

# PARLIAMENT OF BHUTAN



## PROCEEDINGS AND RESOLUTIONS (TRANSLATED) OF THE TWENTIETH SESSION OF THE NATIONAL COUNCIL OF BHUTAN

(28<sup>th</sup> Day of the 9<sup>th</sup> Month to 19<sup>th</sup> Day of the 10<sup>th</sup> Month of the Fire Female Bird Year  
Corresponding to 16<sup>th</sup> November to 7<sup>th</sup> December 2017)

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## **Proceedings and Resolutions (Translated) of the 20<sup>th</sup> Session of the National Council of Bhutan**

*(Thursday, 16<sup>th</sup> November 2017 corresponding to the 28<sup>th</sup> Day of the 9<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

### **A. Proceedings for the Opening Ceremony**

The 20<sup>th</sup> Session of the National Council of Bhutan commenced on 16<sup>th</sup> November 2017 corresponding to the 28<sup>th</sup> Day of the 9<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar with traditional *Marchhang Tendrel* ceremony presided over by the Hon'ble Chairperson.

### **B. Opening Address of the Hon'ble Chairperson**

The Hon'ble Chairperson in his opening address said that the Opening Ceremony of the 10<sup>th</sup> Session of the Second Parliament was kindly presided over by His Majesty the Druk Gyalpo yesterday in the National Assembly. Today, the 20<sup>th</sup> Session of the National Council commenced with traditional *Marchhang Tendrel* ceremony and he prayed for the successful conclusion of the second term with delight, reverence and enjoyment and free from any problem and misfortune.

Above all, he attributed the successful and uninterrupted conclusion of the Session without any problem and misfortune to His Majesty the King, the foremost protector of all the Bhutanese, for his continuous efforts in maintaining the security and sovereignty of the country and for looking after the

welfare of the people day and night in the ultimate interest of the people and the country.

Similarly, on behalf of the National Council, he expressed his appreciation to His Royal Highness the *Gyalsey*, Jigme Namgyal Wangchuck and offered his deepest gratitude to him. He said that, the *Gyalsey*, not even two years old, has already assumed state affairs by making his maiden state visit to our close neighbour country, India. He stated that his maiden state visit will further benefit the special relations shared between the two countries. During the visit, the Prime Minister of India, Narendra Modi had presented the *Gyalsey* with an official football of the FIFA U-17 World Cup which further signify that his fame will spread all over the world in the future.

Likewise, on behalf of all the people of Bhutan, he expressed his gratefulness to His Majesty the King for his continuous advice and guidance in the interest of maintaining security and sovereignty of the country. Among others, the government of India has expressed their belief and appreciation to His Majesty the King for his leadership during the recent international boundary related dispute. He said that we are ever so grateful for such good deeds of His Majesty the King.

He also expressed his gratitude to Her Majesty the *Gyaltshen*, for serving His Majesty the King with utmost loyalty from the time of the Royal wedding and moreover, for carrying out various causes day and night in the interest of the country and the people even

though she have important duties to attend to after the birth of His Royal Highness, the *Gyalsey*.

He also offered his gratitude to His Holiness the *Je Khenpo*, the spiritual leader of all Bhutanese, for presiding over the three-month long oral transmission of *Kanjur* at the *Kuensel Phodrang* in Thimphu in front of the Buddha *Dordenma* statue which is being conducted for the peace and wellbeing of all sentient beings.

The Hon'ble Chairperson informed the House on the agenda of the 20<sup>th</sup> session of the National Council. He said that the House will deliberate on 3 legislative issues, an urgent Bill and a Tourism Levy Exemption Bill. He said that the House will also deliberate on the Report on Assessment of Access to and Use of Government-to-Citizen (G2C) Services and Review Report on Legal Aid to Indigent Person under issues related to review of policies.

In concluding, the Hon'ble Chairperson reminded the Hon'ble members that the essence of the National Council is to remain apolitical and not be influenced by interest groups while serving the country and the people in their parliamentary work. He said that it is very important to uphold the independent mandate and functions of the House. He prayed for the successful conclusion of the 20<sup>th</sup> session of the National Council without any problems and misfortunes by the blessings of the *Kenchog Sum*, the profound advice and guidance of Their Majesties and the prayers of *Lamas* and

*Truelkus*; the upholders of the precious teachings of the Buddha.

### **C. Implementation Report on the Resolutions of the 19<sup>th</sup> Session of the National Council**

The National Council during its 19<sup>th</sup> Session deliberated on the National Budget and Appropriation Bill for the Financial Year 2017-18 and submitted few recommendations to the National Assembly. The implementation report on the resolutions was submitted by the Economic Affairs Committee as per Annexure I. In addition, the National Council during its 19<sup>th</sup> Session had also deliberated on two issues related to review of policies and submitted its recommendations to the government and relevant agencies for implementation and assurances. The relevant Committees of the National Council submitted the implementation reports as per Annexure 2.

While no further deliberations took place on the implementation report of the National Budget and Appropriation Bill for the Financial Year 2017-18, the House decided to obtain additional documents on the issue related to the Mineral Development Policy 2017 since the Members felt the implementation report on the resolutions were not up to satisfaction. On the resolutions related to Cultural Heritage, it was submitted that while responses were received on the most part from the government, there were few sections on which responses were not received from the

government. The House decided to identify these issues to be taken by up by the next National Council to be deliberated for implementation.

*(Friday, 17<sup>th</sup> November 2017 corresponding to the 29<sup>th</sup> Day of the 9<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

## **D. Legislative Issues**

### **1. Introduction of the Anti-Money Laundering and Countering Financing of Terrorism Bill of Bhutan 2017**

The Member-in-charge of the Anti-Money Laundering and Countering Financing of Terrorism Bill, the Hon'ble Minister for Finance said that Bhutan is a signatory to the United Nations International Convention for the Suppression of the Financing of Terrorism (2001) and is a member of the Asia/Pacific Group on Money Laundering since 2011. Therefore, the drafting of the Bill was initiated and was endorsed by the Cabinet as per the procedure of adoption of Bill. Subsequently, the Bill was deliberated and adopted by the National Assembly during the 9<sup>th</sup> Session of the Second Parliament. He then introduced the Bill in the National Council for adoption.

Presenting the background and benefits of the Bill, the Hon'ble Minister said that from the perspective of economic condition, the new legislation shall contribute to world peace by preventing financing of terrorism,

protect the integrity of our financial institutions by drawing examples from international best practices, encourage foreign direct investments and ease in cost of doing business amongst others.

Besides, he informed that the Bill will greatly benefit in making it more convenient when implementing with our present financial institutions like the Bank of Bhutan and Bhutan National Bank. It will also greatly benefit in conforming to the international standards of financial system. Therefore, he submitted that the Bill should be prioritized for adoption by the House.

### **1.1. Deliberations on the Bill**

The National Council thoroughly deliberated on the Anti-Money Laundering and Countering Financing of Terrorism Bill 2017 on 17/11/2017 and 28/11/2017. Following amendments and changes were made in the Bill which shall be submitted to the National Assembly for re-deliberation:

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CHAPTER IX- MISCELLANEOUS

**Preamble**

***Whereas, the Kingdom of Bhutan is a signatory to the United Nations International Convention for the Suppression of the Financing of Terrorism (2001) and is a member of the Asia/Pacific Group on Money Laundering since 2011;***

***And whereas, it is necessary to establish effective legal provisions to implement international obligations and to adopt international best practices and standards for Anti-Money Laundering and Countering Financing of Terrorism in the interest of national security and economic prosperity;***

**Parliament of the Kingdom of Bhutan hereby enacts the Anti-Money Laundering and Countering Financing of Terrorism Act 2017 on the ....Day of the ....Month of.....Year of the Bhutanese Calendar corresponding to the.... Day of.... Month.... year....at its.....session of the.....Parliament as follows:**

**New Section after Section 2**

**Objectives**

**The objectives of this Act are to:**

- 1) To promote the integrity of the financial system by:**
  - a) Providing measures to detect, prevent and repress the money laundering and the financing of the terrorism;**
  - b) Establishing effective Anti-Money Laundering and Countering Financing of Terrorism framework for the stability of financial system in promoting good governance.**
  - c) Implementing the United Nations Security Council Resolutions on targeted financial sanctions;**
  - d) Facilitating co-operation amongst reporting entities, supervisors, enforcement authorities and authorized officer;**
  - e) Establishing Financial Intelligence Department to receive, request, analyze and disseminate financial information**
  - f) Identifying supervisor to undertake Anti-Money Laundering and Countering Financing of Terrorism supervision;**
  - g) Constituting National Coordination Committee for preventing money laundering and combating financing of terrorism.**
  
- 2) To provide with such other measures and powers to the relevant authority under this Act, to enable them to exercise power and functions efficiently for Anti-Money**

## **Laundering and Countering the Financing of Terrorism.**

### **Section 4.2**

Sections 277, ~~278~~ and 329 (b) of the Penal Code of Bhutan 2004;

### **Section 7**

#### **Director Head**

The Financial Intelligence Department shall consist of a ~~Director~~ **Head** and staff members assigned or seconded to the Financial Intelligence Department.

