be liable to **imprisonment for a term not less than one year to not more than three years.**

67. Interference with, hindering or obstruction of investigation

- (1) A person who, at any stage, with intent to defraud or to conceal an offence established in accordance with this Act or to interfere with, or to hinder or obstruct a law enforcement agency in its investigation of any such offence:
 - (a) destroys, alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device or any entry in such book, document, account or electronic device, or is privy to any such act;

- (b) makes or is privy to making any false entry in such book, document, account, or electronic device; or
 - (c) commits or is privy to omitting any information from any such book, document, account or electronic device
- shall be guilty of the offence.

- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.

68. Money laundering by converting or transferring corruption proceeds

- (1) A person who converts or transfers property, knowing that such property is the corruption proceeds, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action any person who directs or works, in any capacity, for a private sector entity, shall be guilty of an offence.

- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.

69. Money laundering by concealing or disguising corruption proceeds

- (1) A person who conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the corruption proceeds shall be guilty of an offence.

- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.

70. Money laundering by acquiring, possessing or using corruption proceeds

- (1) A person who acquires possesses or uses **corruption** proceeds knowing, at the time of receipt, that such property is the **corruption** proceeds shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to **imprisonment for a term not less than five years to not more than nine years.**

71. Predicate Offences

- (1) For the purposes of sections (68) through (70) above, predicate offences shall include:
 - (a) offences committed within Bhutanese territory; or
 - (b) offences committed outside Bhutanese territory provided that such offences constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the Bhutanese law had it been committed in Bhutan.
- (2) Prior conviction for the predicate offences is not necessary to establish the illicit nature or origin of assets laundered provided that the prosecution of an offender for both the predicate offence and the laundering of criminal proceeds from that offence shall not be allowed.

72. Participation in an offence

- (1) A person who **participates in**, associates with, attempts or conspires to commit, aids, abets, **and solicits** the commission of an offence under this Act shall be guilty of an offence.
- (2) **Accomplice, attempt, aiding, abetting, conspiracy and solicitation as defined in the**

Penal Code of Bhutan shall apply with respect to all offences under this Act.

- (3) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.

CHAPTER V COMPLAINT MANAGEMENT

73. Duty to report acts of corruption

- (1) A person has the duty to lodge complaint to the Commission against any person or entity, whether public or private, who has committed or is attempting to commit an offence under this Act.
- (2) Where public servants suspect that an act constituting an offence under this Act has been committed or is about to be committed within or in relation to a public agency, they shall forthwith lodge a complaint to the Commission.
- (3) Notwithstanding subsections (1) and (2), a person who holds a position of authority and who knows or ought reasonably to have known or suspected that another person has committed an offence under this Act shall lodge complaint of such knowledge or suspicion or cause such knowledge or suspicion to be reported to the Commission.
- (4) Upon receipt of a report under subsections (1) through (3), the Commission shall take or caused to be taken down the complaint in the manner directed by the Commission, and forthwith provide the person who made the report with an acknowledgment of receipt of such complaint.
- (5) The Commission shall issue such guidelines as it considers appropriate to ensure

compliance with this section.

- (6) A person, who fails to comply with **this section, shall be guilty** of an offence.
- (7) A person guilty of an offence under this section shall, on conviction, **be liable to imprisonment for a term not less one month to not more than one year.**

74. Complaints procedure

- (1) **A complaint relating to the commission of an offence under this Act may be made in such manner as the Commission determines, including the particulars of complaints.**
- (2) The Commission may also receive anonymous complaints.
- (3) **The Commission shall maintain a complaint register into which information in complaints shall be entered.**
- (4) **A copy certified by the Commission of an entry under this section shall be a document issued by the government within the meaning of the Evidence Act.**

75. Commission may decline investigation

- (1) The Commission may decline to conduct an investigation into any complaint alleging an offence **under this Act** or to proceed with any further investigation if the Commission is satisfied **that the investigation would be unnecessary or futile in accordance with the predetermined criteria.**
- (2) Where the Commission declines to conduct an investigation or proceed further with any investigation into any complaint, the Commission may inform the complainant, **as far as practicable**, of its decision and the reason for it.

76. Penalty for false complaint

- (1) A person is guilty of an offence, if the person:
 - (a) willfully makes or causes to be made to the Commission a false or misleading complaint that an offence has been committed under Chapter IV of this Act with malicious intent; or
 - (b) misleads the Commission by giving false information or making a false statement or accusation.
- (2) A person guilty of an offence under this section shall, on conviction, **be liable to imprisonment for a term not less than one month to not more than one year.**

CHAPTER VI

INVESTIGATION, SEARCH, SEIZURE AND ARREST

77. Duty to provide assistance to Commission

- (1) **The Commission may seek the assistance of any law enforcement agency, in carrying out its functions or exercising its powers under this Act and it shall be the duty of such law enforcement agency to provide assistance to the Commission.**

78. Power to investigate complaints or enquire into information

- (1) Where the Commission has reason to suspect the commission of an offence under this Act following a complaint made under section (73) or information otherwise received by it, the Commission shall cause an investigation to be carried out.
- (2) Notwithstanding any law to the contrary, corruption shall be the subject matter of investigation by the Commission alone unless otherwise stated in this Act.

79. Power to examine persons

- (1) The Commission may, while investigating an offence under this Act, order in any manner any person to:
 - (a) attend before it for oral examination or for taking written statement from such person in relation to any matter which may, in its opinion, assist in the investigation into the offence;
 - (b) produce before it, within the time specified by it, any book, document, records, accounts or computerized data, or any certified copy thereof, or any other article which may, in its opinion, assist in the investigation into the offence; and
 - (c) furnish a statement in writing whether or not made on oath or affirmation setting out therein all such information, which, in its opinion, would be of assistance in the investigation into the offence, within the time and at the place specified by it.

80. Power to take sample hardwiring and voice

- (1) The Commission may, while investigating an offence under this Act, order in any manner any person to attend before it for taking such person's sample handwriting or voice.

81. Special investigation techniques

- (1) The Commission may, in exercising its powers or functions relating to the investigation of an offence under this Act, use any of the following investigation techniques:
 - (a) authorize a person who has reported to the Commission a demand for a bribe to, directly or indirectly, give or receive it as demanded;
 - (b) physical surveillance and observation;

- (c) **undercover operations;**
 - (d) video recording;
 - (e) use listening and bugging devices; or
 - (f) engage in controlled deliveries.
- (2) **The Commission shall develop detailed procedures on the use of special investigation techniques under this section.**

82. Power to intercept communications

- (1) The Commission shall, if it considers that it is likely to contain any information which is relevant for any investigation into an offence under this Act, on application to a competent Court obtain a warrant to:
- (a) intercept, detain and open any postal article in the course of transmission by post;
 - (b) intercept any message transmitted or received by any telecommunication; or
 - (c) intercept, listen to and record any conversation by any telecommunication, and listen to the recording of the intercepted conversation.
- (2) Notwithstanding subsection (1) of this section, the Chairperson **may authorize the Commission to intercept communications without a warrant from a Court** if there is an imminent danger of evidence being destroyed in the opinion of the Commission provided that the judicial authorization shall be obtained within twenty-four hours of the commencement of interception.
- (3) Notwithstanding any law to the contrary, when any person is charged with an offence under this Act, any information obtained **by the Commission** under subsection (1) shall be admissible in evidence at his trial.

