

RESOLUTION OF THE BILLS

CHILD CARE AND PROTECTION BILL OF THE KINGDOM OF BHUTAN, 2010 1P6/GB4

The Education Minister, Member In-Charge of the Bill, moved the motion for leave to introduce the Bill and adoption for discussion on November 22, 2010. The Member In-Charge highlighted the importance of the Bill and also the reasons and objects for drafting the Bill. The Bill was then adopted for discussion after no objection was raised to introduce the Bill.

The Member In-Charge moved the motion for the second reading of the Bill on November 23, 2010

Hon Minister said that the reason for drafting the Bill is to nurture the children of today as the future citizen of tomorrow and to consolidate, provide care, guidance, counsel and protect children who are in difficult circumstances in the most favourable manner and in the best interest of the child.

The Bill also contains provisions on protection, treatment, development, rehabilitation and disposition of matters relating to children in conflict with law by the relevant agencies.

After deliberating on the general principles of the Bill, it was referred to Woman and Children Committee for discussion.

Hon Members of National Assembly deliberated the Child Care and Protection Bill, 2010 for the Third reading on November 25-29, 2010 and adopted the Bill with the following amendment:

Preamble

WHEREAS, ~~in keeping with His Majesty the Druk Gyalpo's vision for nurturing the children of today as the future citizens of tomorrow~~ in keeping with the State Policy of the full development of the human personality;

WHEREAS, it is expedient to make appropriate measures to ensure that children are protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation;

WHEREAS, it is expedient to promote those conditions that are conducive to cooperation in community life and the integrity of the extended family structure;

~~AND WHEREAS, it is expedient to consolidate and provide care, guidance, counseling and protection for children who are in difficult circumstances in the most favourable manner and in the best interest of the child.~~

~~AND WHEREAS, In order to, consolidate and provide care, protection, guidance, counseling, treatment, development,~~

rehabilitation, adjudication and disposition of matters relating to children in difficult circumstances and children in-conflict with law in the most favourable manner and in the best interest of the child;

Parliament of Bhutan do hereby enact the Child Care and Protection Act of Bhutan, 2010 on the ... Day of the Month ofYear of the Bhutanese Calendar corresponding to the ... Day of....., 2010 at itsof the First Parliament as follows:

Section 3

Principles

In actions concerning children under this Act, whether undertaken by government, non-government or private social welfare institutions, courts of law, administrative authorities, **family members or individuals**, the best interest of the child shall be the primary consideration.

Section 11(a)

Be culturally appropriate including any rules that maybe required for the discipline of the children. (*Amended in dzongkha version*)

Section 16

A person below the age of 18 years shall be treated as a child ~~and it shall be~~ evidenced by an official record maintained by the

Government, birth certificate or any other document proving the age of the child.

Chapter 3

The sub titles to be arranged in the following sequence

1. Role of central and local government
2. Role of education ~~system~~ institution
3. Role of the mass media
4. Participation of community
5. Participation of family

Section 25

~~The government shall endeavor to provide assistance to the~~ community **shall, with assistance from the government,** ~~to~~ establish special facilities to provide adequate shelter for children who have no home to live in or not able to live at home.

Section 27

Retain as in the draft

New section under participation of family

Families and individuals shall, with the best interest of their children in mind, participate in programs and measures under this Act.

Section 28

*Move after Section 21 with the sub-title “**Separation from Parents**”*

Section 29

The central and local government shall disseminate and create awareness on the rights **and responsibilities** of the child and relevant child law.

Section 31

Role of Education ~~system~~ **institution**

Section 31 and 32

(these two sections are merged as follows)

Educational institutions shall care for and protect the child through, among others, the following measures:

- (a) Work with families and communities to promote understanding about children;**
- (b) Enhance the academic and social image of children;**
- (c) Rehabilitate children in difficult circumstances and children in conflict with law;**
- (d) Provide continuing education to children who have dropped out of schools, children in difficult circumstances and children in conflict with the law; and**

- (e) **Equip children with information and skills to deal with personal safety.**

Section 33

The mass media shall assist in the promotion of child rights and **responsibilities** and prevention of offences committed by children through positive publication.

Section 36

To protect the best interest of the child, no report in any newspaper, magazine or newsletter of any inquiry regarding a child under this Act shall disclose the name, address, or school or any other particulars which may lead to the identification of the child nor shall any picture of any such child shall be published.

Section 38

His Majesty the Druk Gyalpo on the recommendation of the National Judicial Commission may establish a Child Justice Court **or Bench** for exercising the powers and discharging the duties conferred by this Act.

Section 40

~~Notwithstanding any provision of this Act~~, **Till such time** where there is no separate Child Justice Court, the regular Court shall exercise the powers and discharge the duties as prescribed under this Act.

Section 47

The Government shall **endeavour to** establish and maintain as many child homes as may be necessary for:

Section 49

The Government shall **endeavour to** establish and maintain as many remand homes as may be necessary for:

Section 50

The Government shall **endeavour to** establish and maintain as many special homes as may be necessary for:

Section 51

The Government shall **endeavour to** establish and maintain as many closed facilities as may be necessary for:

Section 51 (a)

Amended in Dzongkha text

Section 52

The Government shall **endeavour to** establish and maintain as many Aftercare Homes as may be necessary to facilitate social reintegration by providing for:

Section 54

The NCWC **or any other authority established by the government** shall be the competent authority under this Act.

Section 56

The Child Welfare Committee shall consist of a chairperson and such number of members as determined by the government from relevant agencies and the community of whom ~~one shall be a judge and~~ one shall be a woman having knowledge on child rights and the laws relating to children.

Section 59

A child in difficult circumstances is a child who:

- (a) Is found without having any home or settled place of abode and without any ostensible means of subsistence and is a destitute;
- (b) Has a parent or guardian who is unfit or incapacitated to **take care of or** exercise control over the child;
- (c) Is found to associate with any person who leads an immoral, drunken or depraved life; ~~or~~
- (d) Is being or likely to be abused or exploited for immoral or illegal purposes; **or**
- (e) **Is a frequent victim at the hands of individuals, families or the community.** *(New sub section)*

Section 60

Retain as in the draft

Section 61

~~Whenever~~ **Whenever** the information has been given to the police, the police shall inform the child welfare officer expediently.

Section 63

A child in difficult circumstances taken into the care of the police under this Act shall be transferred to the child welfare officer within 24 hours after being taken into the care of the police excluding the time necessary for the journey from the place ~~and government holidays~~.

Section 67

Where a child is taken into the care of a child welfare officer, the officer shall ~~as soon as possible~~ inform the parent or legal guardian of the child **within twenty four hours**.

Section 70 (a)

Provide counseling to the parents of legal guardian on how to look after the child and direct the parents or legal guardian to look after the child in a proper manner including the provisions of necessary assistance to the family as the child welfare deems fit (*Amended in dzongkha version*)

Section 72

A child in conflict with the law is a child who is ~~of 13~~ **above 12** years of age ~~and above~~ and found to have committed and offence

Section 80

The police shall **assess** ~~have the discretion to decide~~ whether a child is in conflict with law or not and subsequent proceedings

shall take place only after the preliminary issue has been decided in the affirmative.

Section 82

The Officer In-charge of the Police Station shall maintain detailed record of the child. ~~in a register~~

Section 85 (a)

Visit or receive the child in conflict with law at reasonable interval as may be specified in the probation order; (*amended in Dzongkha*)

Section 90(b)

Inform the child on the child's rights **and responsibilities** under the law.

Section 99

The police official or any investigating officer shall not question or interview a child if the child at the time of inquiry, assessment and investigation is:

- (a) Without ones parent or guardian or legal representative;
- (b) Unable to appreciate the significance of questions and answers made at the time of inquiry; or
- (c) Under the influence of alcohol, drugs, illness, ailment or condition that negates the capacity to comprehend the process.

This section shall apply to any child offender or child witness.

Section 100

~~Notwithstanding Section 99, if an officer of the rank of superintendent is satisfied that such an inquiry will not significantly harm the child's physical or mental state or right to defence, may interview or question the child.~~

Section 105

No child shall be subjected to arrest or detention, except in accordance with this Act ~~and other laws in force.~~

Section 111

If the Child arrested or taken into custody is ~~below 13~~ **12** years of age **and below**, the authority that has affected arrest or under custody, the child is kept, shall immediately release the child to the custody of one's parents or guardian, or in absence thereof, the child nearest relative.

Section 113(d) and (e)

- (d) refrain from using vulgar or profane language
- (e) avoid violence or ~~unnecessary~~ force or display of any threat to the child ;

Section 114

No handcuffs shall be used on a child ~~below the age of 13~~ **12** years **and below**, and handcuffs may only be used on a child ~~13~~ **12** years and above if there is an exceptional circumstance warranting the use.

Section 118

The police official may allow a child to go home after advice or admonition upon undertaking by the child along with a parent, member of family, guardian, or legal representative if the child is:

- a) ~~Below 13~~ **12** years of age ~~and below~~; or
- b) ~~13~~ **above 12** years of age ~~and above~~ but the offence is of violation and the child is not a recidivist.

Section 121

Retain as in the draft

Section 144

Retain as in the draft

Section 162

An amount of compensation ordered to be paid under this Act, and any amount of costs ordered by the Court to be paid, is a debt owed by the parents or guardian to the person in whose favour the order is made. *(Amended in dzongkha text)*

Section 172

If an offence committed by a child is a fourth degree felony and below, the Court may in lieu of imprisonment, order community service *(Amended in dzongkha text)*

Section 173

Except for recidivist or child habitually in conflict with law, the Court may make an order to pay fine in lieu of imprisonment, if

the offence is a felony of the fourth degree and below (*Amended in dzongkha text*)

Section 184 (b)

The presence of the child's parents, guardian or legal representative; and

Section 201

After submitting the copy of the family group conferencing report, and if the judge feels that such agreement would benefit the child, he may make the order accordingly. (*Amended in dzongkha text*)

Section 210

The female child in conflict with law shall be handled by female ~~doctors~~, **health personnel** correction officers and social worker.

Section 213

Retain as in the draft

Section 214

Retain as in the draft

Section 215

A person shall be liable for the offence of harsh and degrading correction or punishment, if the person subjects a child to harsh or degrading correction or punishment measures at home, in schools or in any other institutions. **Any corrective measure**

shall be culturally appropriate and in accordance with rules framed for the discipline of children. The offence of harsh and degrading correction or punishment shall be a **violation** ~~petty misdemeanor~~.

Section 216

Retain as in the draft

Section 218

Retain as in the draft

Section 219

Retain as in the draft

Section 222

A person shall be guilty of the offence of sale of a child, if a person ~~transfers~~ **sells** a child for remuneration or any other consideration. The offence of sale of child shall be felony of the third degree.

New section after 225

Any other crime committed against the child not covered under this Act shall be dealt in accordance with the Penal Code of Bhutan.

Section 231

The authorities of the closed facilities or any authorities under whom the child is detained or confined shall allow the parents,

guardians and legal representatives to visit their their child
atleast ~~twice~~ **thrice** a month.

Section 234

Retain as in the draft

Section 235

Retain as in the draft

Section 238

Retain as in the draft

Section 243

(j) Parent means biological father and mother of a child,
regardless of whether they are married or not **including a
person who has adopted the child.**

After submitting their general views, member In-Charge of the
Bill moved the motion that the Bill be passed. All the 39
members present voted “YES” and thus adopted the Bill on
December 1, 2010 at 10.15 am.

**PENAL CODE (AMENDMENT) BILL OF BHUTAN, 2010
1P6/GB5**

The Chairperson for Legislative Committee, Member In-Charge
of the Bill, moved the motion for leave to introduce the Bill and
adoption for discussion on November 22, 2010. The Member
In-Charge highlighted the importance of the Bill and also the

reasons for amending the Penal Code of Bhutan, 2004. The Bill was then adopted for discussion after no objection was raised to introduce the Bill.

The Member In-Charge moved the motion for the second reading of the Bill on November 23, 2010

Hon Chairperson said that the Penal Code which was drafted in line with the Thrimzhung Chenmo, 1959 is inconsistent with the Constitution of the Kingdom of Bhutan and other laws such as the Anti-Corruption Act of Bhutan. He also said that the Penal Code had to be amended in line with the changing time and to elucidate problems relating to rape penalties.

He said that one of the many resolutions adopted during the annual drangpons conference was to review and amend the Penal Code of Bhutan.

After deliberating on the general principles of the Bill, it was referred to Legislative Committee for discussion.

Hon Members of National Assembly deliberated on the Penal Code (Amendment) Bill, 2010 for Third Reading on November 26 and adopted the Bill with the followings amendments:

Section 3 (d)

A crime shall be a violation, if it is so designated in this Penal Code or other laws and provides that the convicted defendant

shall not be imprisoned but shall be fined the ~~daily~~ minimum ~~national~~ wage ~~rate~~ up to a maximum of ninety days.

Section 7(a)

Retain as in the Penal Code of Bhutan

In case of a felony of the first degree comprising of murder, treason or terrorism;

Section 14

A defendant convicted of a violation shall be fined the ~~daily~~ minimum ~~national~~ wage ~~rate~~ for a maximum of ninety days.

Section 18

The offence graded as value based under this Code shall be:

- (a) A felony of the third degree, if the value or the amounts involved in the crime exceed the total amount of the ~~daily~~ minimum ~~national~~ wage ~~rate~~ at the time of the crime for a period of thirty years or more;
- (b) A felony of the fourth degree, if the item of the crime is not of a type described in Section 18(a) and the value or the amounts involved in the crime exceed the total amount of the ~~daily~~ minimum ~~national~~ wage ~~rate~~ at the time of the crime for a period less than thirty years and for period of fifteen years or more;
- (c) A misdemeanor, if the item of the crime is not of a type described in Section 18 (a) & (b) above and the value or the

amounts involved in the crime exceed the total amount of the ~~daily~~ minimum ~~national~~ wage ~~rate~~ at the time of the crime for a period less than fifteen years and for a period of seven years or more; or

- (d) A petty misdemeanor, if the item of the crime is not of a type described in Section 18(a) (b) and (c) above and the value or the amounts are less than the total amount of the ~~daily~~ minimum ~~national~~ wage ~~rate~~ at the time of the crime for a period less than seven years.

Section 39

If the Court determines that compensatory damages are appropriate, then a defendant convicted of a crime shall pay appropriate compensatory damages at the rate of the ~~daily~~ minimum ~~national~~ wage ~~rate~~ at the time of the crime for:

- a) ~~Maximum of~~ Ten years to the surviving spouse or next of kin of the victim and the cost for forty-nine days for seven people towards the expenses incurred in the funeral rites of the deceased victim, when the crime has resulted in the death of the victim;
- b) ~~Maximum of~~ Ten years, if the crime causes permanent **total** disability to the victim;
- c) ~~Maximum of~~ Seven years, if the crime causes **permanent** partial disability to the victim;
- d) ~~Maximum of~~ Five years, if the crime **causes temporary total disability endangers the victim's life or causes serious bodily injury** to the victim;

~~(d1) Three years, if the crime causes temporary partial disability to the victim;~~

(e) The daily wage lost to the victim, when the crime has resulted in temporary loss of wage.

Title of Chapter 9

~~Juvenile Delinquency~~ **Child in Conflict with Law** and Mental Disability

Sub-title before Section 114

~~Juvenile~~ **Child in conflict with law**

Section 114

If the defendant is a child of ~~10-12~~ years and below, he/she shall not be held liable for any offence committed by him/her. ~~However, the Court may order the child to be sent to a remand home.~~

Section 115

If the defendant is a child of above ~~10-12~~ years, the Court ~~may~~ shall sentence the ~~juvenile~~ **child in conflict with law** to minimum of half of the sentence prescribed for the offence.

Section 116

If a ~~Juvenile child in conflict with law~~ is found guilty of an offence for which imprisonment is prescribed, the Court may in lieu of imprisonment consider the availability of other appropriate facilities and correctional institutions.

Section 117

If a ~~Juvenile child in conflict with law~~ is found guilty of an offence for which damages are appropriate, the Court may order the parents or legal guardian of the **child in conflict with law** ~~Juvenile~~ to pay the damages.