### **Section 8**

The ~~Director~~ **head of the Department** shall be appointed by the ~~Governor~~ **board** of the Royal Monetary Authority in accordance with the service rules of Royal Monetary Authority.

### **Section 9**

The ~~Director~~ **head** shall be appointed for a period of five years and may be eligible for **one ~~another~~ more term** re-appointment.

### **Section 10**

The ~~Director~~ **head** shall be transferred or dismissed from the service on:

### **Section 11**

The ~~Director~~ **head** shall report to the Governor of the Royal Monetary Authority or to the Deputy Governor

relating to policy or resources matters for the operation of the Financial Intelligence Department.

## **Section 12**

The ~~Director~~ **head** shall:

- (3) ~~ensure that the Financial Intelligence Department carries out the functions and duties under this Chapter.~~

## **Section 13**

Any Royal Monetary Authority staff may be assigned to the Financial Intelligence Department by the Governor in consultation with the ~~Director~~ **head**.

## **Section 14**

Officials with relevant skills from other ministry or government agency may be recruited on secondment as Financial Intelligence Department staff members with the approval of the Governor and the head of the ministry or government agency employing that person as per the **Civil Service Act**.

## **Section 15**

Assignments or secondments under Sections 13 or 14 of the Act shall be for a ~~fixed term of five years and may be extended for periods of not less than two years.~~ **maximum period of three years and extension may be given for a period of up to two years at a time, subject to a total duration of five years.**

## **Section 17.2**

Disseminate **share** information received from a foreign counterpart to a law enforcement agency if such

~~dissemination~~ **share** is subject to the same reservations and conditions imposed by the foreign counterpart.

### **Section 17.3 & 17.4**

Retain the original Section of the Bill

### **Section 18**

The Financial Intelligence Department may issue a temporary ~~freezing~~ **freeze** notice ~~after obtaining court order~~ over property held by a Reporting Entity for a period not exceeding twenty one days if :

- (1) the ~~Director~~ **head** has a reasonable suspicion that the property may be proceeds of or be connected with some form of criminal activity whether committed in Bhutan or elsewhere; and
- (2) a ~~freezing~~ **freeze\_order notice** is required to enable further analysis by the Financial Intelligence Department or for investigative work to be undertaken by a ~~law enforcement agency~~ **an enforcement authority**.

### **Section 19**

Where the ~~Director~~ **head** of the Financial Intelligence Department has issued a temporary ~~freezing~~ **freeze** notice **based on the order from the court** for a period exceeding twenty one days, ~~under Section 18 of this Act for a period exceeding twenty one days~~ the Reporting Entity upon which the notice has been served may notify any person having an interest in the property the subject of the notice of the existence of the

notice without and in so doing shall be exempted from Section 65 of this Act.

**Section 20.1**  
**(Amended in Dzongkha)**

**Section 22.1**  
**(Amended in Dzongkha)**

**Section 22.2**  
**(Amended in Dzongkha)**

**Section 22.3**  
Retain original section of the Bill

**Section 22.6**  
Retain original section of the Bill

**Section 22.7**  
**(Amended in Dzongkha)**

**Section 22.8**  
**(Amended in Dzongkha)**

**Section 22.11**  
**(Amended in Dzongkha)**

**Chapter 3**  
Retain original section of the Bill.

**Section 23**  
**(Amended in Dzongkha)**

**Section 23.1**  
**(Amended in Dzongkha)**

**Section 23.2**  
**(Amended in Dzongkha)**

**Section 24**  
**(Amended in Dzongkha)**

**Section 24.4**  
**Deleted**

**Section 28**  
~~The Accounting and Auditing Standards Secretariat shall supervise accountants.~~ **Any agency identified by the Government shall supervise the accountants.**

**Section 29**  
**(Amended in dzongkha)**

**Section 30**  
Retain original section of the Bill.

**Section 31**  
Accepted National Assembly's Amendment.

**Section 32**  
Retain original section of the Bill.

**Section 32.1**  
Retain original section of the Bill.

**Section 33**  
**(Amended in Dzongkha)**

**Chapter 4**  
**(Amended in Dzongkha)**

**Section 35**

Financial institutions or designated non-financial business and profession, and any other agency identified by the RMA shall be ~~the~~ **a Reporting Entity.**

**Section 36**

~~The~~ **A Reporting Entity** shall establish a risk based approach to prevent and detect money laundering and terrorist financing.

**Section 37**

The **A Reporting Entity** shall:

**Section 37.2**

Accepted National Assembly's Amendment.

**Section 38**

The **A Reporting Entity**:

**Section 38.1**

~~shall apply enhanced customer due diligence to high risk customers; and~~ **Shall apply customer due diligence to all customers in accordance with their Anti Money Laundering/ Countering Financing of terrorism prevention program; and**



## **Section 38.2**

may apply simplified customer due diligence to low risk customers **with the written approval of their supervisor**

## **Section 39**

### **Internal Controls**

The **A** Reporting Entity shall develop and implement programs for the prevention of money laundering and terrorist financing.

## **Section 40**

Accepted National Assembly's Amendment.

## **Section 40.4**

**Added sub-section 4 in Dzongkha**

## **Section 41.2**

delivered to the Supervisor of a Reporting Entity set out under Chapter III, or where ~~the~~ **a** Reporting Entity does not have a Supervisor, delivered to the Financial Intelligence Department;

## **Section 42**

The **A** Reporting Entity shall designate a compliance officer at the senior management level to be responsible for the implementation of, and ~~ongoing~~ **periodic** compliance with, this Act and the rules and regulations.

## **Section 43**

The **A** Reporting Entity shall provide the compliance officer under Section 42 of this Act with:

### **Section 43.2**

unrestricted access on demand to all books, records and employees of the **a** Reporting Entity

### **Section 44**

The **A** Reporting Entity shall adhere to the internal policies, procedures and controls that they developed pursuant to this Chapter and the rules and regulations developed by the Financial Intelligence Department under Chapter II.

### **Section 45**

Accepted National Assembly's Amendment.

### **Section 46**

#### **Customer Due Diligence**

The **A** Reporting Entity shall not establish or maintain an anonymous account or an account in a fictitious name.

### **Section 47**

The procedures and controls that the **a** Reporting Entity are required to develop under this Chapter shall include procedures for the identification and verification of their customers and procedures for ongoing customer due diligence.

### **Section 48**

The procedures and controls under this Chapter shall be commensurate with the money laundering and terrorist financing threats identified by ~~the a~~ Reporting Entity in its AML and CFT risk assessment.

#### **Section 49**

Accepted National Assembly's Amendment.

#### **Section 50**

The **A** Reporting Entity shall not enter into ~~or continue~~ correspondent banking relationships with shell banks.

#### **Section 51**

The **A** Reporting Entity shall satisfy ~~themselves~~ **itself** that respondent banks do not permit their accounts to be used by shell banks.

