



TRIPARTITE MEMORANDUM OF UNDERSTANDING

With respect to co-operation, assistance and sharing of information and the investigation and prosecution of corruption offences in the private sector.

BETWEEN

THE ANTI-CORRUPTION COMMISSION OF BHUTAN (ACC);

THE ROYAL BHUTAN POLICE (RBP)

AND

THE OFFICE OF THE ATTORNEY GENERAL (OAG)

PREAMBLE

The Anti-Corruption Commission, hereinafter referred to as "ACC", the Royal Bhutan Police, hereinafter referred to as "RBP", and the Office of Attorney General, hereinafter referred to as "OAG" hereinafter jointly referred to as "Parties";

Concerned about the seriousness of the threats posed by corruption to the stability and security of the State, undermining the institutions and values of democracy, ethics and justice, and jeopardizing the socio-economic prosperity and rules of law;

Recognizing the separate responsibilities, functions and duties of the Parties, where the ACC has constitutional mandate under the Anti-Corruption Act of Bhutan 2011 (ACAB 2011), to take necessary steps to prevent, educate and investigate all allegations of corrupt practices, whether reported or otherwise, the RBP having the mandate to investigate other criminal offences under the Royal Bhutan Police Act (RBPA), and the OAG having the mandate to prosecute both corruption and other criminal offences under the Office of Attorney General's Act (OAGA);

Desiring to work in co-operation and collaboration in pursuant to Section (9) of ACAB 2011, with the RBP and the OAG, in fostering good governance and for the investigation of corruption offences in the private sector, determined to create strong partnership which will enhance the rendering of assistance for successful fight against corruption;

On the basis of mutual respect without prejudice to each other's institutional independence, statutory rights and obligations under the respective legislation, having unconditionally recognized the need to establish a guiding framework of collaboration to underpin an effective functional relationship between the Parties;

Bearing in mind the sacred constitutional duty to act against corruption, the Parties hereby subscribe to this "TRIPARTITE MEMORANDUM OF UNDERSTANDING", hereinafter referred to as "MoU" and agree as follows:

1. PURPOSE OF THE MoU

1.1. The purpose of the MoU is to:

- (a) outline the respective roles and responsibilities of, and the relationship between the Parties to this MoU;
- (b) foster collaboration between the Parties (RBP and ACC) to this MoU with respect to the investigation, arrest, detention, search, seizure, protection, and such other investigative proceedings of a corrupt offence;
- (c) enhance the effective working relationships between the Parties to foster constructive co-operation;
- (d) provide a clear understanding of the Parties' respective roles and responsibilities in the investigation and prosecution of corruption offences in the private sector on a mutual understanding basis;
- (e) foster collaboration between the Parties to this MoU with respect to the investigation and prosecution of corruption in the private sectors; and
- (f) ensure that the private sector is not neglected and harassed.

2. SCOPE OF THE MoU

- 2.1 The Parties within the framework of this MoU shall provide each other with full co-operation within the ambit of their respective Laws, Rules and Regulations;
- 2.2 The co-operation or assistance intended under this MoU between the RBP and the ACC shall also extend to providing access to related information and documents, books, articles or such other information maintained by or known to the parties, which may be necessary for effective functioning of either of the parties;
- 2.3 The scope of assistance to the investigation by either of the parties shall not only be restricted to access, providing information or document but also other support services if viewed necessary; and
- 2.4 Any of the Party to this MoU may, as the case may be, request the other Parties for any assistance in effective implementation of this MoU.