Section 154

A defendant shall be guilty of the offence of trafficking a person if the defendant **recruits**, transports, *sells or buys* **harbours or receives a person through the use of threat or force or deception** within, into or outside of Bhutan for ~~any~~ **the illegal** purpose ~~of exploitation~~

Section 177

A defendant shall be guilty of the offence of rape, if the defendant has **commits any act of** sexual intercourse ~~with another~~ **penetration—whatever its nature against any other** person:

- (b) Compels the other person to submit to sexual intercourse by force, or by threat of imminent death, bodily injury or serious bodily injury or the commission of a felony to that person or a third person;
- (c) Substantially impairs the other persons ability to appraise or control the conduct by administering drugs, intoxicants, or other substances without consent for the purpose of preventing the person's resistance to the sexual intercourse ~~penetration~~, or

- (d) Renders the other person unconscious for the purpose of committing sexual intercourse ~~penetration~~.

Section 181

A defendant shall be guilty of the offence of statutory rape, if the defendant engages in **any act of** sexual intercourse ~~penetration whatever its nature~~ with a child of ~~below thirteen~~ **twelve years and below**, or an incompetent person, either with or without knowledge of the other person being a child or incompetent person.

Section 182

As in the Penal Code of Bhutan

The offence of statutory rape shall be a felony of the second degree.

Section 183

Rape of a Child above ~~thirteen~~ twelve years of age

A defendant shall be guilty of the offence of rape of a child above the age of ~~thirteen~~ twelve years if the defendant **commits any act of** sexual intercourse ~~penetration against~~ a child between the ages of ~~thirteen~~ twelve to eighteen years. **However, consensual sex between children above the age of sixteen years shall not be deemed to be rape.**

Section 184

Grading of Rape of a child above twelve years of age

Retain as in the Penal Code of Bhutan

The offence of rape of a child above the age of twelve years shall be a felony of the third degree.

Section 191

Gang rape of a child ~~below thirteen~~ twelve years of age **and** below

A defendant shall be guilty of the gang rape of a child ~~below the age of thirteen~~ twelve years **and below**, when two or more persons engage in **any act of** sexual intercourse ~~penetration~~ **whatever its nature** with a ~~child below the age of thirteen~~ twelve **years and below**.

Section 192

Grading of Gang rape of a child below twelve years of age

Retain as in the Penal Code of Bhutan

The offence of gang rape of a child ~~below~~ twelve years ~~of age~~ **and** below shall be a felony of the first degree.

Section 193

A defendant shall be guilty of the offence of gang rape of a child above the age of ~~thirteen~~ twelve years, when two or more persons engages in **any act of** sexual intercourse ~~penetration~~

whatever its nature with a child between the age of ~~thirteen~~ twelve and eighteen years.

Section 194

The offence of gang rape of a child ~~above thirteen~~ ~~twelve~~ years of age shall be a felony of the ~~first~~ second degree ~~above the age of twelve years and below sixteen years shall be a felony of first degree.~~ **The offence of gang rape of a child above the age of sixteen and below eighteen years shall be a felony of second degree.**

Section 197

Retain as in the Penal Code of Bhutan

A defendant shall be guilty of the offence of custodial rape, if the defendant who has custody of a person, or being a legal guardian takes advantage of one's official position and engages in sexual intercourse with such person.

Section 199

Retain as in the Penal Code of Bhutan

A defendant shall be guilty of marital rape, if the defendant engages in sexual intercourse with one's own spouse without consent or against the will of the other spouse.

Section 206

Retain as in the Penal Code of Bhutan

The offence of sexual harassment shall be a petty misdemeanor.

Section 207

Retain as in the Penal Code of Bhutan

A defendant shall be guilty of the offence of incest, if the defendant engages in sexual intercourse or any other sexual conduct with a person to whom the defendant is related by consanguinity or affinity in such a way that they cannot legally marry except otherwise provided in other laws.

Section 211

Retain as in the Penal Code of Bhutan

A defendant shall be guilty of the offence of bestiality, if the defendant engages in sexual intercourse or other sexual contact with an animal.

New section 214 (A)

Unauthorized Disclosure of Identity

A defendant shall be guilty of the offence of unauthorized disclosure of identity if the defendant discloses the identity of a rape victim in the media without the consent of the victim.

New Section 214 (B)

Grading of Unauthorized Disclosure of Identity

The offence of unauthorized disclosure of identity shall be a ~~misdemeanor~~ violation.

Section 226(a)

Retain as in the Penal Code of Bhutan

The offence of pedophilia shall be:

A misdemeanor; or

Section 247

A defendant shall be guilty of the offence of armed robbery, if in the course of committing ~~the~~ a robbery, **the defendant is armed with a deadly weapon** ~~there exists three or more persons.~~

Section 260

In this Penal Code, the term “service” shall include labour, professional services, transportation services, telecommunication/**information technology** services, including cable television, gas, electricity, water, ~~or other public service~~, accommodations in a hotel, and restaurant service, **or any other such services.**

Section 278

The offence of money laundering shall be a value-based sentencing **or a felony of the third degree, whichever is higher.**

Chapter 20

Delete the entire chapter except for sections 294 and 295 (Official misconduct) to be inserted after section 316 as section 316 A and 316 B.

Section 307

A defendant shall be guilty of the offence of counterfeiting, if the defendant knowingly manufactures, distributes, or sells counterfeit ~~medicinal~~ products, false currency, coin or bank notes.

Section 309(e)

Makes a false or misleading written statement for the purpose of promoting the sale of a ~~security~~ **financial services** or omits information required by law to be disclosed in written document relating to a ~~security~~ **all financial services**;

Section 319

The offence of defamation shall be:

- (a) A felony of the fourth degree and pay compensation for a minimum of one month and a maximum of three years to the aggrieved party calculated in accordance with the ~~daily~~ minimum ~~national~~ wage rate, if the defamation includes murder, armed robbery, terrorism or treason; or
- (b) A petty misdemeanor and pay compensation to the aggrieved party for a minimum of one month and maximum of three years calculated in accordance with the ~~daily~~ minimum ~~national~~ wage rate, if the defamation includes any matter other than murder, armed robbery, terrorism or treason.

Section 321

The offence of libel shall be:

- (a) A felony of the fourth degree and pay compensation for a minimum of one month and a maximum of three years to the aggrieved party calculated in accordance with the ~~daily~~ minimum ~~national~~ wage ~~rate~~, if the libel includes murder, armed robbery, terrorism or treason; or
- (b) A petty misdemeanor and pay compensation to the aggrieved party for a minimum of one month and maximum of three years calculated in accordance with the ~~daily~~ minimum ~~national~~ wage ~~rate~~, if the libel includes any matter other than murder, armed robbery, terrorism or treason.

Section 327

~~(b)Engages~~ **Collaborates** with the known enemy of Bhutan;

Section 372

Retain as in the Penal Code of Bhutan

The offence of cantankerous litigation shall be a petty misdemeanor.

Section 376

Retain as in the Penal Code of Bhutan

- (b) A felony of the fourth degree, if the person used for prostitution is a child of above twelve years and below 18 years; or

- (c) A felony of the third degree, if the person used for prostitution is a child of twelve years and below.

Section 378

Retain as in the Penal Code of Bhutan

- (b) A felony of the fourth degree, if the person used for prostitution is a child of above twelve years and below 18 years; or
- (c) A felony of the third degree, if the person used for prostitution is a child of twelve years and below.

Section 380

- (b) Second degree, if the person is a child of above twelve years and below 18 years; or
- (c) First degree, if the person is a child of twelve years and below

Section 385

Use of ~~tobacco or other~~ health hazard substances

A defendant shall be guilty of the offence of use of ~~tobacco or other~~ health hazard substances, if the defendant uses ~~tobacco or other~~ health hazard substances **other than tobacco, narcotic drugs or psychotropic substances** in the prohibited places.

Section 386

Grading of use of ~~tobacco or other~~ health hazard substances

The offence of use of ~~tobacco or other~~ health hazard substances shall be a violation

Section 387

Illegal sale of ~~tobacco or other~~ health hazard substances

A defendant shall be guilty of the offence of illegal sale of ~~tobacco or other~~ health hazard substances, if the defendant illegally sells any ~~tobacco or other~~ health hazard substances **other than tobacco, narcotic drugs or psychotropic substances.**

Section 388

Grading of illegal sale of ~~tobacco or other~~ health hazard substances

The offence of illegal sale of ~~tobacco or other~~ health hazard substances shall be a violation.

Section 410

A defendant shall be guilty of the offence of criminal nuisance, if the defendant knowingly or recklessly creates or maintains a condition including spreading of dangerous diseases that ~~injures~~ **causes injury** or endangers the safety or health of **an individual or** the public.

Section 411

The offence of criminal nuisance shall be:

- (a) misdemeanor;
- (b) **felony of fourth degree, if the dangerous disease has high likelihood of causing death;**

Section 416

A defendant shall be guilty of the offence of illegal arrest, if the defendant being a police officer, **law enforcement personnel** or other authorized government official arrests and detains a person without probable cause.

New Section 463(A)

~~Proselytization~~ **Compelling others to belong to another faith**

A defendant shall be guilty of the offence of ~~proselytization~~ **compelling *others to belong to another faith*** if the defendant uses coercion or other forms of inducement to cause the conversion of a person from one religion or faith to another.

New Section 463(B)

~~Grading of Proselytization~~ **Compelling others to belong to another faith**

The offence of ~~proselytization~~ *compelling others to belong to another faith* shall be a felony of ~~misdemeanor~~ **fourth degree**.

Section 471

The offence of the unauthorized opening of mail or parcel shall be a **misdemeanor** ~~felony of the fourth degree~~.

Section 487

The offence of display of a weapon shall be a: ~~felony of the fourth degree~~

- (a) **misdemeanour** if the weapon is a firearm; or
- (b) **petty misdemeanor if the weapon is other than firearms.**

Section 491

Retain as in the Penal Code of Bhutan

The offence of the risking of the protected species shall be a misdemeanor

Section 496

A defendant shall be guilty of the offence of illegal cultivation, Production or manufacturing of controlled substances, if the defendant unlawfully cultivates, produces, or manufactures:

- a) Coca plant or any of its derivatives including cocaine
- b) Opium, poppy or any of its derivatives;
- c) Any narcotic drug or psychotropic substance; or
- c1) Cannabis and its derivatives**
- d) Any controlled medicinal products and precursor chemicals.

Section 497

Retain as in the Penal Code of Bhutan

The offence of illegal cultivation, production, or manufacturing of controlled substances shall be a felony of the fourth degree.

Section 501

Retain as in the Penal Code of Bhutan

The offence of possession of a controlled substance shall be:

- (a) A petty misdemeanor; or
- (b) A misdemeanor, if the amount possessed is of a quantity such that the Court is of the opinion that the defendant intended to sell.

Section 506

Retain as in the Penal Code of Bhutan

A defendant shall be guilty of the offence of illegal sale and use of harmful chemical substance, if the defendant except for the household purpose unlawfully sells, imports, exports or uses any harmful chemical substances including pesticides without any licenses or authorization.

Section 507

The offence of the illegal sale and use of harmful substances shall be

- a) A misdemeanor **if found selling; or**
- b) **Petty misdemeanor if found using.**

After submitting their general views, member In-Charge of the Bill moved the motion that the Bill be passed. All the 41 members present voted “YES” and thus adopted the Bill on November 30, 2010 at 10.37 am

**ANTI CORRUPTION (AMENDMENT) BILL OF
BHUTAN, 2010 1P6/GB6**

The Chairperson for Ethics and Credential Committee, Member In-Charge of the Bill, moved the motion for leave to introduce the Bill and adoption for discussion on November 22, 2010. The Member In-Charge highlighted the importance of the Bill and also the reasons for drafting the Bill. The Bill was then adopted for discussion after no objection was raised to introduce the Bill.

The Member In-Charge moved the motion for the second reading of the Bill on November 23, 2010

Hon Chairperson informed the House that the Anti Corruption (Amendment) Bill is in line with the United Nations Convention against Corruption. The new Bill contains provisions on public service code of conduct, active bribery of foreign public servants, active trading influence, money laundering, mutual legal assistance, failure to declare conflicts of interest and asset declaration.

After deliberating on the general principles of the Bill, it was referred to Ethics and Credential Committee for discussion.

Hon'ble Members of the National Assembly deliberated on the Anti Corruption Bill 2010 for the Third Reading on

November 29 and 30, 2010 and adopted the Bill on December 3, 2010 with the following amendments:

Preamble

~~Recalling His Majesty's vision of a democracy to pursue~~
Bearing in mind the pursuit of Gross National Happiness, to fulfill the people's aspirations and needs, and enhance transparent and accountable 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 ;the fundamental duty of every person to uphold justice ; and to act against corruption~~ **under the Constitution; and also to educate the public about corruption;**

~~Concerned about the seriousness of problems and threats posed by corruption to the stability and security of the Bhutanese society, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development the rule of law~~ **and jeopardizing sustainable development;**

~~Acknowledging the fundamental principles of due process of law in a criminal~~ **proceeding** and in a civil or administrative proceedings;

~~The Parliament of Bhutan has enacted as follows~~ **Parliament of the Kingdom of Bhutan do hereby enact the Anti Corruption Act of Bhutan 2010 on Day of the ... Month of the Iron Male Tiger Year of the Bhutanese Calendar corresponding to theDay of, 2010 at its Session of the First Parliament as follows:**

Section 1

Short Title, Commencement and Extent

- (1) This Act **shall**:
- (a) ~~may~~ Be called the Anti-corruption Act **of Bhutan 2010;**
and
 - (b) ~~shall~~ Come into force on the .. day of ... ~~2010~~
...Month of the Iron Male Tiger Year of the
~~corresponding toof~~ Bhutanese calendar **corresponding to theDay of2010; and**
 - (c) **Extend to the whole of the Kingdom of Bhutan.**

New clause

Repeal

The Anti Corruption Act of Bhutan 2006 is hereby repealed.

Section 2

Principal objectives of this Act

- (1) The principal **objectives** 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) prevent corruption involving or affecting authorities and officials, whether public or private;
- (ii) 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
- (iii) investigate corruption involving or affecting authorities and officials, whether public or private.

Section 3 (1)

The following shall be held liable for the commission of an ~~corruption~~ offence under this Act

Section 3 (1)(a)(iv)

Members of the **Royal Bhutan Police Force** .

Section 4 (1) (d)(iv)

a company in which that person or his/her 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/her nominee, holds the a controlling interest; or shares **as per the prescribed limit of relevant laws; amounting to more than thirty percent of the total share capital;**

New clause in section 4(bb)

(x) Armed Forces

(xi) Constitutional offices

New clause 4(dde)

“Public resources” include:

- (i) moneys paid from the Consolidated Fund of Bhutan;**
- (ii) public property, including human resources, authority, information, time, natural resources; or**
- (iii) any moneys, loan, grant, or donation for the benefit of the people of Bhutan or a section thereof, whether mobilized through domestic or external sources.**

New clause 4(ffg)

“Responsible person” shall, for the purpose of this Act, mean a person who has no record of corruption.

Section 4 (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;~~

New clause

“Business” means any business, trade, occupation, profession, calling, industry or undertaking of any kind, or any other activity carried on for gain or profit by any

person within Bhutan or elsewhere, and includes all property derived from or used in or for the purpose of carrying on such other activity, and all the rights and liabilities arising from such other activity;

New clause

“Competent court” means a court within Bhutan having jurisdiction and due legal authority to deal with the subject matter of this Act;

New clause

“Formal University Degree” means a degree not lower than a Bachelor’s Degree conferred on a person after having pursued a formal course of study at a University or an institution of higher learning recognized by the Royal Government of Bhutan and attested by a competent authority in the Kingdom;

New clause

“Private entity” means any person or organization not being a public agency and it also means a voluntary organization, charitable institution, club, company, firm or partnership;

Section 4 (aa)

“Property or asset ” means money or any other corporeal or incorporeal, movable or immovable, tangible or intangible

thing, whether situated in Bhutan or elsewhere and includes any rights, privileges, claims, securities and any interest therein and all proceeds thereof.