#### **Section 52**

##### **Record Keeping**

The **A** Reporting Entity shall:

#### **Section 54**

Subject to Sections 57 of this Act, a Reporting Entity shall submit a report to the Financial Intelligence Department, if ~~the a~~ Reporting Entity has reasonable grounds to suspect that any property, the subject of a transaction with which it is involved is:

#### **Section 57**

**(Amended in Dzongkha)**

#### **Section 58**

**(Amended in Dzongkha)**

**Section 61**

**(Amended in Dzongkha)**

**Section 64**

No criminal, civil, disciplinary, administrative or any other related proceedings for breach of banking secrecy, professional secrecy or contract shall lie against any Reporting Entity or its ~~directors~~ **head**, principals, officers, partners or employees who, in good faith, submit reports or provide information in accordance with the provisions of the Act.

**Section 65**

Accepted National Assembly's Amendment.

**Section 72**

Subject to Section 73 of this Act the Department may grant such authorization, under such conditions as it deems appropriate ~~to prevent terrorism financing~~, for

**Section 75**

There shall be a Domestic Designation Committee constituted for the domestic designation of ~~terrorist and terrorist organizations~~ **persons or entities or organizations that are required to be subject to financial sanction.**

**Section 76**

The Domestic Designation Committee shall comprise of the:

1. Secretary for Ministry of Home and Cultural Affairs
2. Chief of Police
3. Director, Department of Law and Order
4. Director, Financial Intelligence Department
5. Representative of Royal Bhutan Army

**Section 80**  
**(Amended in Dzongkha)**

**Section 81**  
**(Amended in Dzongkha)**

**Section 81.1**

designate any person or organization in relation to whom there are reasonable grounds to believe that they have ~~committed or attempted to commit a terrorist act or participated in or facilitated the commission of a terrorist act as a terrorist~~ **engaged in prescribed conduct or are prescribed entities**; and

**Section 85**  
**(Amended in Dzongkha)**

**Section 86**

Accepted National Assembly's Amendment.

**Section 87**  
**(Amended in Dzongkha)**

**Section 91**

Accepted National Assembly's Amendment

**Section 92**  
**(Amended in Dzongkha)**

**Section 93**  
**(Amended in Dzongkha)**

**Section 96.2**  
**(Amended in Dzongkha)**

**Section 96.3**  
Accepted National Assembly's Amendment.

**Section 96.4**  
Shall, **on its own or by ~~authorizing~~ directing the Royal Bhutan Police**, collect or solicit information from relevant agencies, property registries and any other person who is reasonably believed to have in his/**or** her possession, custody or control the property of any person or organization designated under Section 79 of this Act;

**Section 98**  
Any person or organization whose funds have been frozen pursuant to Section 81 of this Act may file a **written** petition to the Department for authorization to access to such funds.

**Section 99**  
The Department may grant such authorization pursuant to a written petition under Section 98 of this

Act, under such conditions as it deems appropriate to ~~prevent terrorism financing~~, for:

**Section 100**  
**(Amended in Dzongkha)**

**Section 102**

The Department may prescribe such conditions for the payment of funds under Section 101 of this Act as it thinks fit to prevent the funds ~~to be~~ **from being** used for ~~terrorism financing~~ **any purpose that is inconsistent with the operation of the sanctions imposed in this Chapter.**

**Section 104.2**

not make, **unless authorized in accordance with the provisions of this Act**, any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of **any person or organization listed pursuant to Section 67(4) or designated under section 81 of this Act;**

- a. **any person or organization owned or controlled, directly or indirectly, by such a person, or organization; and**
- b. **any person or organization acting on behalf of or at the direction of such a person or organization;**

**Section 104.3**  
**(Amended in Dzongkha)**

## **Section 107**

The Department shall examine an application received under Section 105 of this Act and may ~~request~~ **seek** such additional information including documents as may be necessary from the affected party, any relevant agency or any person who has in his or her possession, custody or control the frozen property of an affected party to ~~make a determination~~ determine as to whether the affected party is not listed pursuant to Section 67(4) of this Act or designated pursuant to Section 81 of this Act.

## **Section 111**

The Objectives of the National Coordination Committee ~~is~~ **are** to:

## **Section 112**

The National Coordination Committee shall consist of a member from:

1. Governor of the RMA(Chairman)
2. Chairperson, Anti-Corruption Committee
3. Secretary, Ministry of Home and Cultural Affairs
4. Secretary, Ministry of Foreign Affairs
5. Secretary, Ministry of Finance
6. Secretary, Ministry of Economic Affairs
7. Chief of Police.

## **Section 121**

Where a person is suspected of having committed a predicate offence, (referred to hereafter in this Chapter as “the relevant person” in relation to that offence), **an**



enforcement authority or an authorized officer may apply to the court of competent jurisdiction for a freeze order against property that is reasonably suspected to be proceeds or instrumentalities of the offence. **This, however, shall not preclude the Anti-Corruption Commission from exercising the powers on freeze or seizure as provided for by the Anti-Corruption Act of Bhutan.**

### **Section 128.1**

Retain original Section of the Bill

### **Section 129**

Where a relevant person is convicted of a predicate offence, ~~the~~ an authorized officer or an enforcement authority may apply to the court of competent jurisdiction for a confiscation order against property that is proceeds or an instrumentality of that offence.

### **Section 132.2**

Retain original Section of the Bill.

### **Section 134.3**

~~Forfeiting~~ **Forfeiter Forfeiture of** the property of or in the possession or under the control of ~~any~~ **the person** named in the request.

### **Section 136.2**

Retain original Section of the Bill.

### **Section 154**

**A person commits an offence of money laundering, if**

**the person:**

- (1) converts or transfers, exchanges or gives away property knowing that it is proceeds of a ~~money laundering—offence~~ **crime**, for the purpose of concealing or disguising the illicit origin of such property or of assisting any person who is involved in the commission of a **predicate** offence to evade the legal consequences of his or her action;
- (2) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to property knowing that such property is proceeds of a ~~money laundering—offence~~ **crime**; or
- (3) acquires, uses or possesses property knowing that such property is proceeds of a ~~money laundering offence~~ **crime**.

**Section 156**

**Under this Act:**

**(1) For the offence of money laundering:**

- (a) Prior conviction for the predicate offence is not necessary to establish the illicit nature or origin of assets laundered.**
  - (b) The offence of money laundering shall also apply to persons who have committed the predicate offence.**
  - (c) Section 156 (1) (a) and (b) shall apply mutatis mutandis to the Anti-Corruption Act of Bhutan.**
- (2) Predicate offences for the purpose of Section 154, shall include:**
- (a) Offences committed within Bhutanese territory;**  
**or**

**(b) Offences committed outside Bhutanese territory provided that such offences constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the Bhutanese law had it been committed in Bhutan.**

### **Section 159**

Retain original Section of the Bill.

#### **Section 159.1**

~~In the case of~~ a natural person, ~~he/she~~ shall be liable for value based sentencing as per Penal Code of Bhutan, subject to a maximum **for** felony of ~~second~~ **third** degree if the value or the amounts involved in the crime exceed the total amount of minimum wage at the time of the crime for a period of ~~35~~ **30** years or more; and

#### **Section 159.2**

~~In the case of~~ a legal person, ~~he or she~~ shall be liable on conviction to pay fine as prescribed in the rules and regulations.

### **Section 164**

Accepted National Assembly's Amendment.

### **Section 165**

Accepted National Assembly's Amendment.

### **Section 167.4**

**(Amended in Dzongkha)**

**Section 172**

Accepted National Assembly's Amendment.

**Section 173**

**(Amended in Dzongkha)**

**Section 177**

No legal proceeding or suit shall lie against a person 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 a person in connection with the discharge of their official duties.

**Section 178**

**(Amended in Dzongkha)**

**Definitions**

**Section 182**

In this Act the following terms shall have the meanings indicated unless the context clearly indicates otherwise:

- (1) "Account"** means any facility or arrangement by which a financial institution or a designated non financial business or profession:

- a) accepts deposits of funds or other assets;
- b) allows withdrawals or transfers of funds or other assets;
- c) pays negotiable or transferable instruments or other orders or collects negotiable or transferable instruments or payment orders on behalf of any other person; and
- d) includes any facility or arrangement for a safety deposit box or for any other form of safe deposit.