3. SHARING OF INFORMATION

- 3.1 The Parties (RBP and ACC) to this MoU may each, subject to any restrictions imposed by the ACAB 2011, the RBPA 2009, the Prison Act of Bhutan 2009 (herein after referred to as the PAB 2009) and any other relevant laws, share information that they believe would be of assistance to either Party in undertaking its respective responsibilities under the law;
- 3.2 Where necessary, either Party may, if it deems fit, communicate any intelligence or information deemed relevant, to another Party;
- 3.3 The Parties shall in pursuant to the request made by either Party share such information which may include sharing of such documents, books, articles containing information on the suspect/the accused or such other information required for investigation or otherwise;
- 3.4 The Parties shall endeavor to provide a prompt and adequate response to requests for information and documents and such other records;
- 3.5 The intelligence or information shared under this MoU or obtained from any available automated systems shall not be used as evidentiary material for any criminal proceeding unless it is formalized through post facto consent and formal approval of the Party that provided such intelligence or information or the competent Court; and

4. CONFIDENTIALITY AND SECURITY OF INFORMATION

- 4.1 Subject to the provisions of this MoU, the ACAB 2011, the RBPA 2009, the PAB 2009, and any other applicable act of Parliament, the information shared between the Parties or obtained from the database system, under the terms of this MoU shall be treated as confidential, and shall be protected from further disclosure.
- 4.2 Any information and/or data obtained from the database system or shared between the Parties shall 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.

4.3 Where there is any leakage of information without the prior consent of the other Party to a third party, the official concerned shall be held accountable under the relevant laws of the land.

5. OTHER ASSISTANCE

5.1 The ACC may in accordance with the ACAB 2011, the RBPA 2009 and the PAB 2009 as required by the case in hand, seek necessary assistance from the RBP in relation to investigation, arrest, detention, search, seizure, transfer of detainee, protection and such other investigative proceedings of a corrupt offence; and

5.2 The ACC may, where it deem necessary, accordance with the ACAB 2011, the RBPA 2009 and the PAB 2009 request the RBP to guard the safety of the ACC investigation and/or prosecution team from imminent threat. Where necessary, the ACC may in accordance with the relevant laws and procedures set in this MoU request the physical protection of witness, informer, complainant and those individual who assist the ACC.

6. MAKING A REQUEST AND REFUSAL OF REQUEST

6.1 The requests for sharing of information and/or rendering of assistance by the Parties will ordinarily be in writing; however, in exceptional cases requiring urgent attention, information may be shared and/or the assistance may be sought on a verbal request, followed by a written request within 24 hours, where necessary. The Parties while rejecting a request made by the other party shall, as far as possible, give reasons for rejecting the request;

6.2 Subject to the fulfillment of the legal requirement set in the relevant laws, a request for assistance to the RBP by way of arrest, detention, search, seizure, transfer of detainee shall, as the case may be, state:

- (a) the basis on which the ACC asserts that there are reasonable grounds for suspecting that an arrestable offence within the meaning of ACAB 2011 or any other relevant laws has been committed;

- (b) the reasonable grounds for suspecting him to be guilty of the offence with regard to the individual named in the request;
- (c) sufficient information regarding the factual background of the offence; and
- (d) where necessary, such reasons or any other justification on the need of such assistance.

6.3 A requested Party has discretion not to provide such an information and/or assistance;

- (a) If such an information and/or assistance is likely to prejudice the legal responsibilities of the requested Party; or
- (b) If judicial proceedings have been initiated and the providing of such an information and/or assistance would be in breach of any judicial order; or
- (c) If the information and/or assistance sought is in contrary to law.

6.4 The requested Party shall, however, provide an explanation of its decision to the requesting Party; and

6.5 The requesting Party must ensure that all the formalities are completed and that the request made is specific in nature accompanied by reasons for seeking such information and/or assistance and its intended use.