New sub clause in Section 4 (bb)

- **the Executive;**
- **the Legislative;**
- **the Judiciary;**

Section 4 (bb) (iv)

a cabinet, ministry, department, commission, service or undertaking of the government of Bhutan or local governments;

New sub section in Section 4 (bb)

- **the Armed Forces;**
- **the Royal Bhutan Police;**
- **a government company or government controlled company;**
- **a company or other body or organization established by an Act of Parliament or out of moneys provided by Parliament or otherwise set up partly or wholly out of public funds;**
- **any commission, committee or other body of persons, whether paid or unpaid, appointed by or on behalf of the Government or local government or by a public corporation or company in which the Government owns or has controlling power or interest;**

- **any commission or committee established by or under the Constitution or by or under any law or by the Government;**
- **any educational or similar institution financed wholly or partly from public funds; and**
- **any organization, whether local or foreign, established to render any voluntary social service to the public or any section thereof or for other charitable purposes, which receives funds or other donation for the benefit of the people of Bhutan or a section thereof;**
- **federation or board that concern with sports;**
- **a co-operative society whether or not registered; or**
- **any person as the Commission may prescribe from time to time by an order; (these are in addition to what is already mentioned in (bb);**

New clause

“Public office” includes judicial office or any office or position (whether fulltime or not) held by any person engaged in a public agency or private entity or any office or position (whether fulltime or not) in respect of which emoluments or allowances are payable from public funds or from the Consolidated Fund of Bhutan;

Section 4 (dd)

“Public servant” means a person who is a member, an officer, an employee of a public agency, whether appointed or elected,

whether permanent or temporary, whether paid or unpaid **and includes a person:**

- (i) **who is a civil servant within the meaning of the Civil Service Act , as amended; or**
- (ii) **receiving salary, allowances, benefits, or emoluments from public funds;**

New clause

“Travel documents” includes a passport;

New clause

“Value” means face, par, or market value or, or cost price, either wholesale or retail, whichever is greater.

Section 5 (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.

Section 7 (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.

Section 7 (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.~~

Section 7 (3)

~~Notwithstanding subsections(1) and (2) of this section, the ministry of finance shall ensure availability of funding for adhocases and for complex investigation over and above the budget provided under subsection (1) of this section.~~

Section 8 (1)

The Commission shall determine its organizational structure **in consultation with the Royal Civil Service Commission** and administer it independently.

Section 8 (2)

The Commission shall have independence and powers to regulate appointments, management and dismissal of its staffs other than a Members in accordance with **Civil Service Act of Bhutan** ~~the Anti corruption Commission Staff Service Rules.~~

Section 9

Cooperation with other national agencies bodies

Section 9(1)

In exercising its powers or **discharging its** functions ~~relating to the investigation of an offence~~ under this Act, the Commission:

Section 9(1)(b)

may, **as it deems fit**, work in co-operation with:

- (i) the Royal Audit Authority, the Royal Monetary Authority **or Financial Intelligence Unit**, the Department of Revenue and Customs, the Financial Institutions and such other persons and public agencies ~~as the Commission thinks appropriate~~; (ii) **any person or body in the private sector; or**
- (iii) any foreign government, or international or regional organization.

Section 9(2)

The Commission may consult with and disseminate intelligence and information to law enforcement agencies, the Royal Monetary Authority **or Financial Intelligence Unit** and the Department of Revenue and Customs and such other persons and public agencies as the Commission ~~thinks appropriate~~ **deems fit**.

Section 10 (1)

~~The Commission shall, as provided for in section (1) of article (27) of the Constitution, comprise of a Chairperson and~~

~~two other Members.~~ **The Commission shall be an independent authority comprising of a Chairperson and two Members.**

Section 11(1)

~~Selection~~ **Appointment** of the Chairperson and Members

The Druk Gyalpo shall, by warrant under His hand and seal, appoint the chairperson and the Members of the commission from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.

Section 12 (1)

Eligibility and qualification of the **Chairperson** and Members:

A person to ~~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 as the Chairperson or the member, if he/she is:~~ **to be eligible to hold office as a Chairperson and a member of the Commission shall.**

~~**Section 12(2)**~~

~~a person shall, in addition to the qualification as provided for in subsection (1) of this section, ne qualified for appointment as a Chairperson if the person fulfills the qualification criteria spelt out in paragraphs (e), (d) and (f) through (i) of subsection (3) of this section.~~

Section 12(3)

~~A person shall be qualified for appointment as a Member, if the person:~~

- (a) ~~is~~ **be** a natural born citizen of Bhutan;
 - (b) ~~is~~ not married to a person who is not a citizen of Bhutan;
 - (c) ~~has~~ **have** a minimum qualification of ~~Bachelor's formal~~ **university** Degree ;
 - (d) has a minimum work experience *in* government and public services of ~~20~~ **25** years in respect of a candidate for the Chairperson and ~~15~~ **20** years in respect of a candidate for a Member;
 - (e) ~~has~~ **have** no political affiliation;
 - (f) ~~is~~ not **have been** terminated or compulsorily retired from the **Government or** public service on disciplinary grounds;
 - (g) ~~is~~ not **have been** convicted of a criminal offence **and sentenced to imprisonment**;
 - (h) ~~is~~ not **be** in arrears of taxes or other dues to ~~a~~**the Government and** public entity;
 - (i) ~~is~~ not holding any office of profit whether public or private or in Civil Society Organizations.
- **not have been disqualified under any other laws;**

Section 13 (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.~~

Section 14 (1)

Oath or affirmation of office

The Chairperson **and the Members** shall before assuming office, take an oath or affirmation of office **in the form and manner prescribed in the Third Schedule** of the Constitution.

Section 14(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.~~

Section 15 (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.~~

Section 15 (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~~ **is** earlier.]

Section 16

Amended in Dzongkha Version.

Section 16 (1)

Salary, allowances and benefits of **the Chairperson** and Members

The salary , allowances, benefits and other service conditions of **the Chairperson and** 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.

Section 17

(1) The Members and staffs shall always maintain strict discipline and shall, in particular:

- (a) respect and abide by all applicable Bhutanese laws, including all lawful and reasonable directions given by lawful individual or an authority when excising their official functions or powers;**
- (b) at all times conduct themselves in a way that upholds this Code and preserves and enhances the public's confidence and trust in the integrity, impartiality, effectiveness and good reputation of the Commission;**

- (c) act objectively, honestly, equitably, diligently and in a fair, just, Courteous and transparent manner in the exercise of their official functions or powers;**
- (d) be accountable for their decisions and actions to the public and submit themselves to whatever scrutiny is appropriate to their functions or powers;**
- (e) not act arbitrarily to the detriment of a person, group or entity and have due regard for the rights, duties and proper interests of all other persons in the performance of their functions or powers;**
- (f) not allow their official functions or powers to conflict with their own or their relatives' personal or financial interest;**
- (g) not engage in an activity or transaction or acquire a position or function, whether paid or unpaid, that is incompatible with or detracts from the proper exercise of their official functions or powers;**
- (h) declare their personal assets, income and liabilities, as well as, those of their spouses and/or dependants;**
- (i) not, directly or indirectly, solicit or accept gifts, hospitality or other benefits of any kind which might be seen to compromise their personal judgment or integrity except as otherwise provided for by the laws and/or rules;**

- (j) not permit themselves to be put, or appear to be put, in a position of obligation to return a favour to another person or entity;**
- (k) not, directly or indirectly, take advantage of their official position for the improper advancement of their own or their relatives' personal or financial interest;**
- (l) both while in service as well as thereafter, keep confidential a matter of a confidential nature in their possession and take appropriate steps to protect its security and confidentiality;**
- (m) not withhold official information that should properly be released to another person or entity or to public nor knowingly provide false or misleading information in response to a request for information that is made for official purposes;**
- (n) at all times ensure that the staff and public property, facilities, services and financial resources with which they are entrusted are managed and used effectively, efficiently and economically for which they are intended to be used and protect them against damage, loss, destruction and abuse;**
- (o) establish merit as the fundamental principle in employment, promotion and other personnel actions and ensure that appropriate checks on the integrity of the candidate for employment are carry out as lawfully required;**

- (p) ensure that they remain apolitical and political activities do not influence or conflict with their official functions or powers;**
 - (q) take all necessary steps to ensure that the public servant's privacy is appropriately respected and declarations provided for in this Code are kept confidential unless otherwise provided for by law;**
 - (r) not give preferential treatment or privileged access to their service to a former public official;**
 - (s) carry out risk assessment of posts or activities vulnerable to corruption within the Commission, and hold discussions with office holders on how to protect both them and the activities from corruption; and**
 - (t) comply with any other conduct requirement that may be prescribed by rules made by the Commission from time to time.**
-
- (2) This Code shall be considered as a part of the employment terms and conditions of a Member and staff and its breach shall result in disciplinary actions.**
 - (3) The Commission shall promote and support this Code by leadership and example in accordance with the policies and purposes of the Commission.**
 - (4) The Commission shall be answerable for an act or omission of its staff which are inconsistent with this Code or the policies and purposes of the Commission if**

the Commission has not taken reasonable steps required from it to prevent such an act or omission.

- (5) The Commission shall take reasonable steps to prevent corruption by its staffs in relation to their office by emphasizing and enforcing rules, providing appropriate education or training, being alert to signs of financial or other difficulties of its staff, and providing by its personal conduct an example of propriety and integrity.**
- (6) The Members or staffs of the Commission who believe they are being required to act in an unlawful, improper or unethical way, which involves maladministration, or which is otherwise inconsistent with this Code shall file a complaint with the designated authorities.**
- (7) The Members or staffs shall file a complaint with the designated authorities if they become aware of breaches of this Code by another Member or a staff, including pressure or undue influence applied to them by a colleague or by others.**
- (8) The Commission shall ensure that complaint or information contained therein is treated confidentially and the complainant's career is not adversely affected.**
- (9) The Commission shall ensure that no prejudice is caused to staffs who file a complaint about the breaches of this Code on reasonable grounds and in good faith.**

- (10) The Commission shall be responsible for implementing this Code by developing its own code with more detailed policies, rules, training, and procedures that specify in detail what is expected and what is prohibited based on this Code, tailored to the powers or functions it is expected to carry out and to suit its particular requirements and circumstances.**
- (11) The Commission shall, in accordance with the procedures prescribed in this Act and/or rules made by the Commission from time to time, impose the following sanctions on its staff who is found to have breached this Code:**
- (a) termination from service;**
 - (b) compulsory retirement;**
 - (c) suspension;**
 - (d) withholding of promotion;**
 - (e) demotion;**
 - (f) re-assignment of duties;**
 - (g) reduction in salary;**
 - (h) deductions in salary, by way of fine;**
 - (i) withholding of training ; and**
 - (j) a reprimand.**

Where the conduct involved also constitutes a criminal offence which is punishable under any other law, subsection (11) shall not be considered as a limitation.

Section 19(1)

~~Resignation of Members~~ Voluntary resignation

~~The Members may resign from their office by giving one month's prior notice to the Druk Gyalpo. The Chairperson or in the case of other Members through the Chairperson may resign from Office before the expiry of their term by making a written submission before the Druk Gyalpo within thirty days' notice.~~

Section 19(2)

~~Members other than the Chairperson shall send a copy of their resignation letter to the Chairperson for information.~~

Section 19(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.~~

Section 20(1)

~~The Chairperson shall be removed from his or her office only by way of impeachment in accordance with article (32) of the Constitution.~~ **Except through the process of impeachment**

as prescribed by law, the Chairperson shall not be removed from Office.

Section 21

- (a) ~~incapacity to perform their official functions whether arising from infirmity of body or mind;~~ **Physical, mental, or other incapacity of a permanent nature;**
- (b) ~~incompetence to perform their official functions;~~ **Any violation of this Act;**
- (c) ~~serious misconduct.~~ **Conviction under any other law.**

New sub clause in section 21 (1)

- **incompetence to perform their official functions; or**
- **violation of code of conduct;**
- **Corruption;**
- **Violation of the constitution.**

Section 21(3)

~~The senior most Justice of the Supreme Court~~ **Chairperson** shall hear the disciplinary proceedings if formal charges against the Members are filed for incompetence to perform their official functions or **violation of code of conduct** ~~serious misconduct.~~

Section 21(4)

The incapacity to perform their official functions whether arising from infirmity ~~Infirmity~~ of body or mind of a Member shall be determined by a head of Medical Department who shall obtain ~~the an~~ advice of a relevant medical specialist.

Section 21(5)

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

Section 23 (1)

~~Post-employment restrictions on the Chairperson and Members~~

~~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.~~

Section 23(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.~~

Section 25(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.

Section 26 (1) (d)

Commence an inquiry **or investigation** on its own motion even without a complaint by any person and without informing any person or authority.

Section 26 (1) (g)

~~Blacklist or debar~~ **upon finding of a *prima facie* case of corruption, suspend a license, or prohibit an corrupt** individual or entity whether national or foreign from participating in contractual relations with ~~Government~~. **public agencies till pending the outcome of the case.**

Section 26 (1) (h)

revoke work order, appointment, ~~license~~, lease or contractual transaction that is obtained by corrupt means;

Section 26 (1) (f)

exchange information with an appropriate ~~bodies~~ **entity**, domestically and internationally **with or without a request**, involved in anti-corruption work, including the relevant law enforcement agencies as may be required;

Section 26 (1) (j)

~~Take any other powers which in the opinion of the Commission may be necessary~~ **steps** for the ~~to~~ prevention of, and the ~~fight~~ **combat** corruption.

Section 27 (f)

receive and consider a complaint of the commission of an ~~corruption~~ offence under ~~chapter IV~~ of this Act lodged with it by ~~any~~ a person or authority and investigate such of the complaint as the Commission consider practicable;

Section 28 (2)

~~The Commission shall appoint or employ staff under the Anti-corruption Commission Staff Service Rules established by the Commission.~~

Section 28 (3)

~~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.~~

Section 28 (4)

~~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.~~

Section 28 (5)(f)

~~regulate~~ **administer** appointments, management and dismissal of staff of the Commission; and

Section 29 – title

~~Oath or affirmation of office~~ **Oath of affirmation and allegiance**

Section 30 (1)

The appointment, terms and conditions of service of staffs of the Commission shall be **in accordance with the Civil Service Act** ~~determined by the Anti corruption Commission Staff Service Rules.~~

Section 32 (1)

A person who impersonates a Member or a staff of the Commission, ~~including the Secretary~~, is guilty of an offence.

Section 32 (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.~~ **An offence under this section shall be a Misdemeanor.**

Section 35 (4)

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

Section 36(1)

~~Functional~~ Immunity from prosecution

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. **Such immunity shall not cover corrupt acts committed by any member of the commission or staff or a person acting for the commission in connection with the discharge of their official duties.**

Section 36(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.~~

Section 39 (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.

Section 40 (4)

Without prejudice to subsection (5), where public servants or other individuals using public resources who is required by this Act to file their declaration ~~knowingly~~, **without reasonable justifications**, fails to do so within **thirty days from the expiry of the due date** ~~a prescribed period of time~~, shall be levied a fine equivalent to one day's ~~daily minimum wage~~ **salary for each day of** such failure subsists.

Section 40 (5)

Where public servants or other individuals using public resources who is required by this Act to file their declaration ~~knowingly~~, **without reasonable justifications**, fails to do so **after one month of expiry of due date** shall be **considered as**

non filing and will be levied a fine equivalent to **three month's gross salary** ~~.year's daily minimum wage.~~

Section 40 (6)

~~For the purposes of subsection (5), non filing of declarations means declarations not filed after one month from the due date.~~

New clause

A public servant who, without reasonable justifications, commits an offence under subsections (4) and (5) of this subsection for more than once shall be subject to appropriate disciplinary sanctions, as may be prescribed in the Asset Declaration Rules in addition to fines levied under subsection (4) and (5) .

Section 40 (7)

Agency heads who are required to perform their functions in relation to the administration of declarations in their agencies fails to do so, **without reasonable justifications**, shall be levied a fine equivalent to **one month's gross salary** ~~one year's daily minimum wage.~~

Section 40(8) (f)

such other guidance as **which** in the opinion of the Commission may be necessary for the effective implementation of ~~this section~~ **declaration system.**

Section 41 (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, **as well as, those of their spouse and/or dependants**, to the Commission.

Section 42 (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.~~

Section 42 (3) (d)

the requirement for the Committee to follow or guarantee ~~the parties~~ **a party** involved a minimum due process **or procedural fairness**;

Section 42 (3) (e)

the manner in which suspension and/or debarment proceedings shall **ould** be conducted and decided ~~guaranteeing the parties involved a minimum due process or procedural fairness.~~

Section 43 (a)

inform ~~a person~~ **the public** on the Anti-corruption Act and other anti-corruption related laws, and ensure free access to such information by **the public** ~~person~~.

Section 44 (4)

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

Section 45 (1)

A person who ~~with intention~~ promises, offers or gives any advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant.