83. Powers of arrest

- (1) **The Commission may**, without warrant, arrest any person upon reasonable suspicion of his having committed or being about to commit an offence under this Act.
- (2) The Commission may arrest a person who may assist **it** in an investigation, if the Commission is satisfied that that person:
 - (a) has interfered with a potential witness; or
 - (b) **intends to destroy evidence.**

84. Arrest by citizen

- (1) **A citizen may arrest or cause to be arrested any person whom he/she reasonably believes:**
 - (a) has committed or intends to commit any offence under this Act; or
 - (a) is wanted by the law for the commission of an offence under this Act.
- (2) A person arrested **under this section** shall be handed over to the Commission or in the absence of the Commission, relevant public official without delay.
- (3) If the person arrested under this section is handed over to a public official other than the Commission, that official shall record a statement from the arresting individual justifying the arrest and expediently transfer the suspect to the Commission.
- (4) At the time of handing over the suspect to the police, the arresting individual, or the public official given control over the person by the arresting individual, shall

make or present a statement to the Commission justifying the arrest.

85. Detention of arrested person

- (1) A person arrested under sections (83) and (84):
 - (a) may be taken to the offices of the Commission;
 - (b) may be taken without delay to a detention facility established by the Commission; or
 - (c) may be taken to a police station.
- (2) A person arrested and taken to the offices of the Commission or detained at a detention facility under subsection (1) may be detained if the Commission considers it necessary for the purpose of further inquiries.
- (3) Any person detained by the Commission for the purposes of further inquiries under **this section** shall, while being moved to or from any other place in the custody **of the Commission**, be deemed to be in lawful custody.
- (4) Treatment of a person who is arrested or detained by the Commission **under this Act** shall be in accordance with the Prison Act **provided that any visitor to such person shall be supervised by the Commission.**

86. Bail and bond

- (1) A person arrested and taken to the offices of the Commission or detained at a detention facility under **sections (83) and (84)** may be released from custody on:
 - (i) surrendering his travel documents to the Commission; or
 - (ii) depositing such reasonable sum of money as the Commission may require;

- (iii) his entering into recognizance with such sureties, if any, as the Commission may require and conditioned upon the attendance of the person at the offices of the Commission at such time as the Commission may specify;
 - (iv) condition that he resides at such address as the Commission may specify;
or
 - (v) condition that he attends at the offices of the Commission such time or times as the Commission may specify; or
 - (vi) any one or combinations of the conditions set out in sub-paragraphs (i) to (v).
- (2) Where a person released from custody under this section fails to attend at the offices of the Commission, the deposit paid or recognizance entered into for release, as the case may be, shall be forfeited by the Commission.
- (3) Where a person released from custody under this section fails to attend at the offices of the Commission, the deposit paid or recognizance entered into for release, as the case may be, shall be forfeited by the Commission.

87. Power to finger-print and photograph arrested persons

- (1) The Commission may take photographs, finger-prints and the weight and height measurements of any person arrested sections (83) and (84).

88. Arrest of persons granted bail by Commission

- (1) The Commission may arrest without warrant any person who has been released on bail under section (86):
- (a) if the Commission has reasonable grounds for believing that any condition upon which that person was so released or otherwise admitted to bail has been or is likely to be broken; or

- (b) on being notified in writing by any surety for that person that the surety believes that that person is likely to break the condition that he will appear at the time and place required and for that reason the surety wishes to be relieved of his obligation as surety.
- (2) The Commission shall produce before a Court of law a person who is arrested or detained under section (85) and subsection (1) of this section within twenty-four hours of his/her arrest or detention or as soon as practicable thereafter exclusive of the time necessary for the journey from the place of arrest and holidays unless sooner released on bail.
- (3) If it appears to the judge before whom a person is brought under this section that any condition upon which the person was released or otherwise admitted to bail has been or is likely to be broken, he may:
 - (a) remand that person in custody; or
 - (b) admit that person to bail on the same or on such other conditions as he thinks fit.

89. Powers of Commission to request information

- (1) For the purposes of any investigation under this Act, the Commission shall have such powers, rights and privileges in respect of:
 - (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; and
 - (b) compelling the production of documents; and
 - (c) request to examine witnesses abroad.
- (2) A person under investigation summoned to appear before the Commission may

consult and be represented by a Bhutanese *Jabmi* of his own choice.

- (3) For the purposes of **this section**, the Commission shall, with or without notice, visit any place, examine any accounts, books, documents or other article of or relating to, any person which may be required for the purpose of the investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts, books or other relevant entry therein.
- (4) A person who is required under this section to disclose any information or to produce any accounts, books, documents or articles shall, notwithstanding any law to the contrary or any oath of secrecy, comply with such requirement.
- (5) A person shall be guilty of an offence, if that person:
 - (a) fails or neglects, without reasonable justification, the proof of which shall be upon him, to comply with any requirement under this section; or
 - (b) obstructs the **Commission** in the execution of an authorization given under this section.
- (6) A person guilty of an offence under subsection (7) shall be liable, on conviction, to imprisonment for a term ranging from not less than one year to not more than three years.

90. Power to search and seizure

- (1) Notwithstanding any law to the contrary, the Commission may search any person:
 - (a) if he has reasonable grounds for suspecting that such person has committed an offence or is about to commit an offence under this Act and seize any document, material or other thing found on him; or

- (b) if **the Commission** has reasonable grounds for believing that such person has with him or on him any document, material or other thing which is relevant or is likely to be relevant to the investigation and seize any such document, material or other thing found on such person.
- (2) A person shall not be searched **under this section** except by a person of the same sex.

91. Search of public premises

- (1) Notwithstanding any law to the contrary, where the Commission has reasonable cause to believe that there is in any place or premises, **other than a private place or premises**, anything which is or contains evidence of the commission of an offence under this Act, the **Commission may enter such public** place or premises and search it.

92. Search of private premises

- (1) Where the Commission has reasonable cause to believe that there is on any private place or premises, anything which is or contains evidence of the commission of an offence under this Act, the Commission shall on application to a competent Court obtain a warrant for the purpose of the entry and search of that private place or premises.
- (2) Where a search is effected **under this section and section (91)**, **the Commission may:**
 - (a) seize and take possession of any book, document, computer, computer disk or other article;
 - (b) inspect, make copies of, or take extracts from, any book, record or document;
 - (c) search any person who is on the premises, detain him for the purpose of the

search, and seize any article found on such person;

- (d) break, open, examine, and search any article, safe, container or receptacle.

93. Search without warrant

(1) Notwithstanding any law to the contrary, the Commission may on the scene conduct search without warrant, in the course of an investigation, where:

(a) there is danger of destruction of evidence; or

(b) the distance from the Court to the place to be searched are substantial.