7. EXECUTION OF REQUEST

7.1 The requested party shall in pursuant to the request made by the requesting party, share relevant information which may include sharing of such documents, books, articles recorded with the requested party or such other information required for investigation or otherwise;

7.2 Where the RBP is assisting the ACC with the execution of an arrest, and unless otherwise agreed, the Team Leader of the ACC Investigation Team shall take charge of the command to order the arrest and other associated proceedings such as conduct of entry

and arrest process, search and seizure, including in relation to the handling and removal of evidence in accordance with the procedures set out in this MoU;

- 7.3 In cases of detention by the ACC, decisions relating to the detainee, including access, conditions, length of detention and compliance with the Codes of Practice under the relevant laws shall be the responsibility of the ACC. However, the overall responsibility for ensuring the detainee's rights under the relevant laws and ensuring the detainee's physical and general wellbeing during detention shall be with the RBP;
- 7.4 The visits during the period of detention shall only be allowed with the permission granted by the Commission with due completion of all the requirements;
- 7.5 The RBP shall, as the case may require, assist the ACC in transferring the detainee from one prison cell to another in accordance with the PAB 2009. It shall be the responsibility of the RBP to take full in-charge of the detainee and ensure safe custody during the course of transit or transfer of the detainee from one detention facility to another or to the office of the ACC or the competent court for the investigation or prosecution or such other lawful proceeding purposes in accordance with the procedures set out in this MoU;
- 7.6 It shall be the responsibility of ACC to apply and obtain necessary warrants and extend remands from the competent court;
- 7.7 Where the RBP is assisting the ACC with the execution of search and seizure, the assistance shall be confined to the directives provided by the ACC investigation team leader based on the circumstances, time, area and/or case permissible under the ACAB, the RBPA and the Civil and Criminal Procedure Code of Bhutan (herein after referred to as the CCPCB); and
- 7.8 The Parties shall endeavor to provide a prompt and adequate response to requests for information and documents and such other records.

8. SCOPE OF INVESTIGATION OF CORRUPTION OFFENCES IN THE PRIVATE SECTOR

- 8.1 Where a complaint is lodge with any of the Parties to this MOU on corruption offences in private sector, it shall be the responsibility of the complaint receiving Party to discuss the matter with the other Parties for further course of action;
- 8.2 Corruption offences in the private sector involving pecuniary value of less than one million ngultrum shall be investigated by professionals, consultants, experts, independent investigators or informers in accordance with section 33 of the ACAB 2011;
- 8.3 Corruption offences in the private sector involving pecuniary value of more than one million ngultrum and less than ten million ngultrum shall be investigated by the RBP;
- 8.4 Corruption offences in the private sector involving pecuniary value of more than ten million ngultrum shall be investigated by the ACC in accordance with the ACAB 2011;
- 8.5 For the purpose of investigation of private sector corruption, the pecuniary value involved in the crime shall be determined by the concerned investigating agency based on the credibility and reliability of the complaints received;
- 8.6 The ACC shall, where necessary, provide technical assistance in every investigation of corruption offence in the private sector for effective investigation;
- 8.7 There shall be full support, cooperation, coordination and exchange of information relating to investigation and prosecution of corruption offences in the private sector and other matters, amongst the parties to this MoU; and
- 8.8 The measures undertaken for the investigation of the private sector corruption under this MoU is an interim arrangement and shall be terminated once the ACC is in a position to take up all the corruption cases in the private sector as mandated by the ACAB 2011.

9 PROSECUTION OF PRIVATE SECTOR CORRUPTION

- 9.1 Prosecution of all corruption offences in the private sector shall be done by the OAG;
- 9.2 On completion of the investigation, the cases shall be forwarded to the OAG in accordance with the prosecution referral procedures of the respective investigation agencies;
- 9.3 The OAG may also provide consent of prosecution to the Jabmi hired by the OAG in consultation with concerned private organization or delegate to that concerned private organization, if that organization has Jabmi to prosecute of private sector corruption cases investigated by certified private investigators.
- 9.4 However, the ACC shall take over the prosecution when the circumstances provided under section 128 (3) of the ACAB 2011 are fulfilled.