Section 45 (1) (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~~ **another** public servant in ~~his~~ **the latter's capacity as a public servant; or**

Section 45 (2) (a)

is for the benefit of such public servant who ~~is to~~ performs, or **fails to performed**, the acts as defined in paragraphs (a), (b) and (c) of subsection (1) or for another person or entity; actually influenced the public servant's acts **or omissions** as defined in

paragraphs (a) **through (bd)** and ~~(e)~~ of subsection (1) **of this section.**

Section 45 (3)

A ~~person guilty of~~ an offence under this section shall **be misdemeanor or value based sentencing, whichever is higher** ~~on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~

Section 46 (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:

Section 46 (1) (a)

performing or abstaining from performing or having performed or abstained from performing **directly or indirectly** an act in one's capacity as a public servant;

Section 46 (1) (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~~ **another** public servant in ~~his~~ **the latter's capacity as a public servant; or**

Section 46 (2) (a)

is for the benefit of such public servant who ~~is to~~ performs, or ~~has~~ **fails to** performed, the acts as defined in paragraphs (a) **through (d)**, ~~(b) and (c)~~ of subsection (1) or for another person or entity;

Section 46 (2) (c)

actually influenced the public servant's acts **or omissions** as defined in paragraphs (a) **through (d)**, ~~(b) and (c)~~ of subsection (1).

Section 46 (3)

~~A public servant guilty of an offence under this section shall be a misdemeanor or value based sentencing, whichever is higher, on conviction, to imprisonment for a term not less than five years to not more than nine years.~~

Section 47 (1)

A person who ~~with intention~~ promises, offers or gives to a foreign public servant any undue advantage, in order:

Section 47 (4)

~~A person guilty of an offence under this section shall be a misdemeanor or value based sentencing, whichever is higher, on conviction be liable to imprisonment for a term not less than five years to not more than nine years.~~

Section 48 (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.

Section 48 (3)

~~A foreign public servant guilty of an offence under this section shall be a misdemeanor or value based sentencing, whichever is higher on conviction, be liable to imprisonment for a term not less than five years to not more than nine years.~~

New clause

Active bribery in relation to auctions

- (1) A person, who, directly or indirectly, promises, offers or gives an advantage to another person as an inducement to or reward for or otherwise on account of that another person refraining or having refrained from bidding at an auction conducted by or on behalf of a public agency shall be guilty of a corruption offence.**
- (2) An offence under this section shall misdemeanor or value based sentencing, whichever is higher.**

New clause

Passive bribery in relation to auctions

- (1) A person who, directly or indirectly, solicits or accepts an advantage from another person as an inducement to or reward for or otherwise on account of that other person refraining or having refrained from bidding at an auction conducted by or on behalf of a public agency shall be guilty of an corruption offence.**
- (2) An offence under this section shall misdemeanor or value based sentencing, whichever is higher.**

Section 49 (2)

~~A public servant guilty of an offence under this section shall be a felony of the fourth degree misdemeanor or value based sentencing, whichever is higher, on conviction be imprisonment for a term not less than three years to not more than five years.~~

Section 50 (2)

~~A person guilty of an offence under this section shall misdemeanor or value based sentencing, whichever is higher, on conviction be liable to imprisonment for a term not less than three years to not more than five years.~~

Section 51 (2)

~~A person guilty of an offence under this section shall be misdemeanor or value based sentencing, whichever is~~

~~higher, on conviction be liable, to imprisonment for a term not less than three years to not more than five years.~~

Section 52 (2)

~~A person guilty of an offence under this section shall be~~
misdemeanor or value based sentencing, whichever is
~~higher, on conviction be liable to imprisonment for a term not less than three years to not more than five years.~~

Section 53 (2)

~~A person guilty of an offence under this section shall be~~
misdemeanor or value based sentencing, whichever is
~~higher, on conviction be liable to imprisonment for a term not less than three years to not more than five years.~~

Section 54 (2)

~~A person guilty of an offence under this section shall be~~
misdemeanor or value based sentencing, whichever is
~~higher, on conviction be liable to imprisonment for a term not less than three years to not more than five years.~~

Section 55 (2)

~~A person guilty of an offence under this section shall be~~
misdemeanor or value based sentencing, whichever is
~~higher, on conviction be liable to imprisonment for a term not less than three years to not more than five years.~~

New clause

Protection of public property and revenue

- (1) A person is guilty of a corruption offence if the person fraudulently or otherwise unlawfully:**
- (a) acquires public property or a public service or benefit;**
 - (b) mortgages, charges or disposes of any public property;**
 - (c) damages public property, including causing a computer or any other electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service; or**
 - (d) fails to pay taxes, fees, levies or charges payable to a public agency or effects or obtains an exemption, remission, reduction or abatement from payment of such taxes, fees, levies or charges.**
- (2) A person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property shall be guilty of a corruption offence if the person:**
- (a) fraudulently makes payment or excessive payment from public revenues for:**
 - (i) sub-standard or defective goods;**
 - (ii) goods not supplied or not supplied in full; or**

- (iii) services not rendered or not adequately rendered;**
 - (b) willfully or negligently fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or**
 - (c) engages in a project without prior planning.**
- (3) 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 so paid or valued-based sentence.**

New clause:

False claims by public servants

- (1) A public servant who:**
- (a) is employed in such a capacity as to require one or enable one to furnish returns or statements touching a sum payable or claimed to be payable to oneself or to another person, or touching any other matter required to be certified for the purpose of a payment of money or delivery of goods to be made to another person; and**
 - (b) makes a return or statement touching such matter which is, to one's knowledge, false in any material particular, shall be guilty of a corruption offence.**

(2) A public servant 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 so claimed or valued-based sentence.

Section 56 (2)

~~A person guilty of an offence under this section shall~~
misdemeanor or value based sentencing, whichever is higher,
~~on conviction be liable to imprisonment for a term not less than five years to not more than nine years.~~

Section 57 (2)

~~A person guilty of an offence under this section shall~~
misdemeanor or value based sentencing, whichever is higher,
~~on conviction be liable to imprisonment for a term not less than five years to not more than nine years.~~

Section 58 (2)

~~A person guilty of an offence under this section shall~~
be misdemeanor or value based sentencing, whichever is higher,
~~on conviction be liable to imprisonment for a term not less than three years to not more than five years.~~

Section 59 (2)

~~A person guilty of an offence under this section shall~~
be a felony of fourth degree or value based sentencing, whichever

~~is higher, on conviction be liable to imprisonment for a term not less than five years to not more than nine years.~~

Section 60 (2)

~~A person guilty of an offence under this section shall be a felony of fourth degree or value based sentencing, whichever is higher, on conviction be liable to imprisonment for a term not less than five years to not more than nine years.~~

Section 61 (2)

~~A person guilty of an offence under this section shall be misdemeanor or value based sentencing, whichever is higher, on conviction be liable to imprisonment for a term not less than five years to not more than nine years~~

Section 62 (2)

~~A person guilty of an offence under this section shall be misdemeanor or value based sentencing, whichever is higher, on conviction be liable to imprisonment for a term not less than five years to not more than nine years~~

Section 63 (3)

~~A person guilty of an offence under this section shall be misdemeanor or value based sentencing, whichever is higher, on conviction be liable to imprisonment for a term not less than five years to not more than nine years~~

Section 64 (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.~~

- (1) Where a public servant or one's relative or associate has a private or personal interest in a decision to be taken by a public agency, that public servant shall not vote or take part in a proceeding or process of that public agency relating to such decision.**
- (2) A public servant who fails to comply with subsections (1) or (2) of this section shall be guilty of a corruption offence.**

Section 64 (2)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one year to not more than three years~~

Section 65 (2)

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

Section 66 (2)

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

Section 67

~~Interference with, hindering or obstruction of investigation~~

~~(1) A person who, at any stage, with intent to defraud or conceal an offence established in accordance with this Act or to interfere with, or hinder or obstruct a law enforcement agency in its investigation of any such 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~~

Section 68 (2)

~~A person guilty of an offence under this section shall be liable to imprisonment for a term not less than five years to not more than nine years~~

Section 69 (2)

~~A person guilty of an offence under this section shall be liable to imprisonment for a term not less than five years to not more than nine years~~

Section 70 (2)

~~A person guilty of an offence under this section shall be liable to imprisonment for a term not less than five years to not more than nine years~~

Section 72 (3)

~~A person guilty of an offence under this section shall be, on conviction, be liable to imprisonment for a term not less than one year to not more than three years.~~ **felony of third degree felony , if the offence is of 1st and 2nd degree felony or half the penalty awarded to the person, who had committed the crime, if the offence is of fourth degree felony, misdemeanor or petty misdemeanor.**

New clause

Abuse of Privileged Information:

- (1) A ~~public servant~~ person who uses the privileged information and knowledge that he/she possesses as a result of his/her office to provide an advantage to another person or entity, or to accrue a benefit for himself/ herself shall be guilty of an offence.**
- (2) An offence under this section shall be a misdemeanor.**

Section 73 (4)

Upon receipt of a complaint under subsections (1) through (3), the Commission shall take ~~or caused to be taken~~ down the complaint in **such** the manner **as it considers appropriate** ~~directed by the Commission,~~ and forthwith provide the person who made the report with an acknowledgment of receipt of such complaint.

Section 73 (7)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one year to not more than three years~~

Section 75 (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.~~

Section 76 (2)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one year to not more than three years~~

Section 77

Duty to provide assistance to Commission

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

New Clause:

The Commission to use the Civil and Criminal Procedure Code

- (1) The Commission shall have such powers, rights and privileges as specified in this Act while exercising its powers or functions under this Act.**
- (2) Notwithstanding this section, the Commission may use the Civil and Criminal Procedure Code while exercising its powers or functions under this Act.**

warn the New Clause

The Commission shall, before taking a written statement from a person under this Act:

- (a) person that a statement given by such person can be admissible at that person's trial in evidence;**
 - (b) notify the person of one's right to a *Jabmi*; and**
 - (c) inform the person, that if one cannot afford a *Jabmi*, the Government will provide the person with a *Jabmi*.**
- (3) A *Jabmi* shall always strictly adhere to the Code of Conduct and shall not engage, directly or indirectly, in an act that amounts to obstruction of justice under this Act.**

Section 81 (1) (a)

~~authorize a person who has reported to the Commission a solicitation of, or promise or offer, of an undue advantage, directly or indirectly, give or receive it as solicited, or promised or offered;~~

Section 81 (1) (e)

~~use~~ listening or bugging devices;

Section 81 (1) (f)

~~engage in~~ controlled deliveries.

Section 81 (1) (g)

(g) use any other special investigation techniques.

New sub clause

The Commission shall obtain Court order for the purpose of clauses (d) and (e) of this subsection (1). However, Chairperson may authorize the Commission to use any special investigation technique without an order from a Court if there is an imminent danger of evidence being destroyed, provided that the judicial authorization shall be obtained within twenty-four hours.

Section 82 (3)

Notwithstanding any law to the contrary, when ~~any~~ person is charged **for an** ~~with~~ an offence under this Act, any information obtained by the Commission under subsection (1) shall be admissible in ~~evidence at his trial.~~ **accordance with Evidence Act of Bhutan.**

Section 83 (1)

Subject to subsection (2) of section (92),the Commission may, without warrant, arrest a person upon reasonable suspicion of

the **person** ~~his~~ having committed or being about to commit an ~~corruption~~ offence under this Act.

Section 83 (2)

Subject to subsection (2) of section (92), the Commission may arrest a person who may assist it in an investigation, if the Commission is satisfied that that person: (b) intends to destroy evidence which is in that person's possession.

Section 83 (2) (b)

intends to destroy evidence **which is in that person's possession**.

Section 84 (1)

A citizen may arrest or cause to be arrested ~~any~~**other** person whom ~~the~~**the citizen** reasonably believes:

Section 84 (3)

If the person arrested under this section is handed over to a public servant other than the Commission, that public servant shall record a statement from the arresting ~~individual~~ **person** justifying the arrest and expediently transfer the ~~suspect~~ **arrested person** to the Commission.

Section 84 (4)

At the time of handing over the ~~suspect~~ **arrested person** to the Commission, the arresting ~~individual~~, **person** or the public

official **who is** given control over the person **arrested** by the arresting ~~individual~~, **person** shall make or present a statement to the Commission justifying the arrest.

**Section 86 – title
Bail and Bond**

Section 86 (1) (iii)

~~his~~ entering into recognizance with such sureties, if any, as the Commission may require and conditioned upon the ~~attendance~~ **appearance** of the person **before** ~~at the office of~~ the Commission at such time as the Commission may specify;

Section 86 (1) (iv) condition that **the person** resides at such address as the Commission may specify;

Section 86 (1) (v) condition that **the person appears before** ~~attends at the office of~~ the Commission such time ~~or times~~ as the Commission may specify;

Section 86 (1) (vi) any one or combinations of the conditions set out in sub-paragraphs (a) ~~through to~~ (e).**of this section.**

Section 86 (2)

Where a person released from custody under this section fails to **comply with sub paragraphs (d) and (e) of sub section (1) of this section** ~~attend at the office of the Commission~~**shall forfeit** the deposit paid or recognizance entered into for release, as the case may be, ~~shall be forfeited by the Commission.~~

Section 88 (1) (b)

~~On being notified in writing by any~~ **that person's** surety ~~believes that that~~ **wishes to be relieved of one's obligation as surety because** that person is likely to break the condition to appear at the time and place required ~~and for that reason the~~ **which shall be notified in writing by the** surety ~~wishes to be relieved of his obligation as surety.~~

Section 88 (3) (b)

admit that person to bail on the same or on such other conditions as ~~he~~ **the Judge** ~~thinks~~ **deems fit.**

Section 89 (1) (a)

enforcing the attendance of ~~a~~ witnesses and examining **the witness** ~~them~~ on oath, affirmation or otherwise; ~~and.~~

Section 89 (2)

~~A person under investigation summoned to appear before the Commission may consult and be represented by a Bhutanese~~ *Jabmi* of his own choice.

Section 89 (5) (b)

obstructs the Commission in the execution of **its powers or functions** ~~an authorization given~~ under this section. **Act.**

Section 89 (6)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one year to not more than three years~~

Section 90 (1)

~~Notwithstanding any law to the contrary, the Commission may, subject to sections (95) and (96) of this Act, search any person, if it has reasonable grounds for:~~

Section 90 (1) (a)

~~If the commission has reasonable grounds for suspecting that such person has committed an offence or is about to commit an ~~corruption~~ offence under this Act and seize any document, material or other thing found on ~~that person him~~; or~~

Section 90 (1) (b)

~~If the commission has reasonable grounds for believing that such person ~~is~~ has in possession of with him or on him any document, material or other thing which is relevant or is likely to be relevant to ~~an the~~ investigation and seize any such document, material or other thing found on such person.~~

Section 91(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 **therein under the circumstances contemplated in the Civil and Criminal Procedure Code of Bhutan.**

Section 93 (1)

~~Notwithstanding any law to the contrary, the Commission may on the scene conduct search a person without warrant in the course of an investigation, from a Court while conducting search under section (95), where:~~

New sub section

a person being arrested under warrant.

Section 98 (2)

The Commission shall prepare 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 premises or person in occupation of such premises and by a witness present at the time of search.

Section 100 (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 **in accordance with the Evidence Act of Bhutan .**

Section 101 (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.~~

Section 102 (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.~~

Section 102 (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.~~

Section 104 (4)

A court of competent jurisdiction may, on application under this section by the Commission, extend the **retention** ~~detention~~ period as may be reasonably required, if the court satisfied the investigation could not be completed before the ~~expiry~~ **expiration** of one hundred and eight days.

Section 104 (8)

Subject to subsection 3 of this section, 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 **an application made under:**

Section 105 (2)

~~Notice of A Court shall not grant~~ an application under this section ~~shall be given by the~~ **unless the** application gives a **notice** to the Commission.

Section 105 (3)

Subject to subsection (2) of this section, a Court may:

Section 105 (3) (a)

grant the application either without conditions or subject to such conditions as to the further surrender of the ~~passport-travel~~ **documents** and the appearance of the applicant at a place and time as the Court may specify; or.

Section 105 (4)

~~Without prejudice to section (106),~~ A Court may, before granting an application under this section, register that:

Section 107 (1)

The Commission may at any time amend or revoke an order or notice which has been made or given by it in exercise of ~~any~~ its powers **or functions** ~~conferred on it~~. 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.

Section 108 (2)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one year to not more than three years~~

Section 109 (1)

The Commission may consider plea bargain which shall be in conformity with ~~section 197~~ the Civil and Criminal Code of Bhutan.

Section 111 (1)

Subject to subsection (8) of this section, a person servant shall

incur no civil or criminal liability, **including disciplinary action** as a result of his disclosure.

Section 111 (6)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable imprisonment for a term not less than one month to not more than one year.~~

Section 111 (7)

In addition to any penalty imposed under subsection ~~(5)~~**(6)** 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)~~**(5)**, as may be appropriate.