94. Duty to show warrant

(1) The Commission shall, while executing a search warrant, announce that it is the Commission and produce the warrant for inspection by an occupier of the premises.

95. Use of reasonable force

(1) Whenever it is necessary so to do, the Commission exercising any power under sections (90), (91), (92) and (93) may:

(a) break open any outer or inner door or window of any premises and enter there into, or otherwise forcibly enter the premises and every part thereof;

(b) remove by force any obstruction to such entry, search, seizure or removal as may be reasonably necessary; or

(c) detain any person found in or on any premises, or in any conveyance, searched under subparagraph (a), until such premises or conveyance has been searched.

96. Execution of warrant by day or night

(1) An execution of a search warrant may not be commenced seven anti-meridian and

five post-meridian unless the person issuing the warrant, by the warrant, authorizes otherwise.

97. Expiry of warrant

- (2) A search warrant ceases to have effect:
 - (a) twenty one days after its issue;
 - (b) if it is withdrawn by the person who issued the warrant; or
 - (c) when it is executed, whichever occurs first.

98. Seizure of movable property

- (1) In the course of an investigation into an offence under this Act, any movable property which the Commission has reasonable grounds to suspect to be the subject matter of an offence or evidence relating to the offence shall be liable to seizure.
- (2) A list of all movable property seized under this section and of the places in which they are respectively found shall be prepared by the Commission and such seizure list shall be signed by the Commission, the owner of premise or person in occupation of such premises and by a witness present at the time of search.
- (3) A copy of the list referred to in subsection (2) shall be served on the owner of such property or on the person from whom the property was seized as soon as possible.
- (4) Where any movable property liable to seizure under this section is in the possession, custody or control of a bank, subsections (1), (2) and (3) shall not apply and the provisions of section (102) (order not to part with, deal in, movable property in bank etc) shall apply thereto.

- (5) When any movable property seized under this **section** consists of money, shares, securities, stocks, or debentures, in the possession or under the custody or control of any person other than the person against whom the prosecution is intended to be taken, the seizure shall be effected **by the** Commission serving an order on such person:
- (a) prohibiting him from using, transferring, or dealing with such property; or
 - (b) requiring him to surrender the property **to the** Commission in the manner and within the time specified in the order.
- (6) Where any movable property seized is liable to speedy decay or deterioration, or is property which cannot be maintained without difficulty, or which is not practicable to be maintained, **the Commission** may sell or cause to be sold the property and shall hold the proceeds of the sale, after deducting there from the costs and expenses of the maintenance and sale of the property, to abide the result of any proceedings under this Act.

99. Responsibility for **frozen, seized or confiscated property**

- (1) The Commission shall take all reasonably necessary steps to protect anything obtained or anything **frozen, seized or confiscated** under section **(98)**, while it is in the custody of the Commission.
- (2) Where the Commission does not propose to use anything obtained or **frozen, seized or confiscated** under section **(98)** as evidence in any proceedings, it shall make arrangements for such thing to be returned forthwith to the person from whom it was obtained or under whose control or possession it was seized.
- (3) **The Commission shall be answerable for failure to protect anything obtained or anything frozen, seized or confiscated under section **(98)**, while it is in the custody**

of the Commission.

100. Admissibility of things produced or found

- (1) **Anything, including** the contents thereof, provided by a person to the Commission or obtained on a search of any person or premises under this Chapter, may be taken and retained by the Commission for such time as is reasonable for the purposes of the investigation **concerned**.
- (2) **Such thing, including the contents** thereof, shall be admissible in evidence in a prosecution of any person, including the person who produced it or from whom it was obtained, for an offence.

101. Order not to part with, deal in, movable property in bank

- (1) Where the Commission is satisfied on information **obtained by** it that any movable property, including any monetary instrument or any accretion thereto, which is the subject matter of an offence under this Act or evidence in relation to the commission of such offence, is in the possession, custody or control of a bank, the Commission may, by order direct the bank not to part with, deal in, or otherwise dispose of such property or any part thereof **for twenty one days from the date of issue of such order**.
- (2) A bank or any agent or employee of a bank shall not, on account of such compliance, be liable to any prosecution under or by virtue of any law or to any proceeding or claim by any person under or by virtue of any law or under or by virtue of any contract, agreement, or arrangement, or otherwise.
- (3) A person who fails to comply with an order of the Commission **this section** is guilty of an offence.

- (4) A person who is guilty of an offence under **this section** shall, on conviction, be liable to a fine not exceeding two times the amount which was paid out in contravention of the Commission's order or to imprisonment for a term **not less than one month to not more than one year**.

102. Seizure of immovable property

- (1) Where the Commission is satisfied on information **obtained by it** that any immovable property is the subject matter of an offence under this Act or evidence of the commission of such offence, such property shall be liable to seizure and the seizure shall be effected by:
- (a) the issue of a Notice of Seizure by the Commission setting out therein the particulars of the immovable property which is seized in so far as such particulars are within his knowledge, and prohibiting all dealings in such immovable property;
 - (b) publishing a copy of such Notice in two newspapers circulating in Bhutan, including broadcasting such notice in television; and
 - (c) serving a copy of such Notice **relevant person or public agencies**.
- (2) The **relevant person or public agencies** shall immediately upon being served with a Notice of Seizure **under this section** endorse the terms of the Notice of Seizure on the document of title in respect of such immovable property.
- (3) Where an endorsement of a Notice of Seizure has been made **under this section** the Notice shall have the effect of prohibiting all dealings in respect of the immovable property, and after such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless of whether it was effected before or after the issue of such Notice or the making of such endorsement.

- (4) A person who contravenes or does any act which results in, or causes, a contravention of **this section shall be** guilty of offence.
- (5) A person guilty of an offence under **this section** shall, on conviction, be liable to a fine not exceeding twice the value of the property in respect of which the Commission's order had been contravened, or to imprisonment **for a term not less than one month to not more than one year.**
- (6) Where a Notice of Seizure has been issued under **this section** it shall be guilty of an offence for the registered owner of the immovable property which is seized under such Notice, or for any other person having any interest in such immovable property, who has knowledge of such Notice, to knowingly enter into any agreement with any person to sell, transfer, or otherwise dispose of or deal with, the whole or any part of such immovable property and such owner or person
- (7) A person guilty of an offence under **this section** shall, on conviction, be liable to a fine not exceeding twice the value of the property in respect of which the Commission's order had been contravened, or to imprisonment for a term not less than **one month to not more than one year.**

103. Dealing with property after seizure to be void

- (1) Where any property has been seized under this Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property shall be void, and shall not be registered or otherwise given effect to by any person or authority.
- (2) **For so long as a seizure of any property under this Act remains in force:**

- (a) no action, suit or other proceeding of a civil nature shall be instituted, or if such action, suit or other proceeding has been instituted before such seizure, be maintained or continued in any Court or before any other authority in respect of the property which has been so seized; and
- (b) no attachment, execution or other similar process shall be commenced, or if such attachment, execution or other similar process is pending before such seizure, be maintained or continued, in respect of such property on account of any claim, judgment or decree, regardless of whether such claim was made, or such judgment or decree was given, before or after such seizure was effected.