(2) **“Affected party”** means any party whose property has been affected by the implementation of a freeze order under the Sections 85 and 89 of this Act and who claims that they are not a person listed under the Section 83 of this Act or designated under Section 87 of this Act.

(3) **“AML”** means anti-money laundering.

- (4) **“Authorized officer”** means:
- a. ~~senior~~ police officer; or
  - b. ~~senior~~ Anti Corruption officer.
- (5) **“Beneficial owner”** means:
- a. a natural person who ultimately owns or controls the rights to or benefits from property, including the person on whose behalf a transaction is conducted; or
  - b. a person who exercises ultimate effective control over a legal person or a legal arrangement.

A natural person is deemed to ultimately own or control rights to or benefit from property within the meaning of subsection (1) above when that person:

- i. owns or controls, directly or indirectly, whether through trusts or bearer share holdings for any legal entity twenty five per cent or more of the shares or voting rights of the entity, or
  - ii. otherwise exercises control over the management of the entity.
- (6) **“CFT”** means countering of financing of terrorism

~~**“Department”** means the Department of Law and order.~~

(7) **“Designated non-financial business or profession”** means:

- (a) real estate agents;
- (b) dealers in precious metals;
- (c) dealers in precious stones;

~~Jabmis and accountants howsoever qualified when they prepare for, engage in, or carry out transactions for a client concerning any of the following activities:~~

- ~~i. buying and selling of real estate;~~
- ~~ii. managing of client money, securities or other assets;~~
- ~~iii. management of bank, savings or securities accounts;~~
- ~~iv. organisation of contributions for the creation, operation or management of legal persons;~~
- ~~v. creation, operation or management of legal persons or arrangements, and buying and selling of business entities;~~

**(d) the professionals and accountants of the private and independent legal officers**

**(e) Unit trust service providers**

(f) trust and company service providers not otherwise covered by this Act which, as a business, prepare, or carry out transactions on behalf of customers in relation to any of the following services to third parties:

- i. acting as a formation, registration or management agent of legal persons;
- ii. acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons;
- iii. providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- iv. acting as, or arranging for another person to act as, a trustee of an express trust or other similar arrangement;
- v. acting as, or arranging for another person to act as, a nominee shareholder for another person; or

(g) Such other businesses and professions as may be prescribed by rules and regulation.

~~“domestic PEPs” are individuals who are or have been entrusted domestically with prominent public functions for example: Heads of State or of Government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, and important political party officials and includes any spouse, child, parent, sibling, cousin, or close associate of any of those so defined.~~



**(8) “Domestic Committee” means a committee who recognizes ~~the terrorist and terrorist organization~~ persons, entities or organization that are required to be subject to financial sanction.**

**(9) “Effective control” means:**

- (a)** property, or an interest in property, may be subject to the effective control of a person within the meaning of this Act whether or not the person has:
- i.** a legal or equitable estate or interest in the property; or
  - ii.** a right, power or privilege in connection with the property.
- (b)** without limiting the generality of any other provision of this Act, in determining:
- i.** whether or not property, or an interest in property, is subject to the effective control of a person; or
  - ii.** whether or not there are reasonable grounds to suspect that property, or an interest in property, is subject to the effective control of a person;

Regard may be had to:

- a.** shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- b.** a trust that has a relationship to the property; and

- c. family, domestic and business relationships between person having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.

**(10) “Enforcement authority” means:**

- (a)** the office of the Attorney-General in relation to any application pursuant to a provision in Chapter VII relating to any predicate offence;
- (b)** The Anti-Corruption Commission in relation to any application pursuant to a provision in Chapter VII relating to an offence ~~against~~ **under** Section 154 of this Act ~~or a predicate offence contained in the Anti-Corruption Act of Bhutan;~~
- (c)** an authorized officer in relation to any application pursuant to Chapter VII relating to a predicate offence contained in the Penal Code of Bhutan; and
- (d)** any other person or agency prescribed by the rules and regulations.

(11) **“Financial institution”** ~~means any person or organization that conducts as a business one or more of the following activities on behalf of a customer:~~ **“Financial institution” means a bank, insurer, or a stock exchange or another entity licensed under Financial Services Act 2011 to the extent designated to a financial institution under regulations adopted by the Royal Monetary Authority in light of the licensee’s scale of operation and the exposure of its customers to its insolvency.**

- a) acceptance of deposits and other repayable funds from the public, including private banking;
- b) lending, including, but not limited to, consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions, including forfeiting;
- c) financial leasing other than with respect to arrangements relating to consumer products;
- d) money or value transfer services;
- e) issuing and managing means of payment, including, but not limited to, credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money;
- f) issuing financial guarantees and commitments;
- g) trading in (i) money market instruments, including, but not limited to, cheques, bills, certificates of deposit and derivatives; (ii) foreign exchange; (iii) exchange, interest rate and index instruments; (iv) transferable securities; and (v) commodity futures trading;
- h) participation in securities issues and the provision of financial services related to such issues;
- i) individual and collective portfolio management;

- j) safekeeping and administration of cash or liquid securities on behalf of other persons;
- k) otherwise investing , administering or managing funds or money on behalf of other persons;
- l) underwriting and placement of life insurance and other investment related insurance, including insurance intermediation by agents and brokers;
- m) money and currency trading;
- n) engaging in funds transfers as a business; or
- o) carrying on such other activity, business or operation as prescribed by rules and regulation.

~~**foreign PEPs** are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State, or of Government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, and important political party officials and includes any spouse, child, parent, sibling, cousin, or close associate of any of those so defined.~~

- (12) **“Fund or property”** means assets of every kind, whether corporeal or incorporeal, tangible or intangible, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets.

(13) **“Instrumentality”** means any property used or intended to be used, in any manner, wholly or in part in or in connection with the commission of a criminal offence or criminal offences and is deemed to include property of or available for use by a terrorist organization.

(14) **“Law enforcement agency”** means: the Anti-Corruption Commission, the Department of Law and Order, Ministry of Home and Cultural Affairs, Bhutan Narcotics Control Agency **Authority**, Department of Revenue and Customs, Office of the Attorney-General, Royal Bhutan Police and any other agency or authority prescribed in the rules and regulations.

(15) **“Listed party”** means any individual, group undertaking or entity designated on a United Nations Sanctions List by the Department under Chapter V of this Act.

(16) **“Minister”** means the “Minister of Home and Cultural Affairs’.

**“Money laundering offence”** means:

- ~~(1) Any offence under the laws of Bhutan; and~~
- ~~(2) Any offence under a law of a foreign State, in relation to acts or omissions which, had they occurred in Bhutan, would have constituted an offence under the laws of Bhutan.~~

(17) **“Person”** means any natural or legal person including an entity.

~~**“Politically exposed person”** (“PEP”) means either a Foreign PEP or a Domestic PEP, and includes persons who are or have been entrusted with a prominent function by an international organisation including members of senior management of such organisations, directors, deputy directors, and members of the Board or equivalent functions.~~

(18) ~~**“Predicate offence”** means an offence against the laws of Bhutan that is punishable by a term of imprisonment of one year or more.~~ **means any offence as a result of which proceeds have been generated that may become the subject of an offence of money laundering.**

(19) **“Prescribed Conduct”** means;  
(a) **Committing or attempting to commit a terrorist act, or participating in or facilitating the commission of terrorist act;**  
or  
(b) **Other conduct prescribed in regulations issued by the competent authority on the instruction of the designation committee.**

(20) **“Prescribed Entity”** means an entity as described in regulations issued by the competent authority on the instruction of the designation committee.

- (21) **“Proceeds of Crime”** ~~means property that is wholly or partly derived or realized, whether directly or indirectly, from the commission of a predicate offence or a money laundering offence~~ **shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence.**
- (22) **“Sanctions Committee”** means a subsidiary organ established by the United Nations Security Council for the performance of its functions and includes the Al-Quida Sanctions Committee and the 1988 Sanctions Committee.
- (23) **“Shell bank”** means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated to a regulated financial group that is subject to effective consolidated supervision.