Section 111 (9)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one month to not more than one year.~~

Section 113 (2) (a)

on ~~his~~ the **Judge's** own motion;

Section 114(5)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to~~

~~imprisonment for a term not less than one year to not more than three years~~

Section 116 (1)

Where in any proceedings against any person for an offence under sections... of this Act, it is proved that the accused promised, offered or given any advantage, it shall be presumed, unless the contrary is proved, that the advantage was corruptly promised, offered or given for any of the purposes set out in those sections.

Section 116 (2)

Where in any proceedings against any person for an offence under sections 46, 48, 52, 53, 57, 60, 62, ... of this Act, it is proved that the accused corruptly solicited or accepted any advantage, it shall be presumed, unless the contrary is proved, that the advantage was corruptly solicited or accepted for any of the purposes set out in those sections.

Section 116 (3)

Where in any proceedings against any person for an offence under sections... of this Act, it is proved that such person has solicited or accepted any advantage, such person shall be presumed to have done so as a motive or reward for any of the purposes set out in those sections, unless the contrary is proved.

Section 117 (1)

In a proceedings against a person for an ~~corruption~~-offence under Chapter IV of this Act (other than possession of unexplained wealth), the fact that the accused:

- (a) was, at or about the date of or at any time since the date of the alleged offence, or is in possession of pecuniary resources or property disproportionate to one's lawful sources of income for which the person cannot satisfactorily account ~~may be proved and may be taken by the court~~; or
- (b) that the person had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to one's pecuniary resources or property for which the person cannot satisfactorily account, may be proved and may be taken by the Court as:
 - ~~(a)~~ (i) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any undue advantage; and
 - ~~(b)~~ (ii) as showing that such undue advantage accepted or solicited as an inducement or reward.

Section 117 (2)

An accused person shall, for the purposes of this section, be ~~deemed~~-**presumed to be or to have been** in possession of **pecuniary** resources or property, or to have obtained an

accretion thereto, ~~if these~~ **where such** resources or property are **or were** held, or ~~the such~~ accretion is **was** obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe:

- (a) **is or was** ~~to holding these such resources or property;~~ **or**
- (b) ~~to have~~ **obtained the such** accretion in trust for or **otherwise** on behalf of the accused ~~person;~~ or
- (c) as a gift from the accused.

Section 121(1)

~~Notwithstanding any law to the contrary,~~ In a proceeding against a person for an offence under this Act, a 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~~ made at any **time** by an accused person to the Commission, whether or not interpreted to the accused by the Commission ~~or any other person, whether concerned or not in the arrest of that person,~~ shall :

Section 121(1) (a)

be admissible at that person's trial in evidence **in accordance with evidence Act;** and.

Section 121(3)

~~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.~~

Section 121(4)

~~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.~~

Section 122 (1)

~~Notwithstanding any law to the contrary, In a proceeding against a person for an offence under this Act.~~

Section 122 (1) (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 as evidence in **accordance with Evidence Act** 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.

Section 123 (2)

The Office of the Attorney General shall undertake prosecution of persons on the basis of the findings of the Commission ~~shall~~ for adjudication by a Court, ~~as provided for in section (5) of article (27) of the Constitution.~~

New Clause

Use of previous conviction in another country

- (1) A previous conviction under this section may be proved, in addition to a mode provided by other laws, by the production of a certificate purporting to be given under the hand of a police officer in that country where the conviction was had, containing a copy of:**
 - (a) the sentence or order; and**
 - (b) a finger print, or its photograph, of the accused, together with evidence that the finger print is that of the accused.**
- (2) A certificate under this section shall be *prima facie* evidence of all facts stated therein without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.**

New Clause:

Compensation for loss

- (1) A person who suffers a loss as a result of anything that constitutes a corruption offence under this Act may initiate legal proceedings against another person responsible for the loss in order to obtain full compensation for the loss suffered, including an interest, at the prescribed rate, on the compensation receivable.**
- (2) A person is not entitled to compensation under this section in relation to a particular corruption offence if that person:**
 - (a) is a party to such corruption offence; or**
 - (b) does a related act that also constitutes a corruption offence under this Act.**

New Clause:

Payment in lieu of confiscation

- (1) A Court may, instead of ordering a property or part thereof or interest therein to be confiscated, orders the person to pay an amount equal to the value of the property, part or interest; where it is satisfied that the order for confiscation under sections (130) through (132) of this Act, cannot be enforced and, in particular that the property:**
 - (a) cannot, with due diligence, be located;**

- (b) has been transferred to a third party under circumstances which give rise to a reasonable inference that such property has been transferred for the purpose of avoiding the confiscation;**
- (c) is located outside Bhutan;
has been substantially diminished in value and rendered worthless; or**
- (d) has been intermingled with other property that cannot be divided without difficulty.**

Section 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.~~

New sub section after section 137 (3)

- (4) The High Court may, instead of ordering a property or part thereof or interest therein to be confiscated, orders the person to pay an amount equal to the value of the property, part or interest; where it is satisfied that the order for confiscation under this section, cannot be enforced and, in particular that the property:**
 - (a) cannot, with due diligence, be located;**

- (b) has been transferred to a third party under circumstances which give rise to a reasonable inference that such property has been transferred for the purpose of avoiding the confiscation;
- (c) is located outside Bhutan;
- (d) has been substantially diminished in value and rendered worthless; or has been intermingled with other property that cannot be divided without difficulty.

Section 149 (2)

~~A person guilty of an offence under this section shall be a petty misdemeanor, on conviction, be liable to imprisonment for a term not less than one month to not more than one year~~

Section 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.~~

Section 158 (1)

Any request for extradition of an offender shall be subject to Extradition Act of the **Bhutan Kingdom 1991** which shall be

applied as if an offence under this Act is an offence for which extradition may be granted.

Section 159 (1)

~~Where an offence under this Act is committed by a legal person:~~
Where a legal person commits an offence under this Act, every:

Section 159 (1) (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; or~~ **chairperson, chief executive, director or officer of such legal person shall be deemed to have committed that offence; and**

Section 159 (1) (b)

~~if the legal person is a firm, every partner of such of that firm shall be deemed to have committed that offence.~~ **Every partner of such legal person shall be deemed to have committed that offence.**

Section 159 (2) (a)

~~directly or indirectly, offers, promises or gives a bribe to an official;~~ **directly or indirectly, offers, promises or gives a bribe another person;**

Section 159 (2) (b)

directs or authorises a lower level person to offer, promise or give a bribe to an ~~official~~; **another person**

Section 159 (2) (c)

knowingly fails to prevent a lower level person from bribing ~~an official~~; **another person**, including through a failure to supervise ~~him/her~~ **the lower level person** through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

Section 163

~~**Conduct outside Bhutan constituting offences**~~

~~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.~~

Section 164 (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.

Section 168

In any instance of difference in meaning between the Dzongkha text and the English text of this Act, **Dzongkha text shall be regarded as the authoritative text.**

Section 169

Repeal, savings and transitional provisions

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

New clause

Amendments

The amendment of this Act by way of addition, variation or repeal shall be effected by a simple majority of the respective Houses or vote of not less than two-third of the total members of Parliament present and voting on a motion submitted by one third of the members of either Houses, provided that the amendment does not undermine the functions and effectiveness of Anti-Corruption Commission.

New clause in the Schedule:

12. Chairperson of Dzongkhag Tshogdu's; and

13. Chairpersons of Thromde Tshogdes;

After submitting their general views, member In-Charge of the Bill moved the motion that the Bill be passed. 38 members present voted "YES" and 3 members voted "NO" and thus adopted the Bill on December 3, 2010

**CIVIL AND CRIMINAL PROCEDURE CODE
(AMENDMENT) BILL OF BHUTAN, 2010 1P6/GB7**

The Chairperson of the Legislative Committee, Member In-Charge of the Bill, moved the motion for leave to introduce the Bill and adoption for discussion on November 22, 2010. The Member In-Charge highlighted the importance of the Bill and also the reasons for amending the Civil and Criminal Procedure Code of Bhutan, 2001. The Bill was then adopted for discussion after no objection was raised to introduce the Bill.

The Member In-Charge moved the motion for the second reading of the Bill on November 24, 2010

The Member In-charge of the Bill informed that the main objective behind amending the Act was to make it in line with the Constitution and provisions of other Acts.

Deliberations were also held whether to deliberate only on the amendments made by the National Council or other clauses should also be deliberated. The Hon Member from GeonKhatoe-Laya set forth that it was in line with the constitution to recommend amendments of other clauses as well. Consequently, the House resolved to deliberate on other clauses as well and the Bill was referred to the Legislative committee for review.

Hon Members of National Assembly deliberated on the Civil and Criminal Procedure Code (Amendment) Bill, 2010 for Third Reading on December 1, 2010 and adopted the Bill with the followings amendments:

Section 4 (d)

protecting the privacy of a ~~juvenile~~ **child in conflict with law;**
and

Section 9 (a)

Be established ~~in obedience to kasho of His Majesty the Druk Gyalpo~~ **in accordance with the provisions of the Constitution of the Kingdom of Bhutan;**

Section 9 (d)

The Supreme Court shall:

have ~~such number of four~~ **Drangpons appointed by as His Majesty the Druk Gyalpo by warrant under His Hand and Seal may appoint upon the recommendation of in consultation with** the National Judicial Commission.

Section 10 (b)

The High Court shall:

(b) have ~~eight such number of~~ **Drangpons appointed by as His Majesty the Druk Gyalpo King by warrant under**

His hand and Seal shall appoint upon on the recommendation of the National Judicial Commission;

Section 13

~~His Majesty the King shall appoint legally qualified, experienced and competent persons of high integrity as~~ **The Druk Gyalpo shall, by warrant under His Hand and Seal, appoint:**

- (a) the Chief Justice of Bhutan, **in consultation with the National Judicial Commission;**
- (b) Drangpons of the Supreme Court, ~~upon the recommendation of~~ **in consultation with** the National Judicial Commission;
- (c) Chief Justice and Drangpons of the High Court, upon the recommendation of the National Judicial Commission; and
- (d) ~~Drangpons of the Dzongkhag Courts, upon the recommendation of the National Judicial~~

Section 13.1

The Chief Justice of Bhutan shall appoint ~~legally qualified, experienced and competent persons of high integrity as~~ *Drangpons* of the ***Dzongkhag* and *Dungkhag*** Courts, upon the recommendation of the Royal Judicial Service Council.

Section 13.3

After receiving the warrant of appointment from ~~His Majesty~~ the Druk Gyalpo, the Chief Justice shall administer an “oath of Allegiance and Secrecy” before a court and obtain a written pledge as follows:

“ I.....in the name of the *Tripple Gem* and the guardian deities of the Kingdom of Bhutan do solemnly swear and affirm that I will faithfully perform the duties of my office without fear and favour, affection or ill-will and will to the best of ability, preserve, protect and defend Tsa-Wa-Sum with *Tha Damtsi and Ley Jumdrey*,”

Section 14

~~His Majesty the King~~ **The Druk Gyalpo** shall appoint ~~qualified, experienced and competent persons of high integrity~~ as members of the National Judicial Commission **by warrant under His Hand and Seal. The National Judicial Commission shall comprise:**

- (a) The Chief Justice of Bhutan as Chairperson;**
- (b) The senior most Drangpon of the Supreme Court;**
- (c) The Chairperson of the Legislative Committee of the National Assembly; and**
- (d) The Attorney General.**

Section 14.1

Repealed as it is already covered under 14 (a)

Section 15

The independence of the Drangpons of the Supreme Court and the High Court shall be guaranteed, provided that a Drangpon may be censured or suspended by a command of the Druk Gyalpo on the recommendation of the Commission for proven misbehavior, which, in the opinion of the Commission, does not deserve impeachment.

Section 18

Where a question of law or fact is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, ~~His Majesty the King~~ **the Druk Gyalpo** may refer the question to that Court for its consideration. The Court shall hear the reference and submit to ~~His Majesty the King~~ **the Druk Gyalpo** its opinion thereon.

Section 29

The Royal Courts of Justice shall apply International Conventions, Covenants, Treaties and Protocols that are duly acceded to by the Royal Government of Bhutan and ratified by the ~~National Assembly~~ **Parliament** of Bhutan.

Section 42(b)

Daily allowance at the prevailing rate prescribed by the **Daily Minimum Wage Rate**

Section 42 .1

If the Court summoned the witness *sua sponte*, after considering it necessary, expedient or otherwise in the interest of justice to do so, the Government shall pay reasonable travelling fare and daily allowance at the prevailing rate prescribed by the **Daily Minimum Wage Rate**.

New Section 96A

The judgment of the Court shall be made accessible in the public domain which shall include libraries.

Section 97

It shall be the discretion of the ~~Appellate~~ Court based on the outcome of a case to determine an appropriate assignment of costs and other expenses related to the suit.

Section 98

The Court may order a defaulting party to pay costs to the attending party calculated at the rate prescribed under the **Daily Minimum Wage Rate**.

Section 99.6 (c)

agricultural land to the extent of minimum acre ceiling prescribed by the ~~prevailing~~ Land Act of **Bhutan, 1980**;

Section 101.3

~~Where a Jabmi engages in professional or other misconduct, the High Court may:~~

- ~~(a) — admonish/reprimand the *Jabmi*;~~
- ~~(b) — suspend the *Jabmi* from appearing before a Court for such period as it may deem fit; or~~
- ~~(c) — bar the *Jabmi* from practice, if convicted of a cognizable offence or otherwise.~~

(Repeal since this power is given to the Jabmi Tshogdey under the Jabmi Act)

Section 107.1

Finding of civil contempt shall result in fine/imprisonment until the civil order has been complied with.

However, for the monetary case the person shall be imprisoned for a number of years calculated based on value based sentencing.

Section 112

Repealed

Section 114

Repealed

Section 148.1

Such person shall be, in the case of ~~juvenile~~ **child in conflict with law**, be represented by the parents/family member/guardian/jabmi.

Section 150

At any stage of the proceedings, it shall be open to the parties to take the help of **members of the concerned Local Government** ~~a Chimi, Gup, Chipon, Mang mi or Barmi~~ as mediators for mutual settlement of a civil case in accordance with the requirements of this Code.

Section 153.1

The party may be liable for such costs as the Court may award calculated in accordance with the **Daily** Minimum Wage ~~Rate~~.

Section 171

A search shall be made in the presence of ~~Chimi/Gup/Chipon/ member of Dzongkhag and Geog Yargye Tshokehung~~ **one or more members of the concerned Local Government or any other competent person.**

Section 178

A vehicle/aircraft/vessel/**train**/conveyance may be searched where reasonable cause exists or upon the arrest of the driver/pilot/passenger.

Section 178.1

If the vehicle/aircraft/vessel/**train**/conveyance itself is being subjected to a valid warranted search, closed containers found in the vehicle/aircraft/vessel/**train**/conveyance may be searched without a warrant.

Section 186

The Court may order an accused to be remanded to police/judicial custody, if there exists reasonable cause that he/she has perpetrated a crime, **within the limits prescribed by this Code.**

New Section 186.1

The Court may, depending on the nature of the crime, order the accused to be released on bail ~~or placed under house arrest~~, in lieu of detention.

Section 191.1

The Court, prior to the preliminary hearing, may **from time to time** authorize the detention of the accused for ~~an additional period not exceeding~~ **a reasonable duration calculated from the date of issuance of the first ~~detention~~ remand order which in the whole shall not exceed**

- (a) Forty nine days, if satisfied that adequate grounds exist for doing so; and

- (b) One hundred and eight days, where the investigation relates to a heinous crime.

New Section 191.2

A person detained prior to conviction under this Code shall have the rights of access to and advice from a *Jabmi* and of access to family members.

Section 194

Persons accused of the same offence or any offence that can be reasonably construed to have been committed during the same criminal transaction may be charged and presented together in the Preliminary Hearing except **child in conflict with law juvenile**.

Section 195.1

In the case of **child in conflict with law juvenile**, his/her parents/member of family/legal guardian/*Jabmi* may make a plea of guilty or *Nolo Contendere* only in the best interest of the **child in conflict with law juvenile**.

Section 197.3

Before confirming a plea bargain, the prosecution shall determine whether the defendant is mentally competent and is a **child in conflict with law juvenile**, and if so is represented by parent/member of a family/legal guardian/ *Jabmi*, and understands:

New Section 199.8 A

Non-Bailable Offence

The Court shall not grant bail to a person who has been charged with;

- (a) an offence against the security and sovereignty of the country; and**
- (b) an offence of or above felony of the second degree.**

Section 205

The prosecution may ~~move motion~~ the Courts for new trials based on newly discovered evidence or on other grounds.