104. Impounding of travel documents

- (1) The Commission may, upon reasonable belief that a person who is under investigation of an offence under this Act suspected to have been committed by him/her is likely to leave Bhutan, in writing under the hand of the Chairperson serve a notice requiring such person to:
 - (a) surrender his/her certificate of identity, passport or any other travel document in his possession; and
 - (b) enter into cognizance with two sureties who are owners of property in Bhutan the value of which shall be determined by the Commission.
- (2) A travel document which is surrendered to the Commission under this section may be retained for a period not exceeding one hundred and eight days from the date on which the notice was served.
- (3) Where it appears that the investigation may not be completed before the expiry of the period of one hundred and eight days, the Commission may apply to a Court of competent jurisdiction to extend such retention period.

- (4) A Court of competent jurisdiction may, on application under **this section** by the Commission, extend the detention period as may be reasonably required, if the Court is satisfied that the investigation could not be completed before the expiration of one hundred and eight days.
- (5) An application under **this section** shall not be heard by a Court unless reasonable notice of the application has been given by the Commission to the person who surrendered the travel documents.
- (6) The Commission may, arrest a person possessing a travel document if that person fails to comply with the notice forthwith until such person complies with the notice or completion of the investigation in respect of him, whichever occurs earlier.
- (7) A person who is detained pursuant to an order under **this section** shall be released if:
 - (a) he surrenders his travel documents to the Commission;
 - (b) he satisfies the Court that he does not have any travel documents; or
 - (c) the investigation is completed and the Court is satisfied that no criminal proceedings are to be instituted.
- (8) A person to whom a notice under **this section** is addressed shall not leave Bhutan before the expiry of the period of one hundred and eight days from the date of the notice unless:
 - (a) an application made under section **(105)** for the return of the travel documents is granted; or
 - (b) an application made under section **(106)** for permission to leave Bhutan is granted.

105. Return of travel documents

- (1) A person, whose travel documents have been impounded under section (104), may at any time apply to the Court for the return of his travel documents and the application shall contain a statement of the grounds on which it is made.
- (2) Notice of an application under this section shall be given by the applicant to the Commission.
- (3) The Court may:
 - (a) grant the application either without conditions or subject to such conditions as to the further surrender of the passport and the appearance of the applicant at any place and time as the Court may specify; or
 - (b) refuse the application.
- (4) Without prejudice to section (106) the Court may, before granting an application under this section, register that:
 - (a) the applicant enters into a recognizance, with such sureties, if any, as the Court may require; or
 - (b) the applicant deposits such sum of money and enters into such recognizance as the Court may require.

106. Permission to leave Bhutan

- (1) Without prejudice to section (105), a person on whom a notice under section (106) is served may at any time apply in writing to the Commission for permission to leave Bhutan, and such application shall contain a statement of the grounds on which it is made.

- (2) The Commission shall grant an application made under **this section** only where the Commission is satisfied that having regard to all the circumstances, including the interests of the **investigation**, a refusal to grant the application would cause unreasonable hardship to the applicant.

107. Power to amend or revoke any order or notice under this Act

- (1) The Commission may at any time amend or revoke any order or notice which has been made or given by it in exercise of any power conferred **on it, but any** such revocation shall not be a bar to any fresh order being made or notice being given in the exercise of such power or any other powers conferred **on it, at** any time thereafter, against any person to whom the earlier order or notice applied or in respect of any matter affected by the earlier order or notice.
- (2) A revocation or an amendment of an order or notice under **this section** may contain provision in respect of any matter which is consequential, ancillary or incidental to such revocation or amendment.

108. Obstruction of justice

- (1) A person is guilty of an offence, if that person:
 - (i) **refuses the** Commission access to any premises, or fails to submit to a search by a person authorized to search him under this Act;
 - (ii) assaults, obstructs, hinders or **delays the Commission** in the execution of his duty under this Act;
 - (iii) fails to comply with any lawful demand, notice, order or requirement **of the Commission** in the execution of his duty under this Act;
 - (iv) omits, refuses or neglects to give **to the Commission** any information which may reasonably be required of him and which he is empowered to give;

- (v) fails to produce to, or conceals or attempts to conceal from, the Commission any book, document, or article, in relation to which the Commission has reasonable grounds for suspecting that an offence under this Act has been or is being committed, or which is liable to seizure under this Act;
 - (vi) rescues or endeavors to rescue or causes to be rescued anything which has been duly seized;
 - (vii) destroys any thing to prevent the seizure thereof, or the securing of the thing;
 - (viii) any person interfering with a cue, either orally or in writing;
 - (ix) any person publishing a report of the corruption cases either in the course of investigation or during the Court proceedings in the press that is grossly inaccurate and presents a clear danger of imminent and serious threat to the reputation of the Commission; or
 - (x) interferes with, puts fear into, threatens or abducts or attempts to interfere with, put fear into, threaten or abduct any person involved in an investigation under this Act, is guilty of an offence.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than one month to not more than one year.

109. Plea bargain

- (1) The Commission may consider plea bargain which shall be in conformity with section 197 of the Civil and Criminal Procedure Code.
- (2) For the purpose of this Act, wherever the words 'prosecution' occurs, it shall be understood as the 'Commission' within the meaning of the Civil and Criminal Procedure Code.

CHAPTER VII
PROTECTION OF WITNESS AND INFORMERS

110. Protection of complainants or informers

- (1) Where the Commission receives information in confidence about a commission or suspected commission of an offence under this Act, that information and the identity of the complainant or informer shall be held secret between the Commission and the complainant or informer, and all matters relating to such information shall be privileged and shall not be disclosed in any proceeding before any court, tribunal or other authority.
- (2) If any books, documents or papers, which is given in evidence or liable to inspection in any civil, criminal or other proceedings, contains any entry in which any complainant or informer is named or described or which might lead to his discovery, the Court before which the proceeding is had shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the complainant or informer from discovery.
- (3) The Commission may devise a scheme to pay an appropriate incentive to a person who gives information to the Commission which results in the conviction of another person of an offence under this Act.

111. Protection of Witnesses

- (1) Subject to subsection (8) of this section, a person shall incur no civil or criminal liability as a result of his disclosure:
 - (a) to the Commission that a person or authority is or has been involved in any act constituting an offence under this Act; and

- (b) at the time he makes the disclosure, believes on reasonable grounds that the information he discloses may be true and is of such a nature as to warrant an investigation under this Act.
- (2) Subject to subsection (8) of this section, a public officer shall incur no civil or criminal liability, including disciplinary action as a result of his disclosure:
 - (a) to his superior officer or to the Commission or any of its officer that an act constituting an offence under this Act may have occurred within the public body in which he is employed; and
 - (b) believes on reasonable grounds that the information is true.
- (3) A person who makes a disclosure under paragraphs (a) or (b) of this section may assist the Commission in any investigation which the Commission may undertake in relation to matters disclosed by him.
- (4) A person to whom a disclosure is made under paragraphs (a) or (b) of subsection (2) of this section shall not, without the consent of the person making the disclosure, divulge the identity of that person except where it is necessary to ensure that the matters to which the information relates are properly investigated.
- (5) A person is guilty of an offence of victimization, if that person commits an act:
 - (a) which causes injury, damage or loss;
 - (b) of intimidation or harassment;
 - (c) of discrimination, disadvantage or adverse treatment in relation to a person's employment; or
 - (d) amounting to threat or reprisal.

