



Office of the Anti-Corruption Commission
Thimphu
Post Box 1113
Phone: +975-2-334863/64/66/67/68/69/70
Fax: +975-2-334865



Office of the Attorney General
Thimphu
Post Box 1045
Phone: +975-2-326889, +975-2-324604
Fax: +975-2-324606

MEMORANDUM OF UNDERSTANDING

With respect to the conduct of criminal investigations and prosecutions of offences under the Anti-Corruption Act of Bhutan and Office of the Attorney General Act

BETWEEN

ANTI-CORRUPTION COMMISSION

AND

OFFICE OF ATTORNEY GENERAL

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PREAMBLE

WHEREAS the Anti-Corruption Commission (ACC) and the Office of the Attorney General (OAG), the Parties to this Memorandum of Understanding (the Parties), having separate responsibilities within the Constitution and each Party recognizing the other's independence in performing their respective functions and duties;

WHEREAS the ACC established by the Royal Decree issued on 31 December 2005 and has the constitutional mandate under the Anti-Corruption Act 2011 (the AC Act) to investigate all allegations of corrupt practices, whether reported or otherwise and pursuant to Section 128 of the AC Act is required to make prosecution referral to the Office of the Attorney General its findings of investigation which in the opinion of the ACC warrants prosecution in the interest of public;

WHEREAS, the OAG having been established under the Office of the Attorney General Act 2006 entrusted with the primary responsibility of prosecution on behalf of the state shall carry out its prosecutorial functions in accordance with its Act and the Prosecution Guidelines;

WHEREAS the parties, without prejudice to each other's institutional independence, statutory rights and obligations under respective legislation, having unconditionally recognized the need to establish a guiding framework of collaboration to underpin an effective functional relationship between the ACC and the OAG in relation to investigation and prosecution of corruption offences through clear and effective communication and decision making processes;

THEREFORE, the Parties agree as follows:

1. PURPOSE OF THE MEMORANDUM OF UNDERSTANDING AND GOVERNING PRINCIPLES

1.1 The purpose of this Memorandum of Understanding (MOU) is:

- a) to provide a clear understanding of the Parties' respective roles and responsibilities at the investigative and prosecution stages of a case; and
- b) to improve the efficacy of prosecutions and to implement strategies to enhance the quality of investigations and of the cases presented at trial.

1.2 The Parties undertake to disseminate this MOU throughout their respective organizations so that all relevant staffs are aware of the principles it establishes and the resolve of the Parties to achieve its purpose.

2. SUPPORT DURING INVESTIGATION

2.1 The ACC may seek the advice of the OAG on any legal issue likely to impact an investigation or any subsequent prosecution;

2.2 The OAG may help shape the investigation in the early stages by advising the ACC on the nature of the evidence required, and by providing input into the development of the case as to the adequacy and quality of evidence; and

2.3 The ACC shall collaborate with the OAG while executing plea bargain with the alleged persons during the course of investigation.

3. CASE REFERRAL

3.1 In determining what cases need to be referred to the OAG, the ACC will be guided by the relevant provision of the AC Act and any internal policies governing such referrals, depending on the evidentiary strength and the public interest.

3.2 Any case which the ACC decides to refer for prosecution must be in a formal letter signed by the Chairperson or one of the Commissioners in the

absence of the Chairperson. The letter should at least specify the name of the responsible case officer who should be contacted during the prosecution review and/or prosecution.

- 3.3 The ACC shall forward a full investigation report detailing the findings of the investigation along with properly tabbed, labelled and referenced attachments forming part of the investigation report. The ACC and the OAG may review from time to time on any alternative format and the structure of the report in the interest of efficiency.
- 3.4 The case referral will also include draft charges and the persons to be charged.
- 3.5 The ACC shall arrange to provide all evidence or information obtained during the investigation including the status of administrative sanctions in effect such as seizure of moveable and immovable properties, suspension, etc.
- 3.6 Any document / information relating to a case which has been withheld by the ACC shall be communicated to the OAG to ensure full disclosure.
- 3.7 The original evidences will be retained with the ACC unless required by the court for the purpose of a trial.
- 3.8 The OAG shall acknowledge in writing any case that has been referred by the ACC within 3 days from the receipt of such referral. Alternatively, the existing practice of stamping and dating the receipt of the documents may be continued. Where the referral involves additional documents or physical exhibits, the handing taking of such items should be well documented.
- 3.9 If the OAG so desires, the ACC, on prior notice, shall arrange a case briefing in the form of PowerPoint presentation or any other suitable means of communication. However, it should be within a month of the case referral.

4. PROSECUTION REVIEW

- 4.1 The OAG shall communicate to the ACC identifying the representing lawyer assigned to review the case in order to open and establish a line of communication between the lawyer and the ACC case officer.
- 4.2 The ACC case officer shall be responsible to provide necessary support on any clarification solicited by the OAG lawyer regarding the case under review. For any inquiries of technical nature or the factual information of

the case, the OAG lawyer and the ACC case officer are expected to maintain a communication at their level. However, individuals have to report to their respective management.