Section 208(a)

Repealed

New section 212 (A)

~~An~~ **A person detained and acquitted thereof or a person subjected to ~~illegal~~ unlawful detention is entitled to be compensated by the relevant agencies for the loss of income caused by the criminal proceedings or ~~illegal~~ unlawful detention and to be reinstated at the former place of work.**

Chapter 44

~~Juvenile Child in Conflict with Law~~ **Miscellaneous**

Sub-title before section 213

~~Juvenile~~

Section 213

~~A Juvenile arrested on a criminal charge shall:~~

Section 213.1

~~In making the determination to allow a Juvenile to go home after advice/admonition or release the Juvenile on probation, the Court shall consider the:~~

Section 213.1(b)

~~juvenile's past criminal record;~~

Section 213.1(d)

~~juvenile's age and physical/mental health condition; and~~

Section 213.2

~~A Court shall take into consideration the following factors in making orders concerning juvenile:-~~

Section 213.2(a)

~~age of the juvenile;~~

Section 213.2(c)

~~circumstances in which the juvenile was living;~~

Section 213.2(e)

~~other circumstances as are, in the opinion of the Court, required to be taken into consideration in the best interest and welfare of the Juvenile~~

New section 213 A

Amendment

The amendment to this Act by way of addition, variation or repeal shall be effected by simple majority of the respective Houses or vote of no less than two-thirds of the total members of Parliament present and voting on a motion submitted by one-third of the members of either House

Section 214

~~The original text of this Code is the text as passed by the National Assembly in *Dzongkha*. The *Dzongkha* text and the English translation are equally authoritative, except that, in any instance of a difference in meaning between the two texts, the *Dzongkha* text shall prevail.~~ **In any instance of a difference in meaning between the Dzongkha and the English texts of this Act, Dzongkha text shall be regarded as the authoritative text.**

Section 215

Drangpons of the:

- (a) ***Dungkhag and Dzongkhag*** Court shall be addressed as Judges in English; **and**
- (b) High Court **and Supreme Court** shall be addressed as Justices; ~~and~~
- ~~(c) Supreme Court shall be addressed as Justices.~~

New section 215.8 A

~~“Police” shall mean an authorized personnel of the Royal Bhutan Police. However, the procedures laid down in this Code relating to arrest, search and investigation by the Police shall also be extendable to other law enforcement and investigative agencies.~~

After submitting their general views, member In-Charge of the Bill moved the motion that the Bill be passed. All the 38 members present voted “YES” and thus adopted the Bill on December 6, 2010 at 10.15 am

**LAND ACT (AMENDMENT) BILL OF BHUTAN, 2010
1P6/GB8**

The Labour and Human Resources Minister on behalf of Agriculture Minister, Member In-Charge of the Bill, moved the motion for leave to introduce the Bill and adoption for discussion on November 22, 2010. The Member In-Charge highlighted the importance of the Bill and also the reasons for amending the Land Act, 2007. Thereafter, Hon members resolved to deliberate the Bill during the 7th session.

The Member In-Charge moved the motion for the second reading of the Bill on November 24, 2010

The Member In-Charge said that the Act was formulated and implemented for the last 25 years and revised in 2007. Generally, the amendment is imperative in view of the political and economic changes. In particular, the amendment is

necessary due to problems associated with provisions pertaining to the land management such as 1) Sokshing and Tsadro 2) Altitude 3) Land Tax system and 4) Land type/category.

The Minister for Works and Human Settlement representing South Thimphu constituency submitted that the critical Land Act must not be amended in haste. It is important to amend the Act after exhaustive consultation with the relevant ministries, departments and local governments. Moreover, it is also necessary to review the other provisions of the Act in detail. The Members from Drakteng - Langthel, Bji-Katsho-Isu and Gangzur-Minje constituencies supported the submission the Bill was forwarded to the Environment/Land/Urban Development Committee.

**ELECTION (AMENDMENT) BILL OF BHUTAN, 2010
1P6/GB9**

As moved by the Hon'ble Member of Mongar for the amendment of the Election Act 2008, the Chairman of the Legislative Committee while introducing the Bill submitted that within the span of three years after the introduction of the democracy, the Druk Phuensum Tshogpa functioned as per its manifesto, not giving into corruption practices, thereby laying down strong foundation of democracy. It was further submitted that party offices have been maintained by devising various means in line with the provisions of the Constitution, the Electoral laws and guidelines. Since it is inappropriate to

mobilize funds from non members of the party as per the Election Act and democratic principles, it is necessary to amend the Election Act to provide for state funding.

Hon Member of Sombaykha submitted that it would be better if the amendment is made in line with the amendment procedure of Acts and in consultation with the concerned agency. This submission was seconded by the Hon'ble Member of Goenkhatoe-Laya.

Hon Members of National Assembly elaborately deliberated on the Election (Amendment) Bill of Bhutan, 2010 for Third Reading on December 7, 2010 and adopted the Bill with the following amendments:

Section 158 A

State Funding

The ruling party and the opposition party may receive fund from the State to maintain their party machineries and the amount shall be determined by the Government in consultation with the Election Commission.

Proviso of section 206 of the Election Act of Bhutan, 2008 shall be omitted:

~~Provided that the disqualification under sub section (d) shall cease to operate after the lapse of one year from the date of acceptance of the application of resignation or removal from the~~

~~membership of a political party and such resignation or removal shall be immediately notified by the concerned party office in the print media with a copy submitted to the Election Commission.~~

New section after section 581 of Election Act of Bhutan, 2008 shall be inserted as follows:

581 A-The Commission shall submit an annual report to the Druk Gyalpo, the Prime Minister and Parliament on its policy, performances and conduct of elections.”

After submitting their general views, member In-Charge of the Bill moved the motion that the Bill be passed. 30 out of 32 members present voted “YES” and 2 members voted “NO” and thus adopted the Bill on December 8, 2010 at 11.15 am

**SALES TAX, CUSTOMS AND EXCISE (AMENDMENT)
BILL OF BHUTAN, 2010IP6/GB10**

The Finance Minister, Member In-Charge of the Bill, moved the motion for leave to introduce the Bill and adoption for discussion on November 22, 2010. The Member In-Charge highlighted the importance of the Bill and also the reasons and objects for amending the Sales Tax, Customs and Excise Act of Bhutan, 2000. The Bill was then adopted for discussion after no objection was raised to introduce the Bill.

The Member In-Charge moved the motion for the second reading of the Bill on November 24, 2010

The Member In-Charge said that there are two types of taxes consisting of direct and indirect tax. He submitted that, while the alteration in direct tax levied on income can be effected only upon the endorsement of the Parliament, the government has the power to alter indirect taxes as per the provisions of Customs, Sales Tax and Excise Act, 2000. The amendment will not affect the principle, but is rather aimed at enhancing general comprehensibility of the Act. He also submitted that the Section 1 of the Article 14 of the Constitution provides that “Taxes, fees and other forms of levies shall not be imposed or altered except by law”.

The Member from Goen-Khatoe-Laya Constituency submitted that, while he support the issue of imposing and raising taxes, it is important to streamline the system of taxation as the problems pertaining to taxation could potentially affect the security and independence of the country. Therefore, it is imperative to repose the authority of enhancing taxes in the Parliament bearing the present and future implications in mind.

Hon Member of Sombaykha constituency recalled that during the Fifth session of the First Parliament, the Chairman of the Legislative Committee moved a motion to amend the Act in line with the provisions of the Constitution. Furthermore he

expressed that it would be unconstitutional if the Government is given the authority to raise the tax.

After a through deliberation, the Bill was referred to the Private Sector Development Committee.

Hon Members of National Assembly deliberated on the Sales Tax, Customs and Excise (Amendment) Bill, 2010 for Third Reading on December 1, 2010 and adopted the Bill with the followings amendments:

Part I

Chapter 3 (section 4.2)

The fixation of rates of Sales Tax and any revision thereof, and the range of commodities and services under the Sales Tax Schedule shall be approved by the Royal Government of Bhutan **without the need for further authorization.**

Part II

Chapter 4 (section 6.1)

Customs Tariff and revision thereof shall be approved by the Royal Government of Bhutan **without the need for further authorization.**

Part II

Chapter 10

Section 33.1

~~Sale or transfer of vehicles and other goods imported or purchased under exempt basis by persons shall liable to pay customs duty, taxes, fees and charges.~~

Section 33.3

The sale or transfer of duty/tax exempted vehicles and other goods **either** by an exempted person **or imported or purchased under exempt basis**, whether through public auction or tender, the buyer if not a ~~privileged~~ person **entitled to exemption**, shall pay the customs duty, taxes, fees and charges.

Part III

Chapter 3 (section 4.1)

Rates of Excise duty on excisable goods shall be fixed and revised by the Royal Government **without the need for further authorization.**

General Provisions

Chapter 3 (Section 7.2)

Detention

Where an officer of the Department has reason to believe that the goods have been illegally imported or **exported and**

transferred, the officer shall have power to detain the goods, conveyance and person for further enquiry.”

General Provisions

Chapter 4 (Section 16)

Other offence and penalty

(Ga) Conceals any goods imported/exported or conceals sales of any goods and service by furnishing inaccurate particulars of value or quantity ~~of goods or sale of goods and services;~~

General Provisions

Chapter 6 (Section 22.6)

Appeal Procedure

Where an Appeal Committee fails or does not pass a decision within ~~60~~ **45** days of filing an appeal, a person or entity may appeal to the Appeal Board.

General Provisions

Chapter 6 (Section 22.7)

The decision of the Appeal Committee of the Head Office may be appealed to Appeal Board within ~~60~~ **30** days from the date a decision has been passed.

General Provisions

Chapter 6 (Section 22.8)

The Appeal Board shall pass its decision within ~~60~~ **45** days from the date of filing an appeal

General Provisions

Chapter 6 (Section 22.10)

Where an Appeal Board fails or does not pass a decision within ~~60~~ **45** days of filing an appeal, a person or entity may appeal to the Court of Law.

General Provisions

Chapter 7(Section 25)

General

(Cha) Withholding the imports and exports of the ~~entity or~~ person or its sister concerns; and/or

General Provisions

Chapter 7(Section 28.3)

Tax Clearance Certificate

(Ka) At the time of transfer of ownership of business or at the time of change in the location of business **from one tax region to another tax region;**

General Provisions

Chapter 9 (Section 42)

Amendment

The Ministry of Finance shall initiate, formulate and present to the Parliament any amendment necessary to this Act.

After submitting their general views, Member In-Charge of the Bill moved the motion that the Bill be passed. 37 out of 39

members present voted “YES” and Hon member of Sombaykha and Hon Member of Goen Khatoe-Laya voted “NO” and thus adopted the Bill on December 6, 2010 at 10.45 am.

**PUBLIC FINANCE (AMENDMENT) BILL OF BHUTAN,
2010 1P6/GB11**

The Finance Minister, Member In-Charge of the Bill, moved the motion for leave to introduce the Bill and adoption for discussion on November 22, 2010. The Member In-Charge highlighted the importance of the Bill and also the reasons for amending the Public Finance Act, 2007. The Bill was then adopted for discussion.

The Member from Goen-Khatoe-Laya Constituency submitted that as the Act does not contravene the Constitution, there is no need to amend the Act. The current submission for amendment pertains to enhancement of taxes. Both the Constitution and the Act provides that it should be decided by the Parliament. As the Court has passed the judgment on this issue and has the right to appeal within 10 days, he did not support the amendment.

The Member In-Charge moved the motion for the second reading of the Bill on November 24, 2010

The Member In-Charge said that some of the provisions of the Public Finance Act, 2007 are not consistent with the

Constitution. Therefore, the amendment is primarily aimed at harmonizing it with provisions of the Constitution.

Moreover, there is possibility of increasing need of financial services in the light of development activities in the country. The presence of unambiguous and strong legislations is precondition for smooth and effective implementation of government activities. Similarly, it is important to empower the implementers with powers commensurate to their responsibilities. The Bill was referred to Private Sector Development Committee.

Hon Members of National Assembly deliberated on the Public Finance (Amendment) Bill, 2010 for Third Reading on December 2, 2010 and adopted the Bill with the followings amendments:

Repeal

Supersede ~~all~~ **provisions of any** laws, regulations, rules and notifications that are inconsistent with the provision of this Act, except the Constitution of the Kingdom of Bhutan, or as otherwise specified herein.

Section 14 (b)

~~Proposing taxation measures to the Parliament, and for raising~~
~~other~~ revenues and *other* resources for the Government in accordance with laws made by Parliament;

Section 49

New Insertion

The Budget, after being passed by the National Assembly shall be presented to the National Council by the Finance Ministry.

The National Council may within a period of five days from the date of its presentation by the Finance Ministry, transmit its recommendations to the National Assembly. The National Assembly may thereupon either accept or reject all or any of the recommendations of the National Council and approve the Budget.

If no recommendations are received by the National Assembly from the National Council within the said period, the approved Budget and its appropriations shall be put into effect.

Section 62

No budgetary body shall carry out activities for which there is no provision in the Budget and ~~Appropriation Act or other lawful authority.~~

After submitting their general views, member In-Charge of the Bill moved the motion that the Bill be passed. 37 out of 39 members present voted “YES” and Hon member of Sombaykha

and Hon Member of Goen Khatoe-Laya voted “NO” and thus adopted the Bill on December 6, 2010 at 10.45 am.

RE-DELIBERATION OF THE BILLS

WATER BILL, 2010 1P5/GB1

Member In-Charge of the Bill, Minister for Works and Human Settlement moved the motion to re-deliberate on the Water Bill of Bhutan, 2010. Hon Members re-deliberated on the Bill on December 6, 2010 and adopted the Bill with the following amendments:

Preamble

Recognizing the threat of climate change on water resources **and considering** adaptation and mitigation measures ~~are as~~ necessary for the management of this resource;

Section 3

Repeal

This Act hereby repeals the **provisions of the Land Act 1979 and section 267 of the Land Act 2007 on water channel and embankments**, any other Acts, regulations and administrative instruments which are inconsistent with this Act.

Section 4

The purpose of this Act shall be to ensure that the water resources are protected, conserved and/or managed in an

economically efficient, socially equitable and environmentally sustainable manner.

New section after section 5

New section proposed by NC is not accepted

~~**Water use Priorities**~~

~~**5A. The use of water shall observe following order of priorities:**~~

- ~~**a) water for drinking and sanitation;**~~
- ~~**b) water for agriculture;**~~
- ~~**e) water for energy;**~~
- ~~**d) water for industry;**~~
- ~~**e) water for tourism and recreation; and**~~
- ~~**f) water for other uses**~~

New Sections after Section 6

New section proposed by NC is not accepted

~~**Community Based Water Resources Management**~~

~~**6A. Communities shall participate in the integrated management of water resource pursuant to this Act, and beneficiaries and stakeholders shall be consulted in the manner set out in this Act.**~~

Protection of Water Catchment

New section proposed by NC is not accepted

6B. All persons shall cooperate in the conservation, protection and management of the water catchment areas. The right and responsibility to co-operate shall extend to all aspects of achieving the purpose of the Act.

Section 10

- a. The National Environment Commission shall be an independent authority established by an Act of Parliament and shall exercise **in exercising** the powers and **discharging the** functions conferred under this Act.
- b. ~~The members of the Commission shall include all major water users.~~

Section 11

Retain as in the draft

New Section after Section 12

New section proposed by NC is not accepted

~~**Competent Authorities**~~

~~**12A. Government agencies, including ministries and local authorities delegated with specific functions relevant to water supply, protection and its management under this Act shall be designated as Competent Authorities.**~~

Section 13 (a), (b) and (e)

Specific responsibility for implementation including submission of the periodical report to the Secretariat shall vest with the following agencies or any others as may be determined by the Commission:

- a) The Ministry of Works and Human Settlement and municipal bodies for ensuring safe, adequate and potable water supply in the Throms and Thromdes.
- b) The Dzongkhag Tshogdu and Gewog Tshogde supported by the Dzongkhag, Dungkhag and Gewog Administration in collaboration with the Ministry of Health for ensuring safe, adequate and potable water supply at Dzongkhag, Dungkhag, Gewog and Chiwog level not covered under (a).
- e) The Ministry of Health for monitoring the quality of drinking water both in urban and rural areas.

Section 17

The Competent Authorities may enter into contracts or other forms of arrangements with private parties, including Non Governmental Organizations and civil society organizations, to provide for water related infrastructure and services.

New Section after Section 17

17A. The Commission shall regulate the water pricing in keeping with section 5 (c) of this Act in case of privatization of water related infrastructure and services.