- (24) **“Physical presence”** means meaningful mind and management located within a country or jurisdiction. The existence of a local agent or low level staff does not constitute physical presence.
- (25) **“Terrorist”** means a natural person who:
- (a) commits or attempts to commit, a terrorist act by any means, directly or indirectly, unlawfully and willfully;
  - (b) participates as an accomplice in a terrorist act;
  - (c) organizes or directs others to commit a terrorist act; or
  - (d) contributes to the commission of a terrorist act by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.
- (26) **“Terrorist act”** means:
- (a) an act, which constitutes an offence within the scope of, and as defined in any one of the treaties listed in the annex to the 1999 International Convention for the Suppression of the Financing of Terrorism; and

**(b)** any other act that is intended to cause death or serious bodily injury to a civilian, or to any other person not taking any active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

(27) **“Terrorist organization”** means any group that:

- (a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully;
- (b) participates as an accomplice in terrorist acts;
- (c) organizes or directs others to commit terrorist acts; or
- (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

(28) **“United Nations sanction”** means enforcement measures, not involving the use of armed force, as may be adopted from time to time by the United Nations Security Council under Chapter VII of the United Nations Charter.

**Voting details on the adoption of the Anti-Money Laundering and Countering Financing of Terrorism Bill of Bhutan 2017**

Date: 28/11/2017; Total Votes: 21; ‘YES’: 21; ‘NO’: 0; ‘Abstain’: 0

**The following voted ‘YES’:**

1. Hon'ble Phuntsho Rapten
2. Hon'ble Tashi Wangmo
3. Hon'ble Pema Dakpa
4. Hon'ble Dhan Bdr. Monger
5. Hon'ble Sonam Dorji
6. Hon'ble Sangay Khandu (Gasa)
7. Hon'ble Tashi Phuntsho
8. Hon'ble Tashi Dorji
9. Hon'ble Sangay Khandu (Samtse)
10. Hon'ble Jigme Rinzin
11. Hon'ble Jigme Wangchuk
12. Hon'ble Nima
13. Hon'ble Kamal Bdr. Gurung
14. Hon'ble Rinzin Dorji
15. Hon'ble Kaka Tshering
16. Hon'ble Tharchen
17. Hon'ble Tempa Dorji
18. Hon'ble Pema Tenzin
19. Hon'ble Nima Gyaltshen
20. Hon'ble Kesang Chuki Dorjee
21. Hon'ble Karma Tshering

*(Monday, 20<sup>th</sup> November 2017 corresponding to the 2<sup>nd</sup> Day of the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

## **2. Introduction of the Information, Communications and Media Bill of Bhutan 2017**

The Member-in-charge of the Information, Communications and Media Bill, the Hon'ble Minister for Information and Communications said that the main reasons for entirely repealing the previous Bhutan Information, Communications and Media Act of 2006 are because most of the provisions in the old Act needs to be included in the Rules and Regulations, to make it in line with the Constitution and also to replace the existing Act in the face of changing times. He said that as per the proposal for amendment, the new Bill was deliberated and adopted by the National Assembly during the 9<sup>th</sup> Session of the Second Parliament. He then introduced the Bill in the National Council for adoption.

He said that the objectives of the Bill are to repeal the previous Bhutan Information, Communications and Media Act of 2006 and to effectively regulate the new environment of ICT and media sectors. It will also realign and ensure clearer responsibilities of the implementing and regulatory bodies and provide for an establishment of an independent institution. It will also strive to reduce and eradicate any abuse of powers related to computers and ensure proper regulation of

ICT and media services so that it benefits the private sector.

In addition, he said that the Bill also proposes to establish a separate Film Council and Media Council mainly due to the development of film and media in the country. The Bill would provide clearer and additional responsibilities to these institutions and will help to supplement and support in order to ensure effective implementation.

On this, the members sought clarification on the consultative meeting conducted by the Ministry with the relevant stakeholders while drafting the Bill; why the Bill doesn't cover the Bhutan Broadcasting Service (BBS); why the Media Committee is changed to Media Council; how to conduct audit of print media firms and what are the policies regarding reduction of taxes in entertainment places. In response, the Hon'ble Minister said that many agencies were consulted while drafting the Bill. He also submitted that Bhutan Broadcasting Service (BBS) is not covered in the Bill since it is a public service provider and said that audit will be conducted as usual for the print media firms too.

## **2.1. Deliberations on the Bill**

The National Council comprehensively deliberated on the Information, Communications and Media Bill of Bhutan 2017 on 20/11/2017 and 28/11/2017.

Following amendments and changes were made in the Bill which shall be submitted to the National Assembly for re-deliberation:

### **Preamble**

WHEREAS, to create and promote a Bhutanese information society and the right environment for the vibrant growth of ICT and Media sectors ~~in the country;~~**in line with the principles of Gross National Happiness;**

WHEREAS, to ensure technology neutrality, convergence, innovation, private sector participation and competition in the development of the ICT and Media sectors;

WHEREAS, to ensure quality, diversity, speed and choice of ICT and media services, so that the country benefits from the opportunities presented by new developments in the sectors;

~~WHEREAS, to strengthen the capacity of the Regulatory Authority to effectively regulate the ICT and media sectors;~~

WHEREAS, to realign and ensure clearer responsibilities of the ~~Government~~ **implementing** and the regulatory ~~body~~**ies;**

*The Parliament of the Kingdom of Bhutan do hereby enact the Information, Communication and Media Bill of Bhutan 2016<sup>7</sup> on the ....Day of the ....Month of.....Year of the Bhutanese Calendar corresponding to the... Day*

*of...Month...year...at its.....session of the...Parliament as follows:*

### **Section 1**

- (1) Be called the ~~Bhutan~~ Information, Communications and Media Act of **Bhutan 2016 2017**
- (2) Come into force on the.....Day of the....month of the ....of the Bhutanese Calendar corresponding to.....Day of the.....Month of ~~2015~~ **2017**; and
- (3) Extend to the whole of Kingdom of Bhutan

### **Section 2**

This Act shall repeal the Bhutan Information Communication Media Act 2006, ~~and sections 476 and 477 of the Penal Code of Bhutan, 2004.~~

### **Section 6**

The Ministry shall:

- 1) Develop and promote the growth of ICT and media sectors in a holistic way through an emphasis on talent, research, innovation and enterprise;**
- 2) Direct, coordinate, advise and support the public and private sectors on ICT and media related matters to build a competitive and sustainable info-comm. media industry.**
- 3) Formulate legislation, policies, and plans related to ICT and media matters;**
- 4) Propose appropriate codes and standards for ICT apparatus including radio communication**



**apparatus for approval by Bhutan Standards Bureau;**

- 5) Approve Rules and Regulations to implement various provisions of this Act including policy guidelines on tariff and rates;**
- 6) Hear the compliant and settle the disputes between clients and regulatory bodies through appropriate means.**

### **Section 7**

~~The Minister may, delegate the performance of all or any of the functions under section 6 of this Act to the Authority.~~

### **Section 8**

**The Ministry may recommend the Authority to exempt the license requirement:**

- 1) ~~License requirement for~~ **For** certain types of ICT apparatus; and
- 2) ~~License requirements for~~ **For** the use of those ICT apparatus under certain circumstances such as widening consumer choices, improvement in the services, increasing the coverage of services, etc.

### **Section 9**

~~The Minister may, constitute ad-hoc ICT and Media Advisory bodies to advise the Ministry on all aspects of ICT and Media Sectors or delegate specific responsibilities as necessary upon approval of the Cabinet.~~

## **Section 10**

~~The Advisory bodies established under section 9 of this Act shall function in accordance with the terms of reference approved by the Minister.~~

## **Section 11**

~~The members of ICT and Media Advisory bodies shall be paid such remuneration as specified under the terms of reference.~~

## **Section 12**

~~If it appears to the Minister to be necessary to do so~~ In the interest of the sovereignty, security, unity and integrity of Bhutan, ~~or the interest of friendly relations with foreign States,~~ the Minister may issue a directive requiring a person to do or abstain from doing an act pertaining to ICT and Media facility or services.