- (6) A person guilty of an offence under **this section** shall, on conviction, be liable imprisonment for a term not less than one month to not more than one year.
- (7) In addition to any penalty imposed under subsection (5) of this section, the Court may order a person convicted of an offence under this subsection to pay appropriate damages or compensatory damages for any of the grounds mentioned in subsection (6), as may be appropriate.
- (8) A person shall be guilty of an offence, if that person makes a false disclosure under subsections (1) or (2) of this section knowing it to be false.
- (9) A person guilty of an offence under subsection (8) of this section shall, on conviction, be to imprisonment for a term not less than one month to not more than one year.

112. Physical protection of complainants, informer and witnesses

- (1) The State shall provide an effective physical protection of complainants, informer and witnesses and their family, including economic and other threat.

113. Procedural protection of witnesses

- (1) Subject to this section, any party to proceedings under this Act may apply *ex parte* to a Judge to order the non disclosure of the identity of a witness who in the opinion of the Judge may be in danger or at risk.
- (2) A Judge may, consistent with the rights of the accused person, order appropriate measures to safeguard the privacy and security of the witness which may be:
 - (a) on his own motion;
 - (b) at the request of either party; or

- (c) at the request of the witness concerned.
- (3) A Judge may hold proceedings *in camera* to determine whether to order measures to prevent disclosure to the public of the identity or whereabouts of a witness or persons related or associated with him by such means including:
- (a) expunging the names and identifying information from the court's public records;
 - (b) non-disclosure to the public of any records identifying the witness;
 - (c) assignment of a pseudonym to the witness;
 - (d) holding proceedings *in camera*.
- (4) When making an order under **under this section**, a Judge shall where appropriate state whether the transcripts of those proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in any other proceedings before the court.
- (5) Where protective measures have been ordered in respect of a witness or victim in any proceedings, before the court, such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Court unless and until they are revoked, rescinded, varied or augmented.
- (6) A party to any subsequent proceedings seeking to revoke, rescind, vary or augment protective measures shall apply to the Court seized of the subsequent proceedings.

114. Protection for Assisting Commission

- (1) A person shall have immunity from any action or proceeding, including disciplinary action against him in respect of his assistance given to the **Commission**.

- (2) A person shall not have immunity under **this section**, if that person did not believe his assistance or statement to be true.
- (3) In a prosecution for an offence under this Act or a proceeding under this Act, no witness shall be required to identify, or provide information that might lead to the identification of a person who assisted **the Commission**.
- (4) **A person identifies or provides information that might lead to the identification of a person who assisted the Commission in a prosecution for an offence under this Act or a proceeding under this Act shall be guilty of an offence.**
- (5) **A person guilty of an offence under this section shall, on conviction, be liable to a fine not less than Nu... or to imprisonment for a term not less than one month to not more than one year.**
- (6) In a prosecution for an offence under Chapter IV or a proceeding under this Act, the Court shall ensure that information that identifies or might lead to the identification of a person who assisted the **Commission is concealed** from view or obliterated so far as may be necessary to protect the identity of that person.

CHAPTER VIII

EVIDENCE AND REFERRALS BY THE COMMISSION

115. Evidence of custom inadmissible

- (1) In any civil or criminal proceeding under this Act evidence shall not be admissible to show that any such advantage as mentioned in this Act is customary in any profession, trade, vocation or calling.

116. Presumption in certain offences

- (2) Where in any proceedings against any person for an offence under sections (45) through (48), (55) through (62) and section (158), it is proved that any undue advantage has been solicited or accepted, or promised, offered or given by or to the accused, the undue advantage shall be presumed to have been corruptly solicited or accepted; or promised, offered or given as an inducement to or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.
- (3) Where in any proceedings against any person for an offence under this Act, it is proved that such person has solicited or accepted any undue advantage, such person shall be presumed to have done so as a motive or reward for the matters set out in the particulars of the offence, unless the contrary is proved.

117. Evidence of pecuniary resources or property

- (1) In any proceedings against a person for an offence under Chapter IV (other than possession of unexplained wealth), the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, or is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his lawful sources of income, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court:
 - (a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any undue advantage; and
 - (b) as showing that such undue advantage accepted or solicited as an inducement or reward.

- (2) An accused person shall, for the purposes of **this section**, be deemed to be in possession of resources or property or to have obtained an accretion thereto if those resources or property are held or the accretion is obtained by any other person whom, having regard to his relationship to the accused person or to any other circumstances, there is reason to believe to be holding those resources or property or to have obtained the accretion in trust for or on behalf of the accused person or as a gift from the accused person.

118. Evidence of corroboration

- (1) In any proceedings against any person for an offence under this Act, it may be proved that at or about the time of the alleged offence, or at any time thereafter, the accused, or any relative or associate of his:
- (a) held any property for which he, or his relative or associate, as the case may be, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control; or
 - (b) had entered into any dealing for the acquisition of any property and he is unable to satisfactorily account for the consideration for which it is to be acquired, and the evidence in relation thereto shall be presumed to corroborate any evidence relating to the commission of the offence.

119. Evidence of accomplice

- (1) Notwithstanding any law to the contrary, in any proceedings against any person for an offence under this Act:
- (b) a witness shall not be regarded as an accomplice by reason only of such witness having:

- (i) accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any undue advantage from any person;
 - (ii) given, promised, offered or agreed to give any undue advantage; or
 - (c) been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence.
- (2) Notwithstanding any law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of any accomplice **shall not be illegal**.

120. Damage or harm to state property not necessary

- (1) For the purposes of this Act, it shall not be necessary, except as otherwise stated in this Act, for the offences set forth **in this Act** to result in damage or harm to state property.

121. Admissibility of statements by accused persons

- (5) Notwithstanding any law to the contrary, in any proceeding against a person for an offence under this Act, any statement, whether or not the statement amounts to a confession or is oral or in writing, made at any time, whether before or after the person is charged and whether or not in the course of an investigation and whether or not wholly or partly in answer to question, by an accused person to or in the hearing of the Commission, whether or not interpreted to him by the Commission or any other person, whether concerned or not in the arrest of that person, shall:
 - (c) be admissible at his trial in evidence; and
 - (d) if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.
- (3) No statement made under subsection (1) shall be admissible or used as provided for in that subsection if the making of the statement appears to the Court to have

been caused by any inducement, threat or promise having reference to the charge against the person, proceeding from a person in authority and sufficient in the opinion of the Court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

- (4) Where any person is arrested or is informed that he may be prosecuted for any offence under this Act, he shall be served with a notice in writing in such form as the Commission may prescribe, which shall be explained to him.
- (5) Notwithstanding subsection (3), a statement by any person accused of any offence under this Act made before there is time to serve a notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such notice having been served on him if such notice has been served on him as soon as is reasonably possible thereafter.
- (6) No statement made by an accused person in answer to a written notice served on him under this subsection (4) shall be construed as a statement caused by any inducement, threat or promise as described in subsection (4), if it is otherwise voluntary.