Section 20

- a) The Secretariat, with the assistance of the Competent Authorities, shall prepare and periodically update a National Integrated Water Resources Management Plan for the conservation, development and management of water resources.
- b) The Secretariat shall consult the public, prior to submission of a plan to the Commission for its approval.
- c) The Commission and the Competent Authorities shall take account of the Plan in all water related decisions.

Section 21

Retain as in the draft

Section 22

Retain as in the draft

Section 23 (c)

Accepted NC's proposal to delete the clause

Section 24

Retain as in the draft

New Sections after Section 24

New section proposed by NC is not accepted

Functions of river basin committees

~~24A. The functions of river basin committees are—~~

- ~~(a) to promote community participation in the protection, use, development, conservation, management and control of water resources in its area of operation through education and other appropriate activities;~~
- ~~(b) to prepare a River Basin Management Plan for the basin;~~
- ~~(c) to make recommendations regarding the issuance or cancellation of approvals and permits under this Act;~~
- ~~(d) to promote community self-reliance, including the recovery of costs for the operation and maintenance of water-related infrastructure;~~
- ~~(e) to monitor and report on the effectiveness of policies and action in achieving sustainable management of water resources in its area of operation;~~
- ~~(f) to collect, manage and share such data as are necessary to properly manage the basin in coordination with the Commission;~~
- ~~(g) to develop a water research agenda appropriate to the needs of water management institutions and water users within its area of operation;~~
- ~~(h) to help resolve conflicts relating to water resources in its area of operation; and~~

~~(i) to perform any such additional functions as the Commission may direct.~~

~~Dissolution of river basin committees~~

~~24B. The Commission, by notice may dissolve a river basin committee if it is necessary to do so:~~

~~(a) for purposes of re-organizing water management institutions in its area of jurisdiction in the interests of effective water resources management; or~~

~~(b) if the circumstances which supported the establishment of the river basin committee no longer exist.~~

~~Establishment of Dzongkhag Water Management Committees~~

~~24C. For the purpose of proper management of water resources at every Dzongkhag, the existing Dzongkhag Environment Committees shall function as Dzongkhag Water Management Committees.~~

~~Function of Dzongkhag Water Management Committees~~

~~24D. The Dzongkhag Water Management Committees shall carry out the function of River Basin Committee as provided in section 24A at Dzongkhag level.~~

~~Section 25 and 26~~

~~Retain as in the draft~~

New section after 26

Customary Rights or Practices of Water Use.

Customary rights and/or practices of water use may continue provided that the rights are fair and acknowledged by a Water User's Association or other local beneficiaries group in the area.

Section 27

Retain as in the draft

New Section after Section 27

New section proposed by NC is not accepted

~~Right to collect and use rainwater~~

~~27A. A person has the right to collect rainwater falling on his _____ or _____ her _____ own _____ land _____ and use it for the domestic purposes of his/her household _____ and _____ for _____ subsistence irrigation.~~

Section 28

Retain as in the draft

Section 29

Retain as in the draft

Section 30

Retain as in the draft

Section 31 and 32

Retain as in the draft

Section 33 (a)

In dealing with applications under preceding sections, the Commission and **the Competent Authorities** shall observe the following order of priorities:

Section 34

- a) Except as otherwise provided in this Act, all effluent discharge shall be in compliance with **the Effluent Discharge Standard** and the provisions of the Environmental Assessment Act.
- b) **Effluents must be treated using best available technology before discharging into the environment.**
- c) **Notwithstanding any other provisions, it shall be unlawful to discharge any chemical, radiological, radioactive, medical or any other hazardous waste into water bodies.**
- d) **Any person who acts in breach of the provisions of this section shall be guilty of an offence under this Act.**

New Sections after Section 34

New section proposed by NC is not accepted

~~**Discharge of effluent into groundwater prohibited**~~

~~34A. (a) No effluent shall be discharged into groundwater, directly or indirectly, including through a borehole.~~

~~(b) Any person who acts in breach of the provisions of this section shall be guilty of an offence under this Act.~~

~~Exemption of certain discharges from permit requirements~~

~~34B. The Commission may, through Regulations under this Act, exempt any person who discharges effluents from any septic tank, drain or similar private sewerage facility for the disposal of household waste to any watercourse or groundwater from the application of section 34.~~

~~No discharge from public sewer without permit~~

~~34C. (a) A person shall not discharge effluent from a public sewer or public sewerage system directly or indirectly to any water resource, including through a borehole, unless the discharge is in compliance with a permit issued the regulation in pursuant with the Act.~~

~~(b) A person who acts in breach of the provisions of this section shall be guilty of an offence under this Act.~~

~~Water Quality Standards and Effluent Discharge Standards~~

~~34D. (a) Subject to sub-section (b), the Commission shall develop and, from time to time, review Water Quality Standards as well as Effluent Discharge Standards of certain substances into water resources.~~

~~(b) The Commission in consultation with the Ministry of Health and with the Ministry of Works and Human Settlement shall develop and, from time to time review Water Quality Standards for water resources used for or intended to be used for drinking water purposes.~~

~~(c) All competent authorities under this Act are required to give effect to these standards in exercising their powers and duties under this Act.~~

New Sections before Section 35

New section proposed by NC is not accepted

General

~~34E. Allocation of water shall be done based on the principle that water is a resource owned by the State and that every citizen has an equal right to these resources.~~

~~34F. Customary practices of water allocation may continue provided that these are fair and equitable and do not result in denial of water to any individual or community, including downstream and upstream needs, and are acknowledged by a Water Users' Association or other local beneficiaries' groups in the area.~~

Section 35 (a) and (d)

- a) **Notwithstanding the provisions of section 34 of this Act,** no discharge of effluents of any kind shall be allowed into water resources used or allocated for drinking purposes.
- d) If there is a risk of contamination **and/or degradation** of a water resource allocated for drinking purposes, the Commission ~~may~~**shall** declare relevant area as Watershed protection ~~Management~~ Area.

Section 36 (b) and (d)

Retain as in the draft

New Subsections after Subsection 36 (j)

- k. **For the benefit of landed property, renovation of existing irrigation channels and embankments can be done on existing alignment in consultation with Water Users Associations.**
- l. **Existing irrigation channels passing through ones landed property cannot be made small and blocked even if not required by the owner.**
- m. **If water has not flown through old irrigation channels and no repair has been done on the embankments for the last five years then renovation and repairs on the existing alignment will be treated as new construction.**

New Section after Section 36

New section proposed by NC is not accepted

~~**Sufficiency of water shall be determined by the Competent Authority by employing scientific methods.**~~

Section 37

Retain as in the draft

Section 40

Retain as in the draft

New section after section 42 (b)

A group of Water Users' Associations using a particular water supply scheme for their water supply needs may liaise with each other to coordinate the activities.

New sections after 43

New sections proposed by NC is not accepted

~~**Functions of water users' association**~~

~~**43A. (a) The functions of a water users' association shall be:**~~

- ~~**(i) to manage the supply of water from a water source;**~~
- ~~**and**~~
- ~~**(ii) to maintain a water source and protect it against vandalism and other damages.**~~

~~(iii) — to coordinate and oversee the activities and management of water supply service by its members so as :~~

~~(1) — to foster a sense of ownership among the users;~~

~~(2) — to promote economic development;~~

~~(3) — to ensure sustainability of such service; and~~

~~iv) to protect the rural water supply scheme concerned against vandalism and other damages.~~

~~Powers of water users' association~~

~~43B. Subject to this Act, the powers of a water users' association shall include :~~

~~(i) — the power to make rules for the use of the rural water supply scheme or water source by members and non-members;~~

~~(ii) — the power to prevent any person who does not comply with the rules of a water users' association from using such water source;~~

~~(iii) — the power to adopt measures to prevent the wastage of water by any person; and~~

~~(iv) — any other power as may be delegated by the competent authority.~~

~~Section 44~~

~~Federation of Water Users' Association~~

~~44. a) A group of Water Users' Associations using a particular water supply scheme for their water supply needs may federate to coordinate the activities.~~

~~b) The provisions of Sections 42 and 43 shall apply to the Federation of Water Users' Associations.~~

Section 51 (b)

New sections proposed by NC is not accepted

~~The **mechanism** procedure for alternative dispute resolution shall include *Nangkha Nangdrig* (mediation) conducted by the Committee of the relevant Water User Association or the relevant local authority including the office of the Gup be **prescribed in the rules as framed by the Competent Authority.**~~

New Section before Section 53

New sections proposed by NC is not accepted

Registration Requirement

~~**52A. All approvals and permits under this Act for the abstraction of water and discharge of effluents shall be registered. It shall be the responsibility of the authority listed under section 12A to record this information and report it to the Commission annually.**~~

New section after section 53

New sections proposed by NC is not accepted

~~Stop Order~~

~~**53A. If an activity relating to a water resource poses an imminent threat to human health or the environment, the activity shall be stopped with immediate effect.**~~

Section 56

Retain as in the draft

Section 63 (a) and (b)

Retain as in the draft

Section 64 (b)

Retain as in the draft

New Subsection after Section 64 (c)

Vandalism and destruction of water supply infrastructure.

New Subsection after Section 68

New sections proposed by NC is not accepted

~~**b. The subsection (a) shall be applicable to any existing agreement on international water abstraction and use.**~~

Section 69

~~A person who at the commencement of this Act has discharged effluent without permit Environmental Clearance shall be granted a period of 24 months from the commencement of this Act to come under the purview of this Act.~~

Section 73

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

Section 75

3. **Agency** means a Throm or Thromde established under the Local Government Act, 2009 or any ministry, department, or autonomous public body of the Royal Government including local government entities or Companies incorporated under the Companies Act

7. **Competent Authorities** means the Ministries or Agencies ~~listed under Section 13 of this Act, which are either responsible for the implementation and enforcement of this Act under a delegation of authority from the Commission, or which assist the Commission, in the implementation and enforcement of this Act.~~ **Local authorities, committees, NGOs, CSOs and any others as may be determined by the Commission as the competent authority to carry out its functions.**

8. **Customary rights and/or practices** mean such rights and practices in relation to water resources management and utilization as have been exercised and practiced by communities or individual members thereof for more than twenty years
26. ~~**Thromde** means a large urban area as defined in the Local Government Act, 2009.~~

After submitting their general views, member In-Charge of the Bill moved the motion that the Bill be passed. 37 out of 38 members present voted “YES” and Hon member of Drakteng-Langthel voted “NO” and thus adopted the Bill on December 6, 2010 at 10.30 am.

FINANCIAL SERVICE BILL, 2010IP5/GB3

Hon Members re-deliberated on the Financial Services Bill, 2010 on December 6-7, 2010 and adopted the Bill with the following amendments:

Title

Amended in Dzongkha text as per National Council’s recommendation

Section 1 (b)

Come into force on day.....month.....of the.....year of the Bhutanese ~~Calender~~ **Calendar** corresponding to....day of the.....month of 2010 ;and

Section 2

~~This Act hereby repeals the Financial Institutions Act 1992 however the Prudential Regulations 2002 and other similar regulations shall continue to be applicable under the Financial Services Act 2010.~~ **This Act hereby repeals the Financial Institutions Act 1992 and any provision of any law, by-law, rules or regulations which are inconsistent with this Act.**

Section 3

The objectives of the Authority in exercising the powers provided under this Act shall be to: ~~promote:~~

- (a) **Promote** the stability and soundness of the financial system in Bhutan;
- (b) **Eliminate** ~~in~~ or control ~~of~~ conflicts of interest in financial services businesses that may be detrimental to the legitimate interests of customers;
- (c) **Promote** competence in the providing of financial services;
- (d) **Ensure** the maintenance of adequate financial resources and operational controls by persons licensed under this Act in order to help assure performance of obligations to customers and compliance with the Act and the regulations issued under it;
- (e) **Enhance** customer understanding of financial products and services;
- (f) **Promote** honesty in financial services businesses;

- (g) ~~Prevent the avoidance of unwarranted burdens on competition in financial services businesses;~~ **Promote optimal competition in the financial sector without bias and prejudice:**
- (h) **Ensure** diligent, loyal and honest service by managers and directors of ~~public companies~~ financial service institutions to the interests of their shareholders; and
- (i) ~~the prevention of~~ **Prevent** money-laundering, financing of terrorism and criminal uses of financial services businesses.; and
- (j) ~~in general to promote the maintenance of efficient, competitive, fair, safe and stable markets for financial services and securities to the benefit of and protecting the legitimate interests of customers and investors in Bhutan.~~

Section 4

The functions and powers conferred on the Authority by this Act shall be exercised by the Executive Committee except where this Act **provides** or the Board **directs** ~~shall provide states~~ otherwise.

Section 13

Retain as in the draft

Section 14

Any person who ~~knowingly~~ engages without a license or registration required under this Act in activity for which license or registration is required, commits an offence and on conviction shall be fined ~~not exceeding~~ **the minimum wage at the time of the crime for a maximum period of thirty years** ~~Ngultrum one million or imprisonment~~ **felony of the fourth degree** or both.

Section 17

The Authority shall by regulation require applicants for a license to conduct financial services to provide as part of the application such information as the Authority shall specify as necessary to determine whether the applicant meets the standards of Sections 19 to 21. ~~including but not limited to~~

New section before section 19

The Authority shall grant licenses for Financial Institutions in a transparent and unbiased manner and the basis for determining number of licensees shall be based on objective criteria that shall be made public.

Section 20

The Authority may modify these criteria as necessary to take account of applicants who are individuals **financial service providers such as Insurance Agents, Introductory Brokers, Investment Advisors, Insurance Surveyors, etc.**

Section 28

The Authority may by regulation impose such application or licensing fees or periodic license fees payable to it as are reasonably calculated to defray the cost of administering this Act, mindful of the need to ~~impose no unwarranted burdens on~~ **ensure optimal** competition and of the scale or likely scale of operations of the persons upon whom such fee is imposed.

Section 32

Retain as in the draft

Section34

A Chief Executive Officer of a licensed financial institution shall be a full-time employee and shall hold office for such period, not exceeding five years at a time, subject to the approval by the Annual General Meeting.

Section 36

No licensee, or a controller of a licensee, shall appoint a person as Director or Chief Executive Officer except in accordance with prevailing laws and shall thereafter notify the Authority. Where such appointments have been made in contravention of the criteria set out the Authority may by notification require the replacement of any Director or Chief Executive Officer.

Section 37

Where the Authority is satisfied that a financial institution has violated the provisions of this Act, **other relevant laws or repeatedly violated the provisions of the Prudential Regulations or other directives of the Authority**, it may by notification require the replacement of any Chairman, Director or Chief Executive Officer.

Section 38

No order under Section 37 shall be made unless the Chairman, Director or Chief Executive Officer ~~or other employees~~ concerned has been given a reasonable opportunity of making a representation to the Authority against the proposed order.

Provided that if in the opinion of the Authority, any delay would be detrimental to the interest of the financial institution or its stakeholders ~~shareholders~~, the Authority may, at the time of giving the opportunity aforesaid or at any time thereafter, by direct order, that pending the consideration of the representation aforesaid, any Chairman or, as the case may be Director or Chief Executive Officer ~~or other officer or employee~~, shall not, with effect from the date of such order:

Section 38 (a)

act as such Chairman or Director or Chief Executive Officer ~~or other officer or employee~~ of the financial institution; and

Section 39

~~Notwithstanding anything contained in any law or in any contract or any other such documents, on the replacement of person under this Chapter that person shall not be entitled to claim any compensation against the loss of office or termination. of office.~~ **Upon removal from office the person shall be dealt in accordance with relevant laws.**

Section 40

Where an order under section 37 has been made, the Authority's Board, by order in writing, appoint suitable person in place of the chairman or director or chief executive officer ~~or other officer or employee~~ who has been removed from his office under section 37, with effect from such date as may be specified in the order **but such person** shall, hold office for the interim period not exceeding **six months** ~~five years~~ at a time as the Authority may specify.

Section 41

Retain as in the draft

Section 45

The Authority shall within 30 days of receiving notice under Section 42 notify the person that it has no objection or that it does object to his becoming a significant owner of or increasing his stake in the licensee, in the case of objection **the Authority shall state** ~~stating~~ the legal and factual grounds for objection.

Where an objection has been notified, the question shall be determined subject to Chapter IX and X not more than 21 days later, unless the person seeking to become a significant owner agrees to a later time.