- 4.3 At any stage of the case review, if the issue arises and it is such which cannot be addressed or resolved through discussion between the OAG lawyer and the ACC case officer, it should be decided at the higher decision making level. Such matters may include but not limited to situations requiring the commitment of resources due to additional investigations or any other activities needed to build the case.
- 4.4 Upon review of the case by the OAG, the OAG's position on the case shall be communicated to the ACC.
- 4.5 Where the OAG decides not to prosecute the case, the OAG shall convey to the ACC the reasoning behind it. In such case, the OAG shall communicate in writing explaining the grounds and within 7 working days return the investigation report along with all other documents previously submitted.

5. CASE REGISTRATION

- 5.1 For expeditious prosecution, a case referred to the OAG should be registered in a competent court within a reasonable period of time, no later than six months, from the receipt of the case. A copy of the charge sheet of the case should be endorsed to the ACC.
- 5.2 Upon registration of a case in the court, ACC shall issue orders for the suspension of public officials, as required by the AC Act, with effect from the date of charge till pending the outcome of any appeals.
- 5.3 The OAG, while filing the criminal charges in the court, where necessary, shall also furnish a seizure list to the court.
- 5.4 The OAG shall also make an application for restitution order where applicable.

6. PROSECUTION

- 6.1 The decision to prosecute is an ongoing process that continues throughout the prosecution. The OAG's decision to prosecute shall be made in accordance with the Prosecution Guidelines.

- 6.2 The OAG shall inform the ACC in the event of a withdrawal of prosecution explaining the reason behind such a decision.
- 6.3 The ACC shall preserve evidence and all inculpatory and exculpatory information obtained, and maintain continuity and security of all evidence.
- 6.4 The OAG shall inform the ACC immediately of any new issues, facts or evidences that arise during the prosecution which will adversely affect the proceedings of a case.
- 6.5 The ACC case officers will be available to review with the OAG lawyer the facts of the case and disclosure issues.
- 6.6 The ACC case officers shall attend court proceedings, when required.
- 6.7 The ACC shall carry out additional investigative tasks that are reasonably required by the OAG.
- 6.8 The ACC shall continue to provide all relevant evidence, reports and briefs discovered or produced throughout the prosecution phase.
- 6.9 The OAG shall consult the ACC on any proposed plea and charges. If a plea agreement is reached, the OAG shall convey to the ACC the substance of the agreement and the reasoning behind it.

7. APPEAL CASES

- 7.1 The OAG shall inform the ACC with reasons within 5 working days, where it decides not to appeal.
- 7.2 The ACC shall continue to provide the necessary support for the appeal cases.

8. COURT JUDGMENT IMPLEMENTATION

- 8.1 Upon successful completion of prosecution of cases, the OAG shall share a copy of the judgement containing the front page, which carries the chronology of hearings and the operative part of the judgement with the ACC.
- 8.2 The disciplinary referrals will be made by the ACC to the concerned agencies for taking administrative actions as per the court verdict.

- 8.3 The OAG as the prosecutor shall be responsible for petitioning the court for the execution of judgement in order to recover the restitution prayed for during the trial.

9. LIAISON MEETING

- 9.1 The Parties may meet twice a year or as and when required to facilitate, among others:
- a) Monitoring and evaluation of cases referred for prosecution;
 - b) resolution of coordination difficulties;
 - c) review of current matters that have been referred to the OAG;
 - d) Ensuring that case officers have been nominated and are in regular communication on every matter that has been referred;
 - e) Discussion of learning realized by either agency in relation to management of cases (continuous improvement);
 - f) Review of effectiveness of operational arrangements; and
 - g) Joint capacity building.

10. DESIGNATED OFFICIALS

- 10.1 The Chief Legal Officer, ACC and the Chief Prosecutor, OAG shall have overall administrative responsibility for the implementation of this MOU.

11. CONFIDENTIALITY AND SECURITY OF INFORMATION

- 11.1 Subject to the provisions of this MOU, the AC Act, the OAG Act, and any other applicable Act of Parliament, the information shared between the Parties under the terms of this MOU shall be treated as confidential, and shall be protected from further disclosure. The shared information can be used only for the specific purpose for which it is provided, and shall not be passed on to any third party without the written consent of the Party from whom it originated.

12. AMENDMENT

- 12.1 This MOU may be amended at any time with the consent of the Parties. Such amendments may be effected by an exchange of letters between the ACC Chairperson and the Attorney General of the OAG.

13. EFFECTIVE DATE AND TERMINATION

- 13.1 This MOU shall come into effect on the 5th day of the April month of the year 2013.
- 13.2 Either of the Parties may terminate this MOU upon one month written notice to the other Party. Such notice shall be given by either the ACC Chairperson or the Attorney General.

14. NATURE OF THE MOU

- 14.1 This MOU is an administrative understanding between the Parties. It is not intended to be legally binding or enforceable before the courts, nor is it designed to alter the pre-existing obligations, responsibilities, duties, or entitlements of either Party as may be defined by statute, regulation, or otherwise.

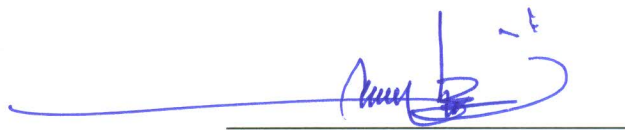
IN WITNESS THEREOF, this MOU was signed in duplicate, each copy being equally authentic.

FOR THE ACC



Neten Zangmo
Chairperson

FOR THE OAG



Phuntsho Wangdi
Attorney General

DATE: 05/04/13

DATE: 05/04/2013