122. Admissibility of statements and documents of persons who are dead or cannot be traced

- (1) Notwithstanding any law to the contrary, in any proceedings against any person for an offence under this Act:
 - (a) any statement made by any person to the Commission in the course of an investigation under this Act; and
 - (b) any document, or copy of any document, seized from any person by

the Commission in the exercise of his powers under this Act or by virtue of his powers under this Act or by virtue of this Act, shall be admissible in evidence in any proceedings under this Act before any court, where the person who made the statement or the document or the copy of the document is dead, or cannot be traced or found, or has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which appears to the Court unreasonable.

123. Prosecution referral

- (1) Where the Commission is of the opinion, based on its findings of investigation or otherwise that there is sufficient evidence and the prosecution would serve the interest of public, the Commission shall make prosecution referral to the Office of Attorney General.
- (2) **Prosecution of persons on the basis of the findings of the Commission shall, as provided for in section (5) of article (27) of the Constitution, be undertaken by the Office of the Attorney General for adjudication by the courts.**
- (3) Notwithstanding subsection (2), the Commission may carry out its own prosecution of a person charged with an offence under this Act or take over the prosecution process from the Office of Attorney General when the case is:
 - (a) delayed without a valid reason;
 - (b) manipulated; or
 - (c) hampered by interference.

124. Confiscation of property upon prosecution for an offence

- (1) In a prosecution for an offence under this Act, the Court shall make an order for the **confiscation** of any property which is proved to be the **corruption proceeds** or to have been used in **or destined for use in** the commission of the offence where:
 - (a) the offence is proved against the accused; or
 - (b) the offence is not proved against the accused but the Court is satisfied:
 - (i) that the accused is not the true and lawful owner of such property;
and
 - (ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.
- (2) Where the offence is proved against the accused but the property referred to in subsection (1) has been disposed of, or cannot be traced, the Court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the property or is, in the opinion of the court, the value of the advantage by the accused, and any such penalty shall be recoverable as a fine.
- (3) **Where such property has been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds.**

125. Confiscation of property where there is no prosecution for an offence

- (1) Where in respect of any property seized under this Act there is no prosecution or conviction for an offence under this Act, if the Commission is satisfied that such property had been obtained as a result of or in connection with an offence under this Act, the Commission may refer the matter to the Office of Attorney General which shall apply for an order of **confiscation** of that property from a court.

- (2) The Court before which an application is made under subsection (1) shall cause to be published a notice in, at least, two newspapers published in the country calling upon any person who claims to have an interest in the property to attend before the Court on a date specified in the notice, to show cause as to why the property should not be forfeited.
- (3) The Court shall make an order for the **confiscation** of the property if the Court before which an application is made under subsection (1) is satisfied:
 - (a) that the property is the subject matter of, or was used in **or destined for use in** the commission of an offence under this Act; and
 - (b) there is no purchase in good faith for valuable consideration in respect of the property.
- (4) **Where such property has been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds.**

126. Confiscation of property if suspect has absconded

- (1) Notwithstanding any other law to the contrary, where a court, on an *ex parte* application by the Commission, is satisfied that having regard to the evidence before the Court the suspect has committed an offence under Part IV, and on the preponderance of evidence, that the person has absconded from Bhutan in order to evade prosecution under this Act, it may make an order for Confiscation of property due or belonging to or held on behalf of the suspect.
- (2) **Where such property has been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds.**

127. Burden of proof

- (1) In any proceedings against a person for an offence under this Act, the burden of proving a defense of lawful authority or reasonable excuse shall lie upon the accused.

128. Immunity for report prior to commencement of proceedings

- (2) A person who receives or gives an undue advantage from or to another person, reports this matter to the Commission or to another law enforcement authority, before the commencement of any corresponding procedure, will be exempt from punishment, provided that no more than twenty four hours have passed since the date of the receipt or giving of such a bribe.

129. Disposal of confiscated property

- (1) The Commission may dispose of confiscated properties in accordance with the judgment of Courts.

130. Disciplinary referrals by the Commission

- (1) Where there is no sufficient evidence and the prosecution would not serve the public interests, the Commission may refer such cases to the respective agencies for necessary administrative action.
- (2) The Commission may, after investigating a matter refer the matter for investigation or other action to an appropriate agency considered by the Commission to be appropriate in the circumstances.
- (3) The Commission may, when referring a matter, recommend an appropriate action to be taken by the relevant agency and the time within which it should be taken.

- (4) The Commission may revoke or vary such recommendation, requirement or direction.
- (5) The Commission may communicate to the relevant authority any information which the Commission has obtained during the investigation conducted in connection with the matter.
- (6) If the Commission communicates information to an appropriate agency under this section on the understanding that the information is confidential, such appropriate agency is subject to the secrecy provisions of this Act in relation to the information.

131. Report to Commission

- (1) The Commission may, when referring a matter under section (130), require the relevant public agency to submit to the Commission a report in relation to the matter and the action taken by the relevant authority.
- (2) A report shall be submitted to the Commission within such time as the Commission directs.

132. Further action by Commission

- (1) If the Commission is not satisfied that a relevant authority has duly and properly taken action in connection with a matter referred under section (130), the Commission shall inform the relevant public agency of the grounds of the Commission's dissatisfaction and shall give the relevant authority an opportunity to comment within a specified time.
- (2) If, after considering any comments received from the relevant agency within the specified time, the Commission is still not satisfied; the Commission may take

necessary action on its own on the matter.

133. Responsibility of relevant public agency

- (1) It is the duty of a relevant agency to comply with any requirement or direction of the Commission under sections (130) through (131).

**CHAPTER IX
INTERNATIONAL COOPERATION**

134. Request by foreign State

- (1) Subject to section (139), where a foreign State makes a request for assistance in the investigation or prosecution of a corruption offence, the Commission shall, after consultation with the Minister responsible for Foreign Affairs and, if required, the Attorney General:
 - (a) execute the request; or
 - (b) inform the foreign State of any reason for either not executing the request forthwith or delaying the execution of the request.

135. Power of Commission to obtain search warrant

- (1) The Commission upon application and upon production of a request under section (132) to a Court, may obtain a warrant:
 - (a) to enter any premises belonging to, or in the possession or control of, any person named in the application and to search the premises;
 - (b) to search any person named in the warrant, and remove any document or material to execute the request as directed in the warrant.
- (2) The Court shall issue a warrant when it is satisfied that:

- (a) the documents accompanying the request from the foreign State in support of the application are duly authenticated;
- (b) there are reasonable grounds to believe that a corruption offence has been committed in the foreign State; and
- (c) the warrant is necessary for the investigation or prosecution.