Section 50

No person shall hold more than the following percentage of interest in shares of a financial institution:

- (a) in case of an individual, 10 percent,
- (b) in the case of a company not being a financial institution, 20 percent,
- (c) in the case of a company being a financial institution, as per the limit provided under subsection 4 below, ~~and~~
- (d) in case of a foreign financial institution, as per the RMA regulations in line with the foreign direct investment policy; **and**
- (e) **in case of Ministry of Finance, RGoB, 75%.**

Except where the Authority on being satisfied that it would not be prejudicial to the promotion of a sound financial system in Bhutan may permit a higher limit **subject** ~~However, such limit shall not exceed~~ to maximum of 20 percent for an individual and thirty percent for a company which is not a financial company and **100% for Ministry of Finance, RGoB.**

New Sections after Section 50 as 50A and 50B

New section proposed by NC is not accepted

Section 51

For the purpose of Section 50(a) **and (b)**;

- a) Individual **is a natural person and** includes spouse, ~~the individual's~~ dependent children **or other dependents of a person** being of the same household; and
- b) Company means a parent company/a holding company; its subsidiaries and affiliates, and vice versa ~~it shall also include significant owners of the company who shall not be permitted to hold additional shares as individual owners as provided in section 50 (a).~~

Section 60 (a)

The board of directors of the financial institution shall, in consultation with the audit committee and the internal audit and risk management functions, establish corporate governance principles minimizing ~~harmful~~ conflicts of interest in the administration of the institution's business, ensuring adequate oversight of managers by the board of directors and establishing ethical standards for directors, managers and other personnel.

Section 60 (b)

Retain as in the draft

Section 60 (d)

Retain as in the draft

Section 60 (e)

Retain as in the draft

Section 78

Retain as in the draft

Section 91

If a person ~~knowingly~~:

- (a) destroys, conceals, mutilates or improperly alters any record or account required to be kept or maintained under any of the provisions of this Act or of regulations made under it; or
- (b) sends or attempts to send or conspires with any other person to send out of Bhutan any such record or account, with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under this Act or under regulations made under it,

he commits an offence and on conviction shall be fined ~~not exceeding~~ **the minimum wage at the time of the crime for a maximum period of thirty years** ~~Ngultrum one million~~ or ~~imprisonment~~ **felony of fourth degree** or both.

Section 93

~~The powers of the Royal Audit Authority given by the Companies Act in respect of the audit of those government and government controlled companies (as defined in the Companies Act) which are financial institutions shall be exercised in consultation with the Authority.~~

Section 116

Any person who ~~knowingly~~ violates this section commits an offence and on conviction shall be fined ~~not exceeding the minimum wage at the time of the crime for a period of seven years to fifteen years~~ **Ngultrum seven hundred thousand** or ~~imprisonment~~ **misdemeanor** or both.

Section 119

Retain as in the draft

Section 145

Any person who ~~knowingly~~ fails to comply with sections 139, 141 or 142 or regulations issued under section 144 commits an offence and on conviction shall be fined ~~not exceeding the minimum wage at the time of the crime for a maximum period of thirty years~~ **Ngultrum one million** or ~~imprisonment~~ **felony of fourth degree** or both.

Section 151

Any person who, without reasonable excuse, fails to comply with a restriction, instruction, condition or other order issued under section commits an offence and on conviction be fined **the minimum wage at the time of the crime for a period of seven years to fifteen years** or imprisonment ~~misdemeanor~~ or both.

Section 161

A person harmed or to be harmed by adoption of an unlawful regulation, certificate of inspection or order of investigation may petition ~~the High Court~~ **a court of competent jurisdiction** to block its application, which the Court may do provisionally or permanently in cases of clear error.

Section 169

Where a financial institution informs the Authority-

- (i) that its capital had depleted far below the minimum capital adequacy requirements;
- (ii) that it is likely to become unable to meet all or any of its obligations; or
- (iii) that it is about to suspend payment to any extent;

The Authority may, by order in writing, require the financial institution to take any step, or any action, or to do or not to do any act or thing, whatsoever, in relation to the institution, or its business, or its directors or officers, which

the Authority may consider necessary and which it sets out in the order, within such time as may be set out therein.

Section 174

Any acts—on behalf of or for the account of the licensee that occur without the prior approval of the Conservator after the date of such publication shall be null and void unless the Conservator otherwise decides.

Section 193

No ~~A~~ financial institution shall;

- a) make ~~no~~ sale of its assets exceeding 10 percent or such lower number as the Authority may by regulation prescribe without 45 days notice to the Authority;
- b) ~~Nor shall it~~ make an application under Part VIII of the Companies Act or it or its directors any resolution or application to wind up the company but upon similar notice;
- c) ~~Nor shall it~~ but upon similar notice make any amendment of its articles, enter into any merger or reorganization or issue securities; provided further that any issue of debt securities should be approved by the Authority as not jeopardizing the institution's ability to comply with this Act and the regulations there under and that any prospectus for such an issue be approved by the Authority as to the adequacy of the disclosure therein; and

d) ~~Not shall it~~ fail to report forthwith to the Authority any application under Part VIII of that Act or winding up application of which it is the subject.

Section 199

The Authority is authorized to make regulations implementing the ~~standards~~ **requirements** of Section 19-21 and other provisions of this Act. ~~whether or not such authorization appears in a specific provision of the Act.~~

Section 200

~~Without limiting to Section 199, the~~ The Authority may also make regulations with respect to:

Section 200(e)

Retain as in the draft

Section 200 (g)

Mandatory lending to ~~certain sector of the economy~~ **priority sectors as may be determined by the government provided that such requirement for mandatory lending is applied in a fair and transparent manner to all relevant financial institutions .**

Section 201

Retain as in the draft

Section 203

The Authority shall ~~not~~ adopt, rescind or amend ~~any~~ regulations under this Act ~~without~~ **after** ~~first exposing it for~~ **inviting** public comments, by announcing in the media that the draft regulation for adoption, rescission or amendment and a statement of its legal grounds and policy justifications are available for inspection in the office of the Authority, and on its website, unless:

Section 209

Except for the purpose of performance of his duties under this Act or as directed by the Authority, or when lawfully required to do so by any court of law, no person who is or has been a member of the Board or Executive Committee, an officer or employee of, or adviser to, the Authority, shall disclose to any person any confidential information relating to the affairs of the Authority or of any other person which he has acquired in the performance of his duties or the exercise of his functions without the prior permission of, ~~in the case of members of the Board, the Chairman of the Board and in any other case, the~~ Governor.

Section 212

A person who ~~knowingly~~ contravenes section 209 commits an offence and on conviction shall be fined ~~not exceeding the~~ **minimum wage at the time of the crime for a period of seven**

~~years to fifteen years Ngultrum five hundred thousand or imprisonment~~ **misdemeanor** or both.

Section 216

A person who ~~knowingly~~ contravenes section 213 commits an offence and on conviction shall be fined ~~not exceeding the~~ **minimum wage at the time of the crime for a period of seven years to fifteen years Ngultrum five hundred thousand or imprisonment** **misdemeanor** or both.

Section 228

Any person who ~~knowingly~~ contravenes section 227 commits an offence and on conviction shall be fined ~~not exceeding the~~ **minimum wage at the time of the crime for a maximum period of thirty years Ngultrum one million or imprisonment** **felony of fourth degree** or both.

New Subsection (m) under section 229

(m). Electronic banking.

New Subsection (g) under section 230

(g). Electronic banking.

Section 236 (a)

30 percent of the capital of the bank, and an additional 10 percent in case of infrastructure lending worked out as prescribed in the regulations, except that

- ~~(i) a lower limit may be set by regulation; and~~
~~(ii) if the transaction is a related-party transaction, it must be contained within the limits as prescribed in the regulations; and~~

New Section after Section 237

A violation of Sections 236 and 237 shall be an offence subject to an appropriate fine specified by the Authority in the regulations issued by the Authority.

Section 240

Retain as in the draft

Section 247

~~Licensing restrictions for the Insurers~~ **shall abide by the following restrictions:**

New Section after Section 247

Insurance Business

247A.

- i. All insurance business emanating within the territory of Bhutan must be insured only with an insurer licensed by the Authority.**
- ii. Every insurer must reinsure with a Bhutanese reinsurer or with a reinsurer outside Bhutan such percentage of the sum assured on each policy as may be specified by the Authority.**

Section 248

Licensing requirements for Reinsurers ~~shall abide by the following requirements:~~

A reinsurer shall be permitted to carry reinsurance business in any of the following business;

- a) Life reinsurance
- b) General reinsurance
- c) Composite reinsurance

The Authority may issue regulations specifying the licensing requirements for a reinsurance company **in addition to the requirements provided under section 248 to 252.**

Section 249

General Licensing requirements for ~~insurers~~ insurance business

Any company applying for a licence as an insurer/**reinsurer** must demonstrate that they have a minimum paid up capital of such amount as may be prescribed by the Authority by regulation.

Section 251

An application for a licence to operate as an insurer/**reinsurer** must include a business plan and the proposed arrangements for reinsurance, as well as the general requirements given in Section 17 to 21.

Section 253

Retain as in the draft

Section 255

An appointed actuary shall not be deemed to be fit and proper unless he/she is appointed from among the empanelled list of actuaries maintained by the Authority.

Section 256

The ~~appointed~~ ~~actuary~~ insurer/**reinsurer** shall prepare an actuarial report, and certify it, in such form as the Authority may specify.

Section 257

Insurer/**reinsurer** must, at all times, maintain the following, in a manner and amount as prescribed by this Part or in regulations:

Section 258

An insurer/**reinsurer** must ensure that at all times its :

Section 260

By regulation or pursuant to Chapter IX and without limiting other remedies available under that Part, the Authority may require an insurer/**reinsurer**:

Section 261

A life insurer/**reinsurer** shall within fourteen days of any change in its appointed actuary provide the Authority with a written notice including the name and qualifications of the person so appointed.

Section 262

An insurer/**reinsurer** licensed to write life insurance business shall have an actuarial report produced, no less than once a year, in the manner and form as prescribed in regulations adopted by the Authority and provide a copy to the Authority.

Section 266 (a) and (b)

- a. the company is a shareholder of an insurer/**reinsurer** or
- b. a director or manager of the company or director or chief executive officer of an affiliate is a director, shareholder or employee of an insurer/**reinsurer**.

Section 277

The Authority may establish and maintain a separate insurance guarantee scheme fund through regulations for ~~both general and~~ **life insurance** business in line with the regulations issued by the Authority.

Section 284

~~An introductory broker is one who transmits customer orders for execution to another broker and who holds no customer~~

~~assets, unless for prompt forwarding to an executing broker.~~
(*Moved under definition*). An introductory broker may be required, should the Authority so determine, to associate for regulatory purposes with a licensed securities exchange on terms set forth in regulations of the Authority.

Section 285

Moved under definition

Section 311

No single company shall act as both Management Company and depository nor shall any **of its** affiliated companies **act similarly** to the extent prohibited in regulations adopted by the Authority.

Section 314

The rules of an investment fund or the contract with its management company shall describe the investment policy **that** the investment fund ~~will~~ **shall** follow, indicating among other things:

Section 321

~~The Authority may grant exemptions from the requirements of this subpart and the rules under it, where it determines that the burden imposed is disproportionate to the protections intended by the provision in question.~~

Section 335 (b)

explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Authority to decide whether to approve ~~them~~ or refuse. ~~to approve them~~

Section 337

The Authority shall, within 8 weeks after receiving the proposed rules or amendments for approval, issue an order to the exchange that **the Authority approves or refuses the proposal.**

~~(a) the Authority approves them; or~~

~~(b) it refuses to approve them.~~

Refusal to approve a rule is adverse action with respect to the exchange. A decision as to approval or refusal under this section or amendment under the following section shall be based upon the standards set forth in this Act and the regulations there under.

Section 340

In determining an application ~~made~~ **under** Section 339, the Authority shall not grant a licence to an applicant unless the Authority is satisfied that:

Section 351

The conduct described in Section 349 may be redressed by a **law** suit ~~at law~~ against persons substantially causing or substantially participating in the conduct by an injured party or

parties seeking compensation of loss or an order that the conduct cease; a suit by the Authority (without limiting its other powers) seeking compensation on behalf of investors or customers or an order that the conduct cease; or by other means stated in this Act or in other law, provided that:

Section 353

Any person who knowingly violation violates the order shall be an offence and upon conviction ~~and subject to a~~ be fine of ~~not more than Ngultrum one million~~ **the minimum wage at the time of the crime for a maximum period of thirty years or imprisonment felony of fourth degree** or both.

Section 354

A person who ~~knowingly~~ commits conduct in section 349 (a), (b), (c), (d) or (e) that has caused or could potentially cause substantial damage to investors commits an offence and on conviction shall be fined ~~not exceeding Ngultrum one million~~ **the minimum wage at the time of the crime for a maximum period of thirty years or imprisonment felony of fourth degree** or both.

Section 361

Where this Act or a regulation under it appears to conflict with the requirements of the Companies Act or another law, or a regulation under them, each of the provisions shall apply unless:

(a) it is not possible to satisfy both provisions; or

- (b) the application of a provision of or regulation under another law would clearly disrupt the orderly functioning of the scheme of regulation established under this Act.

In such cases, the provisions of this Act ~~or a regulation under it~~ shall prevail.

Section 363

Retain as in the draft

Section 366

The amendment of this Act by way of addition, variation or repeal shall be effected by a simple majority of the respective Houses or **by a vote of** no less than two-thirds of the total members of Parliament present and voting on a motion submitted by one-third of the members of either House. ~~;~~ ~~provided that the amendment does not undermine the functions and effectiveness of the financial services.~~

Section 368

Definitions

Financial Services: Amended in Dzongkha text

Public ~~companies~~ Company ~~are~~ **is** as defined in the Companies Act of the Kingdom of Bhutan. ~~and which are listed with the stock exchange in Bhutan.~~

Manager means a ~~chief executive or~~ **senior officer** *or* person who, under the immediate authority of a director, directors or chief executive **officer** of a company,

- (i) exercises managerial functions; or
- (ii) is responsible for maintaining accounts or other records of the licensee;

and such other persons exercising managerial functions as may be defined in regulations adopted by the Authority.

Newspaper means ~~any kind of~~ **print** media or a widely circulated newspaper or similar medium selected by the Authority in order to assure adequate public notice of official actions or proposals.

New Definitions

“Introductory broker” means one who transmits customer orders for execution to another broker and who holds no customer assets, unless for prompt forwarding to an executing broker.

“Independent trader” means a person dealing for his own account as a member or participant of a licensed securities exchange who has no outside customers.

Schedule 1

2. **A Financial Institution** or a company or a person which, immediately prior to the commencement of this Act, is licensed under the Financial Institutions Act 1992 (the “1992 Act”) of Bhutan to provide any of the financial services specified in article 1.a. of the 1992 Act, shall thereupon be deemed to be licensed under this Act to conduct business as permitted by its licence.
3. An insurance company previously licensed by the Authority to operate as both a life and general insurer, shall thereupon deemed to be licensed ~~shall thereupon be deemed to be licensed~~ under this Act to conduct business as permitted by its licence.

After submitting their general views, member In-Charge of the Bill moved the motion that the Bill be passed. 37 out of 39 members present voted “YES” and 2 members voted “NO” and thus adopted the Bill on December 9, 2010 at 10.45 am.

SAARC AGREEMENT ON TRADE IN SERVICES (SATIS) 1P6/IC3

Minister for Economic Affairs while presenting the SAARC Agreement on Trade in Services (SATIS) submitted that in

November 2005 the Heads of the State during its Thirteenth SAARC Summit held in Dhaka, Bangladesh recognized the need to take the process of regional economic integration further by expanding the scope of SAFTA to include Trade in Services, Enhanced investment and Harmonized Standards.

Accordingly several SAFTA Ministerial meeting were held to draft the text of Draft SAARC Framework Agreement on Trade in Services (SATIS). In February, 2010 the draft SAARC Agreement on Trade in Services was finalized. The SATIS is aimed at promoting and enhancing trade in services among the Contracting States in a mutually beneficial and equitable manner by establishing a framework for liberalizing and promoting trade in services within the region in accordance with Article V of General Agreement on Trade in Services (GATS) under WTO.

The SATIS consists of 32 Articles and two annexes. Annex I pertaining to General Understanding on Principles and Guidelines for Negotiation is attached to the SATIS. Annex II pertaining to Schedules of Specific Commitments of Contracting States is subject to negotiations among the Contracting States. The SATIS basically contains essential

elements of GATS with appropriate modifications, where necessary, to suit the SARRC context.

Thereafter all the Hon members present unanimously voted for the SAARC Agreement on Trade in Services (SATIS) and was adopted on December 08, 2010 at 12.30 pm.



8th December, 2010

(Jigme Tshultim)

SPEAKER