## **Section 17**

The Ministry may, on approval or **endorsement** ~~ratification~~ by the Cabinet, take over the control and management of any ICT or Media facility or services including applications services and/or content applications services or suspend its operation, or entrust any agency of the Government to manage it, during:

- 1) an emergency under which the sovereignty, security, or territorial integrity of Bhutan or any part thereof is threatened by an act of external aggression or armed rebellion; or

- 2) a natural or man-made disaster which causes, or threatens to cause loss of life or destruction to property.

### **Section 24**

The amount of compensation under section 23 of this Act shall be determined by the ~~Minister~~ **Ministry based on the prevailing market rates or other acceptable methods**, within three months from the date on which the control and management of the ICT and Media facility or service including other services is returned.

### **Section 30**

There shall be ~~a~~ **an autonomous** regulatory authority called the Bhutan InfoComm and Media Authority to carry out responsibilities entrusted under this Act.

### **Section 31**

The Authority, ~~serve~~ **assisted** by a Secretariat shall be vested with the decision-making and oversight responsibilities ~~of the Authority~~, and the Authority shall comprise of:

- (1) Secretary of Ministry of Information and Communication as a Chairperson;**
- (2) One Member representing Ministry of Home and Cultural Affairs**
- (3) One member representing Ministry of Economic Affairs**
- (4) One nominee from Media/Film Industry**
- 5) One nominee from ICT Industry**
- 6) Head of the Secretariat as a Member Secretary**

### **Section 32**

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

- ~~(1) Is a citizen of Bhutan;~~
- ~~(2) Possess a formal university degree in the field of information and communications technology, telecommunications, media, law, finance, public policy or administration; and~~
- ~~(3) Has at least ten years of work experience.~~

### **Section 33**

~~The Chairperson shall be a senior civil servant, appointed by the Cabinet upon recommendation of the Ministry.~~

### **Section 34**

~~The three Members under section 31 (2) of this Act shall be appointed by the Minister, upon approval of the Cabinet, from a list of names recommended by the Ministry.~~

### **Section 35**

The Member under section 31 (3) of this Act shall be appointed by the Minister upon receipt of nomination from **the respective agencies.** ~~an organization representing the Media sector or ICT sector.~~

### **Section 36**

~~The appointing authority under sections 33, 34 and 35 of this Act, before appointing a person as a Member shall, ensure that the nominee does not have any financial or other interests which are likely to affect the capacity to function as a Member or is not under any legal incapacity.~~

### **Section 37**

~~The Chairperson and the Members of the Authority shall be appointed as non-executive members for a period of three~~ **five** years.

### **Section 38**

~~The Chairperson and Members of the Authority under section 37 of this Act may be eligible for re-appointment for a maximum of one additional term.~~

### **Section 39**

#### **Resignation of Chairperson and Members**

~~The Chairperson~~ **members** of the Authority may at any time resign from office by giving notice in writing to the Cabinet **Chairperson**, while a Member of the Authority may at any time resign from office by giving notice in writing to the Minister.

### **Section 41**

~~The Chairperson or a~~ **A** Member of the Authority shall be removed from the membership, if he or she has:

- (1) Been adjudged insolvent;
- (2) Become physically or mentally incapable of acting as a member;

- (3) Been convicted of any offence that involves moral turpitude;
- ~~(4) Acquired financial or other interest as is likely to present a conflict of interest with the capacity to function as a Member; or~~
- (5) Abused the position so as to render continuance in office prejudicial to the public interest.

### **Section 42**

A ~~Chairperson or~~ a Member of the Authority shall not be removed from office under section 41 ~~(4) and~~ (5) of this Act, unless the Member has been given a reasonable opportunity of being heard on the matter.

### **Section 43**

If the post of a ~~Chairperson or~~ Member of the Authority becomes vacant, it shall be filled as soon as practicable.

### **Section 44**

~~In the event of the said post remaining vacant due to removal, death or other reasons under section 41 of this Act, the Minister shall appoint the interim chairperson from the members of the Authority.~~

### **Section 45**

~~Where fresh appointments are due to be made as a result of any of the existing Members reaching the end of their term, the Minister shall take necessary steps to ensure that new Members are identified at least three~~

~~months in advance of the date on which the existing Members of the Authority will cease to hold office or that suitable actions are taken to renew the term in accordance with sections 37 and 38 of this Act.~~

## **Section 48**

~~In discharging its functions and enforcing its authority under this Act, the Authority shall:~~

- ~~(1) Exercise complete regulatory independence and not receive instructions relating to the exercise of its functions from any Government official or public or private entity, provided that the Authority shall participate in discussions, consultations and collaborate with the government agencies on issues affecting the ICT and media sectors as and when required to do so;~~
- ~~(2) Determine its staffing and recruitment plan for consideration by the Royal Civil Service Commission; and~~
- ~~(3) Exercise its powers and performance of its functions to achieve the objectives of this Act.~~

## **Section 50**

The Authority shall meet at least four times in a year at such time, and place as prescribed in the Rules and Regulations to be adopted by the Authority, and optimize every such meeting by consolidating the agenda items.

**The meetings of the Authority shall be chaired by the Deputy Chairperson elected amongst the members in absence of the Chairperson.**

## **Section 54**

There shall be a permanent Secretariat to the Authority headed by a ~~Director/Director General~~ **an Executive level Officer appointed by the Royal Civil Service Commission.**

## **Section 55**

**The Service Conditions of the employees of the Secretariat shall be governed by the Civil Service Act of Bhutan.**

## **Section 56**

~~The Director/Director General of the Authority shall be appointed by the Royal Civil Service Commission.~~

## **Section 57**

~~The Director/Director General~~ **head of the Secretariat** shall be the legal representative of the Authority, vested with powers of general superintendence and direction in the conduct of the affairs of the Secretariat. ~~and shall, among others:~~

- ~~(1) Serve as the Member Secretary of the Authority with voting rights;~~
- ~~(2) Maintain and preserve documents including records of meetings of the Authority;~~
- ~~(3) Execute resolutions of the Authority;~~
- ~~(4) Organise administrative activities of the Authority;~~
- ~~(5) Be responsible for day to day functioning of the Secretariat;~~



- ~~(6) Guide, supervise and advise the employees of the Secretariat at all levels;~~
- ~~(7) Exercise powers and perform functions assigned under this Act; and~~
- ~~(8) Carry out such functions as the Authority may assign.~~

### **Section 58**

~~All activities of the Authority shall be financed through budgetary grants from the Ministry of Finance;~~

### **Section 59**

**Retain the Original Section in the Bill**

### **Section 61**

~~The Authority shall adopt Rules and Code of Conduct for the efficient functioning of the Authority.~~

### **Section 62**

~~The Authority shall implement the provisions of this Act, Rules and Regulations covered by this Act.~~

### **Section 63**

~~The Authority shall study and keep under constant review trends in development of ICT and Media sectors within and outside Bhutan.~~

### **Section 64**

~~The Authority shall, when directed by the Ministry, give information and advice on any matter falling within its competence or statutory responsibilities, including advice on:~~

- ~~(1) ICT and Media policies;~~
- ~~(2) Bhutan's positions and policies relating to ICT and Media matters at the international, regional and national levels; and~~
- ~~(3) The establishment of technical standards and rules applicable to ICT and Media facilities and services.~~

## **Section 65**

~~In accordance with the general mandate laid down in sections 61 to 64 of this Act,~~ The Authority's principal functions shall be to:

- ~~(1) Grant licenses, certificates and permits, and regulate ICT and Media facilities and services including places of entertainment that are based on ICT and Media facilities and services and enforce license conditions;~~
- (2) Ensure that licensees, permit-holders and other users of the radio equipment or devices comply with requirements laid down by relevant international, regional or national organizations in respect of equipment and technical standards and environmental health and safety standards, including electromagnetic radiation and emissions;
- (3) Prescribe, regulate and monitor compliance with national codes and standards, international or other obligations entered into by the Government in relation to ICT and Media matters;