136. Property tracking for foreign State

- (1) The Commission, upon application and upon production of a request to the Court, may obtain an order:
 - (a) that any document relevant to:
 - (i) identifying, locating or quantifying any property;
 - (ii) identifying or locating any document necessary for the transfer of any property belonging to, in the possession or under the control of any person named in the request be delivered to the Commission; or
 - (b) that a Financial Institution forthwith produce to the Commission all information obtained by the institution about any business transaction conducted by or for a person named in the request with the institution during such period before or after the date of the order as the Court directs.

137. Freezing and **confiscation of property in international cooperation**

- (1) Subject to section (139), the Commission upon application and upon production to the High Court of a request for a freezing or **confiscation** of property of or in the possession or under the control of a person named in the request, may obtain an order:
 - (a) freezing such property for such period as is indicated in the order;
 - (b) directing the disposal of that property to:

- (i) determine any dispute as to ownership of or interest in the property or any part thereof;
 - (ii) properly administer such property during the period of freezing;
 - (iii) pay debts, incurred in good faith, due to creditors prior to the request;
 - (iv) pay moneys to that person for the reasonable subsistence of that person and his/her family; and
 - (v) pay costs and other expenses to defend any criminal proceedings referred to in the request; and
 - (c) forfeiting the property of or in the possession or under the control of any person named in the request.
- (2) An application under **this section** shall be accompanied by the request from the foreign State and:
- (a) an authenticated copy of a Court order from the foreign State ordering the freezing of property of a person who has been charged with a relevant offence in that foreign State; or
 - (b) an affidavit of a competent officer of the foreign State stating that a person has been charged with a relevant offence in that foreign State.
- (3) Under this section, a relevant offence is an offence constituted by an act or omission which, had it occurred in or within Bhutan would have constituted a corruption offence.

138. Request to be accompanied by an evidence order

- (1) Subject to section **(139)**, the Commission may, upon application and upon production to the Court of a request accompanied by an order issued by a Court of the foreign State directed to any person within the jurisdiction of the domestic

Court to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court of the requesting State for the purpose of giving evidence in specified proceedings in that Court, obtain an order directed to that person in the same terms as in the order accompanying the request.

- (2) Upon being served with an order issued **under this section**, as directed by the order, the person served shall, for the purposes of the order, either deliver oneself to the jurisdiction of:
 - (a) the domestic court; or
 - (b) the Court of the foreign State.
- (3) If a person served with an order issued **under this section** elects to deliver oneself to the jurisdiction of the Court of foreign State and fails to comply with any direction in the order, he shall be deemed immediately to have delivered himself to the jurisdiction of the domestic court.
- (4) The domestic Court shall conduct necessary proceedings to take the evidence of the person delivering himself to its jurisdiction under **this section** and the evidence shall subsequently be transmitted by the domestic Court to the foreign State.

139. Refusal of execution of request

- (1) The Commission may refuse to comply with a request if:
 - (a) the action sought by the request is contrary to, or is likely to be contrary to, the Constitution;
 - (b) the execution of the request is likely to prejudice the national interest;
 - (c) under the law of the foreign State the grounds for refusing to comply with a request from another State is substantially different from paragraph (a) or (b) of this section.

140. Request to foreign States

- (1) The Commission may, after consultation with the Minister responsible for Foreign Affairs and, if required, the Attorney General, make a request to a foreign State:
 - (a) which it considers may be able to provide evidence or information relating to an offence under this Act; or
 - (b) for the freezing and **confiscation** of property located in that foreign State and which is liable to be forfeited because such property is the proceeds of an offence under this Act.
- (2) Where the foreign State, to which a request for assistance is made **under this section**, requires the request to be signed by an appropriate competent authority, the Chairperson of Commission shall be considered as the appropriate competent authority to sign such a request.

141. Issuing evidence order against person resident in foreign State

- (1) The Commission may, in respect of any proceedings for an offence under this Act, apply to the High Court in chambers for an order directed to any person resident in a foreign State to deliver that person or any document or material in that person's possession or under that person's control to:
 - (c) the jurisdiction of the domestic Court; or
 - (d) subject to the approval of the foreign State, to the jurisdiction of the Court of that foreign State,to give evidence in relation to those proceedings.

142. Evidence pursuant to requests

- (1) Evidence taken pursuant to a request in any proceedings in a Court of a foreign State shall be received as *prima facie* evidence in any proceedings to which such evidence relates.

143. Authentication of documents

- (1) For the purposes of this chapter, a document is authenticated if:
 - (a) it purports to be signed or certified by a Judge, Magistrate or officer of the foreign State; and
 - (b) it purports to be authenticated either by the oath or affirmation of a witness or to be sealed with an official seal of a Minister or an officer of the Government of the requesting State.

144. Form of requests

- (1) A request shall be in writing, including facsimile transmittal writing, dated and signed by or on behalf of the person making the request.

145. Contents of request

- (1) The request shall:
 - (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected corruption offence or that a person has been convicted of any such offence;
 - (b) state the grounds on which a person is being investigated or prosecuted for any corruption offence, or give details of the conviction of the person for a corruption offence;
 - (c) give sufficient particulars of the identity of the person;

- (d) give particulars sufficient to identify any Financial Institution or other person believed to have information, documents or material which may be of assistance to the investigation or prosecution;
- (e) request assistance to obtain from a Financial Institution or other person any information, documents or material which may be of assistance to the investigation or prosecution;
- (f) specify the manner in which and to whom any information, document or material obtained pursuant to the request is to be produced;
- (g) state whether a freezing order or confiscation order is required and identify the property to be the subject of such an order; and
- (h) contain such other information as may be necessary to assist in the execution of the request.

146. Request for **confiscation**

- (1) A request for **confiscation** shall have attached to it a copy of the final **confiscation** order of the Court and a statement signed by a judge of that Court to the effect that no further appeal against such order can be made.

147. Request not to be invalidated

- (1) A request shall not be invalidated for the purposes of this Act or any legal proceedings by virtue of any failure to comply with any provisions of this Chapter, where the Commission is satisfied that there is sufficient compliance to enable it properly to execute the request.

148. Asset sharing

- (1) Where the Minister responsible for Finance considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, the Minister may order that the whole or any part of any property forfeited under this Chapter, or the value thereof, be given or remitted to the foreign State.

149. Offence of interference with international cooperation orders

- (1) It is an offence:
 - (a) for any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which he knows or has reasonable grounds for believing that it is likely to be relevant to the execution of any order made in accordance with this Chapter;
 - (b) for any person who knows or has reasonable grounds for believing that an investigation into a corruption offence has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document under this Chapter to divulge that fact or other information to another person whereby the investigation is likely to be prejudiced.
- (2) A person guilty of an offence under this section shall, on conviction, be liable to imprisonment for a term not less than one month to not more than one year.