10 CONSENT OF PROSECUTION

- 10.1 The OAG may, if it deem appropriate, provide consent of prosecution in accordance with relevant laws and rules and regulations to such Jabmi fulfilling the requirement under the Jabmi Act or such other requirement under relevant laws and bye-laws;
- 10.2 Where the OAG provides the consent of prosecution, the Attorney General shall retain control over prosecution. For the purpose of prosecution of private sector corruption, **"control over prosecution"** means control of crucial prosecutorial decisions, such as whether to prosecute, what targets of prosecution to select, what investigative powers to utilize, what sanctions to seek, plea bargains to strike or immunities to be granted or such other factors which may be deemed important in prosecution;
- 10.3 Where the Jabmi deems necessary to hire the service of such other professionals shall seek written approval from the OAG, who may upon studying such application approve the proposal; and

10.4 The prosecution by Jabmi shall be governed by the principles of prosecution enshrined in the OAG Act and Prosecution Guidelines of the OAG.

11 LIAISON OFFICIALS

11.1 For the purpose of convenience and greater operational efficiency, the Legal Division, ACC, the Legal and Prosecution Division, RBP and the Prosecution Division, OAG shall act as the Liaison Officer, who will act as a pivotal person bridging the cooperation between the Parties to this MoU.

11.2 The Liaison Officers shall have the overall administrative responsibility for the effective implementation of this MoU and shall work in close coordination without prejudice to the independent function of the Parties.

12 AMENDMENTS AND DURATION

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 Chairperson, ACC, the Chief of Police, RBP. and the Attorney General of Bhutan, OAG; and

12.2 This MoU shall remain effective from the date of signing of this MoU till its termination.

13 TERMINATION

Any of the Parties may terminate this MoU upon one month written notice to the other Parties. Such notice shall be given either by the Chairperson, ACC, the Chief of Police, RBP, or the Attorney General of Bhutan, OAG.

14 MISCELLANEOUS

14.1 As one of the responsibilities mandated by the ACAB 2011, the ACC shall create awareness, educate and initiate advocacy programs in the private sector for the purpose of preventing corruption in the private sector; and

14.2 In cases of bribery of a police person involving pecuniary value of less than ten thousand ngultrum, the ACC may authorize the RBP to investigate and charge the suspect under Section 42 of the ACAB 2011. Such cases shall be forwarded to the OAG for prosecution.

15 NATURE OF THE MOU

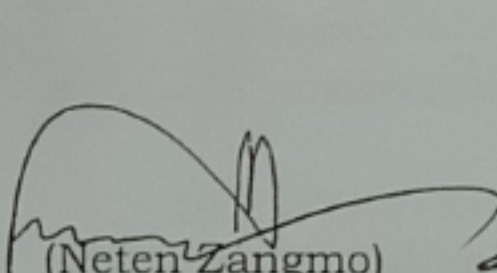
This MoU is an interim administrative understanding between the parties and is not designed to alter the pre-existing obligations, responsibilities, powers, duties, rights, or entitlements of any of the Parties as may be defined by statutes, rules and regulations, or otherwise.

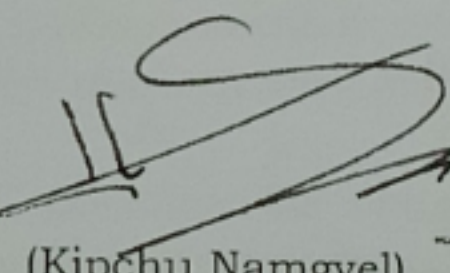
IN WITNESS THEREOF, the parties have executed this MoU effective as of the day and year indicated by the last signature below in three originals with the parties retaining one copy each.

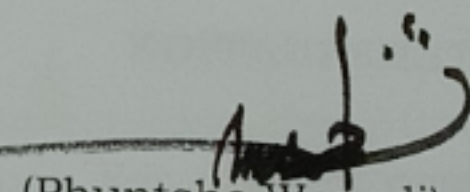
FOR THE ACC:

FOR THE RBP:

FOR THE OAG:


(Neten Zangmo)
Chairperson


(Kipchu Namgyel)
Thrimdag Chichab


(Phuntsho Wangdi)
Attorney General

Date: 9th March 2015

Date: 9th March 2015

Date: 9th March 2015