- (4) Regulate interconnection or sharing of infrastructure and facilities between or among ICT facility providers;
- (5) Maintain and promote competition and take action to prohibit, prevent and bring to amend any abuse of market power or anticompetitive behavior within the ICT and Media industry;
- (6) Ensure interoperability and efficient use of ICT and Media facilities and services;
- (7) Ensure that licensees and permit-holders are able to carry out their obligations to provide services free of undue delay, hindrance or impediment;
- (8) Ensure the proper maintenance of accounting systems by the public ICT providers and media services providers;
- (9) Assign spectrum consistent with the spectrum policy and plan;
- (10) Plan, administer, manage and assign numbering for ICT services;
- (11) Protect consumers of ICT and Media services, among others, the rates charged for, and the quality and variety of ICT services provided;
- (12) Provide an effective, efficient and affordable mechanism for the investigation and resolution of complaints;
- (13) Promote technological innovation in the ICT and Media sectors;
- (14) Plan and manage universal service plans and the Universal Service Fund pertaining to the ICT facilities and services based on policy directives issued by the Ministry;

- (15) Create **a conducive environment by setting standards for Bhutan to develop** competitive and dynamic ICT services market; and
- (16) Ensure universal access to all ICT services at affordable rates.
- (17) **Adopt Rules and Code of Conduct for the efficient functioning of the Authority.**
- (18) **Conduct periodic circulation audit of print media firms**

## **Section 66**

The Authority shall be authorized to:

- (1) Determine the categories of licenses to be issued and to classify types of ICT and Media facilities and services and radio communication services including application services in line with the policies issued by the Ministry;
- (2) Collect data and any other related statistical information for the proper discharge of its functions and responsibilities;
- (3) Determine tariff, rates, fees and charges for licensed services including fees for the usage of spectrum in accordance with the policy directives issued by the Ministry;
- (4) Designate licensees as universal service providers;
- (5) Collect fees including license fees, and any other charges levied or imposed as fines and penalties under this Act or rules and regulations made thereunder;
- (6) ~~Establish advisory or specialised bodies as it sees fit for the purpose of advising the Authority on~~

~~any matter pertaining to the exercise, performance and discharge of its duties, functions and powers under this Act;~~

~~(7) Issue and enforce overall codes and standards for governing guidelines and codes of practice governing the ICT and Media sectors;~~

~~(8) Recover the cost incurred by the Authority for the regulatory activities undertaken in relation to the ICT and Media activities whilst ensuring that any fees or charges levied or imposed are reasonable having regard to the purpose for which they are levied or imposed; and~~

~~(9) Perform all or any powers in furtherance of the objects of this Act, or such as may be prescribed by the Rules and Regulations.~~

## **Section 70**

~~The Authority may establish for a specified period, ad-hoc advisory or specialised bodies as it deems fit consisting in each case of members as it may from time to time appoint or invite technical experts or specialised persons to participate in the Authority meeting but such persons shall not be considered as members of the Authority.~~

## **Section 71**

~~An advisory or specialised body shall advise the Authority on any matter:~~

~~(1) In respect of which any of the Authority's functions is exercisable; and~~

~~(2) Which is referred to it by the Authority.~~

## **Section 72**

~~The Authority may, as soon as practicable, publish copies of reports or other documents submitted by such advisory or specialised body.~~

## **Section 73**

~~The remuneration and other allowances payable to an Advisory body or special invitee shall be as prescribed in the Rules and Regulations by the Authority.~~

## **Section 78**

~~The Authority may, for carrying out effectively and efficiently all its functions and responsibilities under this Act, may develop and approve Rules and Regulations consistent with this Act.~~

## **Section 82**

~~The Authority shall develop Rules and Regulations for the purpose of sections 78 to 81 of this Act in accordance with the process and requirements prescribed under the Act taking into consideration the;~~

- ~~(1) Interests of the sovereignty, security, unity and integrity of Bhutan;~~
- ~~(2) Interest of peace and well being of the nation;~~
- ~~(3) Interests of friendly relations with foreign States; or~~
- ~~(4) Objects and other provisions of this Act are not contravened.~~

**(Inserted under Section 510 with few changes)**

## **Section 83**

**The Authority shall submit an annual report to the minister on its activities during that year.**

### **Section 84**

~~Every such report shall include:~~

- ~~(1) A general survey of developments during the year to which it relates, in respect of matters falling within the scope of the Authority's functions;~~
- ~~(2) A statement detailing the Authority's financial performance, including income, expenditure, assets and liabilities including the status on the implementation of the Universal Service Funds;~~
- ~~(3) A summary of the issues taken up by any ad hoc advisory bodies during that year; and~~
- ~~(4) Such other information as may be required by the Ministry.~~

### **Section 89**

~~The Authority shall maintain a register of Rules and Regulations, directives, licenses and permits granted, codes of practice and sets of guidelines and notices issued, and agreements registered with it in such form as it may determine;~~

~~Provided that, if it appears to the Authority that the entry of any information in the register would be against the commercial interests of any person, it shall not record such information in the register.~~

### **Section 90**

~~The Authority shall update register and make it accessible for public inspection during normal working hours.~~

### **Section 91**

~~A person may, on payment of fee as may be prescribed by an order, request the Authority to provide a copy of or extract from any part of the register duly certified by the Authority to be a true copy or extract.~~

### **Section 94**

~~A party not satisfied or aggrieved by the decision or orders of the Authority, may appeal to the Bhutan Information, Communication and Media Appellate Tribunal~~ **Alternative Dispute Resolution Center** ~~constituted under this Act within ten~~ **working** days.

### **Section 98**

~~The Royal Audit Authority shall carry out annual auditing of the Authority including performance audit in accordance with the Audit Act of Bhutan and rules and regulations made there under.~~

### **Section 99**

~~The Ministry shall establish an independent body, to be called the Media Council~~ **supported by a Secretariat,** to:

**1. Promote and protect freedom and independence of the media;**



- 2. Serve as a standard setting body to promote and enhance ethical and professional standards amongst journalists and media enterprises for media practitioners.**
- 3. Accredite and certify the Journalists practicing in Bhutan.**
- 4. Regulate or curtail any harmful, offensive, illegal or antithetical content on the internet and other ICT and Media services, unless otherwise provided under specific provisions in this Act.**
- 5. Set standards and guidelines in accordance with the overall media related codes and standards set by Bhutan InfoComm and Media Authority.**
- 6. Hear the complaint and settle the dispute in relation to offences of content not amounting to criminal offences which are prescribed under the Rules and Regulations.**
  - 6.1 A party aggrieved by the decision of the Media Council may file an appeal to the Alternative Dispute Resolution Centre.**
- 7. Provide recommendations on matters affecting the media sectors to the Ministry and Regulatory Authority.**
- 8. Ensure objective and fair treatment of any person by the media;**
- 9. Protect general public and more specifically vulnerable sections of the population such as children and young persons from undesirable influences of all Media services;**
- 10. Frame Rules and Regulations on matters relating to the Media Council.**

## **New Section after Section 99**

### **The Secretariat to the Media Council**

- 1. There shall be permanent secretariat to the Media Council headed by an Executive level officer appointed by Royal Civil Service Commission.**
- 2. The head of the Secretariat shall serve as:
  - a) the member secretary to the Council; and**
  - b) the legal representative of the Council and implement the decisions of the Council.****

## **Section 100**

The Minister shall appoint the members of the Media Council comprising of;

- (1) One nominee representing Journalists organization.**
- (2) One nominee representing proprietors of Media firms.**
- (3) One representative from Bhutan Media Foundation.**
- (4) One representative from BICMA Secretariat.**
- (5) One representative from the Ministry of Information and Communications.**
- (6) Head of the Secretariat as a Member Secretary**

## **Section 101**

The nominees under section 100 of this Act shall:

- 1) Be a citizen of Bhutan;

- 2) Not be a **registered** member or an employee of a political party;
- 3) Not be convicted for any criminal offence and sentenced to imprisonment; or
- 4) Not be adjudged insolvent and has not been discharged.

### **Section 103**

The Members of the Media Council shall hold office for a period of ~~three~~**five** years, and may be re-appointed for an additional of one term.