150. Establishment of a Joint investigative body

- (1) The Commission may establish a joint investigative body in relation to matters that are the subject of investigations in one or more States pursuant to:
 - (a) bilateral or multilateral agreements or arrangements; or
 - (b) in the absence of such agreements or arrangements, on a case-by-case basis.

151. Transfer of sentenced persons

- (1) The Commission may, after consultation with the Minister responsible for Foreign Affairs, the Attorney General and other relevant public agencies, enter into bilateral or multilateral agreements or arrangements on the transfer to or from Bhutan of persons sentenced to imprisonment or other forms of deprivation of liberty for an offence under this Act.

152. Transfer of criminal proceedings

- (1) The Commission may, after consultation with the Minister responsible for Foreign Affairs and, if required, the Attorney General, consider the possibility of transferring, to and from, proceedings for the prosecution of an offence under this Act in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

**CHAPTER X
MISCELLANY**

153. Service of notices

- (1) A notice under this Act shall be served on the person to whom it is addressed either personally or by registered post addressed to **that person's** last known place of business or residence.
- (2) Where the person to be served a notice cannot, by the exercise of due diligence be found, the notice may be served by leaving a copy with:
 - (a) an adult member of that person's family; or
 - (b) a person living with that person at the same dwelling.
- (3) Where it is impracticable to serve notice under **this section**, notice may be effected through private courier, or electronically or by advertisement in at least two

newspapers published in Bhutan or by broadcast on a radio station or television.

154. Convict under this Act not eligible for *thrimthue*

- (1) Notwithstanding any other law to the contrary, an offence under this Act shall not be compoundable or a person convicted for an offence under this Act shall not be eligible to pay *thrimthue* in lieu of imprisonment.

155. Offences under this Act to be cognizable offences

- (1) Every offence under this Act shall be cognizable offences within the meaning of Civil and Criminal Procedure Code of Bhutan.

156. Effect of death of person involved

- (1) A notice required to be given to a person under this Act is, for a person who is dead, taken to have been given if it is given to the person's successor, heir or representative.

157. Effect of death of joint owner of restrained property

- (1) If a person has an interest in property as joint owner of the property, the person's death after a restriction notice issued in relation to the interest does not, while the notice is in force, operate to vest the interest in the surviving joint owner or owners and the restriction notice continues to apply to the interest as if the person had not died.
- (2) A **confiscation** made in relation to the interest in property applies as if the order took effect immediately before the person died.
- (3) If a restriction notice ceases to apply to an interest in property without a **confiscation** order being made in relation to the interest, subsection (1) is taken not to have applied to the interest.

158. Corruption offence extraditable

- (1) Any request for extradition of an offender shall be subject to Extradition Act of the Kingdom 1991 which shall be applied as if an offence under this Act is an offence for which extradition may be granted.

159. Liability of legal persons

- (1) Where an offence under this Act is committed by a legal person:
 - (a) if the legal person is a body corporate, every **chairperson, chief executive, director or officer of such body corporate** shall be deemed to have committed that offence;
 - (b) if the legal person is a firm, every partner of that firm shall be deemed to have committed that offence.
- (2) A legal person shall be guilty of an offence, when persons with the highest level managerial authority of such legal person:
 - (h) directly or indirectly, offers, promises or gives a bribe to an official;
 - (i) directs or authorises a lower level person to offer, promise or give a bribe to an official; or
 - (j) **knowingly** fails to prevent a lower level person from bribing an official, including through a failure to supervise him/her through a failure to implement adequate internal controls, ethics and compliance programmes or measures.
- (3) Under **this section**, a conviction of a natural person for any offence under this Act is not necessary for a legal person's conviction for an offence under this Act.

160. Court may impose disqualification or ban

- (1) A Court may in addition to any other penalty, permanently or for a fixed period as the Court deems fit, ban any person convicted of an offence under this Act from pursuing the profession, trade, vocation or occupation which provided the opportunity for the commission of an offence under this Act.

161. Suspension of public servants

- (1) A public servant shall be suspended during the investigation if his/her attendance in his public office is likely to impede the investigation proceeding or when there is likelihood of available evidence being influenced, removed or tampered from the official record which may be under his or his subordinate's guardianship.
- (2) A public servant who is charged with an offence under **this Act** shall be **suspended with effect** from the date of the charge till pending the outcome of any appeals.
- (3) **A public servant who is arrested or detained under this Act by the Commission shall be suspended till the person is released from the custody.**
- (4) Suspension shall cease to have effect if the proceedings against a public servant are discontinued **or if that public servant is acquitted, or the Commission has released the public servant from the custody.**
- (5) This section does not derogate from any power or requirement under any law under which the public servant may be suspended without pay or dismissed.

162. Commission to report on charges and convictions for corruption

- (1) The Commission shall, where a public servant has been charged for or convicted of an offence under this Act, inform such fact to a head of individual agency for

the purpose of taking necessary disciplinary action against such public servant as required by laws.

163. Conduct outside Bhutan constituting offences

- (1) Conduct by a citizen of Bhutan that takes place outside Bhutan constitutes an offence under this Act if the conduct would constitute an offence under this Act if it took place in Bhutan.

164. Annual report

- (1) The Commission shall, as provided for in section (4) of article (27) of the Constitution, submit an annual report on its policies and performances to the *Druk Gyalpo*, the Prime Minister and Parliament.

165. Participation of Civil Society Organizations

- (1) The Commission shall promote active participation of civil society, non-governmental and community-based organizations, in the prevention of and the fight against corruption to raise public awareness regarding the existence of, causes and gravity of and threat posed by corruption.

166. Rules

- (1) The Commission may make rules for the carrying out of the provisions of this Act.

167. Rules of Construction

In this Act, the singular shall include the plural and the masculine shall include the feminine and vice versa.

168. Authoritative text

- (2) In any instance of difference in meaning between the Dzongkha text and the English text of this Act, each text shall be regarded as equally authoritative and courts shall reconcile the two texts.

169. Repeal, savings and transitional provisions

- (1) The Anti-Corruption Act 2006 is hereby repealed.

- (2) All investigations, prosecutions and other legal proceedings instituted or commenced under the repealed Act and which have not been concluded before the commencement of this Act, shall be continued and concluded in all respects as if that Act had not been repealed.

Schedule I

1. The Prime Minister and Ministers;
2. The Speaker and Members of the National Assembly;
3. The Chairperson and Members of the National Council;
4. The Holders and Members of the Constitutional Offices;
5. The Secretary to Government including a Cabinet Secretary;
6. The Head of Armed Forces;
7. The Chief of Police;
8. The Ambassadors and Consuls;
9. The Heads of Autonomous Agencies;
10. The Dzongdags and Drangpons;

11. The Chairpersons and/or Chief Executives of Corporations including Financial Institutions; and
12. The Heads of Civil Society Organizations.

Mirinda warning:

“You have been arrested/informed that you may be prosecuted for ... (the possible offence under this Act). Do you wish to say anything? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done.”.