### **Section 104**

A member of the Media Council may resign from office by giving **one month** notice thereof in writing to the Chairperson.

Provided that in the case of the Chairperson such notice shall be addressed to the ~~Ministry~~**Minister**.

### **Section 105**

A member of the Media Council may be removed by the Minister **upon the recommendation of the Council**, if he or she:

- (1) Is adjudged insolvent;
- (2) Becomes physically or mentally incapable of acting as a member;
- (3) Is convicted of any offence and sentenced to imprisonment;
- (4) ~~Acquires financial or other interest as is likely to affect prejudicially the capacity to functions as a member;~~ or

- (5) Abuses the position as to render continuance in office prejudicial to the public interest.

### **New Section after Section 106**

#### **Meetings of the Media Council**

**The Media Council shall meet at least four times in a year at such time, and place as prescribed in the Rules and Regulations to be adopted by the Media Council, and optimize every such meeting by consolidating the agenda items.**

**The meetings of the Media Council shall be chaired by the Deputy Chairperson elected amongst the members in absence of the Chairperson.**

### **Section 107**

~~The funds of the Media Council shall consist of:~~

- ~~1) Grants from the government;~~
- ~~2) Fees and other charges paid for services rendered by the Media Council; and~~
- ~~3) Grants, gifts and donations from other neutral sources~~

**The Media Council shall be adequately funded by the Government.**

### **Section 108**

~~The Media Council shall be authorised to use funds collected by it and use if for the purpose of its functioning and must keep proper books of accounts and other records of accounts of the income, expenditure, assets and liabilities.~~

### **Section 110**

~~Upon approval of the Government, the Ministry shall specify in the Rules and Regulations:~~

- ~~(1) Remuneration to be paid to the secretariat of the Media Council;~~
- ~~(2) Sitting fees to the members of the Media Council;~~
- ~~(3) Other matters relating to the functioning of the Media Council~~

### **Section 111**

~~For the purpose of this Chapter, “Rules and Regulations” shall be developed by the Media Council and approved by the Ministry.~~

### **Section 112**

~~Any person aggrieved by the decision of Media Council shall within ten working days appeal to the Appellate Tribunal constituted under this Act.~~

## **CHAPTER FIVE:**

### **BHUTAN INFORMATION, COMMUNICATION AND MEDIA APPELLATE TRIBUNAL**

#### **Sections 113-121**

**Delete whole chapter**

## **NEW CHAPTER: FIVE**

### **LICENSING OF PLACES OF ENTERTAINMENTS**

#### **Section 113**

- (1) Ministry of Economic Affairs shall be the licensing authority for the establishment of places of entertainments.**
- (2) places of entertainment shall include movie halls, dance halls, discotheques, music halls,**

- gaming parlours, public houses, bars equipped with facilities for live or recorded music, *Drayangs*, *Luyangs*, hospitality lounges, video/computer gaming arcades, circuses, magic shows, fetes, concerts, fairs, carnivals, wrestling bouts, sporting events, bingo halls and any other similar forms of entertainments.**
- (3) Location clearance to be obtained from respective Thromdes/Dzongkhags/Local government authorities.**
  - (4) There shall be established Entertainment licensing Committee (ELC) at Dzongkhag/Thromde to review, recommend the applications for entertainment establishment centers in Dzongkhag/Thromde respectively.**
  - (5) The licensee shall obtain a Community Clearance and administrative approval from concerned Local Government Authority to apply for the license for establishment of entertainment centers.**
  - (6) The license issued for the places of entertainment shall be a location based. In the event, if the licensee intends to change the location of his establishment, the licensee shall have to obtain location clearance from their respective ELC and then submit to the Licensing Authority.**
  - (7) The license shall not be leased out under any condition. However, transfer of licence shall be approved by the Authority on a case by case basis.**

- (8) No individual shall be issued a license for simultaneously operating more than one entertainment establishment center.**
- (9) The specific technical standards for places of entertainment shall be as prescribed under Rules and Regulation.**
- (10) The licence shall be valid for a period of one year and shall be renewed annually.**
- (11) The Licensing Authority shall either renew or deny renewal of the application based on the recommendation of the Entertainment Licensing Committee.**
- (12) The obligation of the license and penalties shall be prescribed in rules and regulation.**
- (13) All places of entertainment shall ensure the safety of its clients as well as the hygiene of the establishment.**
- (14) While determining location, the ELC shall ensure that the proposed establishment shall be;**
- a) Outside the radius of 400 meters from the designated institutional places like Monasteries, Dzongs, Government offices, hospital, educational institutes and rehabilitation centers, OR**
  - b) Within the demarcated Thromde boundary; and**
  - c) Within permanent structure certified by the ELC for the proposed purpose.**
- (15) The form and manner of application for a licence, duration of a licence, terms and conditions for the issuance of a licence, and any**

**fees payable for it, shall be as prescribed in the Rules and Regulations.**

- (16) The Licencing Authority must include community clearances as part of requirement for any entertainment establishment.**

## **Section 132**

### **Granting of Licenses**

**The Authority shall not grant ICT and Media Services Licenses to a political party and others not fulfilling conditions prescribed in the Rules and Regulation.** ~~A person shall not be eligible for an ICT and Media facilities and services license, if such person:~~

- ~~(1) — Is a political party;~~
- ~~(2) — Is adjudged insolvent or has entered into a composition or scheme of arrangement with the creditors;~~
- ~~(3) — Is of unsound mind; or~~
- ~~(4) — Does not fulfil other conditions prescribed in the Rules and Regulations.~~

## **Section 136**

**The Procedure for the grant and renewal of a License shall be as laid down in the Rules and Regulations.**

~~A person who applies for a license or requests renewal under this Act shall comply with the procedure established by the Authority under this Act.~~



### **Section 137**

~~The Authority shall, before granting a license under this Act, take into account whether the:~~

- ~~(1) Applicant possesses, or has ready access to, the technical expertise necessary to fully perform the obligations;~~
- ~~(2) Applicant is a fit and proper person as defined under this Act; and~~
- ~~(3) Granting of licenses conform to the objectives of this Act.~~

### **Section 141**

Where the Authority has reasonable grounds not to renew a license, it shall inform the licensee in writing within ~~a reasonable time~~ **10 working days** of its intention not to renew the license.

### **Section 144**

If aggrieved by the decision under section 143 of this Act, the licensee may appeal **either** to the **Ministry or Appellate Tribunal** **the Alternative Dispute Resolution Centre** within ten working days of the receipt of a copy of the decision.

### **Section 149**

If aggrieved by the decision under section 148 of this Act, the licensee may appeal to the ~~Appellate Tribunal~~ **Alternative Dispute Resolution Centre** within ten days of receipt of the decision.

### **Section 153**

A person having objection against the transfer shall show cause against the transfer within one month of issuance of such public notice **to the Authority.**

### **Section 166**

~~The Authority shall develop Rules and Regulations to ensure enforcement of license terms and conditions and procedures for suspension and revocation of license.~~

### **Section 173**

~~The Authority shall, by Rules and Regulations, make provision for the regulation of interconnection which inter alia includes agreements, resolution of pre-contractual or other disputes relating to interconnection and the costs of interconnection.~~

### **Section 179**

A person shall not receive on behalf of, or for the purposes of, any ICT or Media facility or services in Bhutan any donation, benefits in kind, or loans from a foreign source.

~~Provided that~~ **However,** the loans for bona fide commercial purpose may be raised in accordance with the laws in force in Bhutan with the prior approval of the Minister.

### **Section 188**

In taking any action under section 187 of this Act, the ICT and Media facility provider shall:

- (1) Comply with environmental policy of the government and relevant laws;

- (2) Consult with and seek prior agreement from local authorities, utility service providers, owner and other parties who may be affected by the planned installation of the facilities;
- ~~(3) Minimize damage in the installation of the facilities~~ **Ensure minimum damages or disruption to the property owners in installation of the facilities and make fair compensation for the damages or disruption, if any;**
- (4) Restore without unreasonable delay any damage caused during the installation of the facilities and leave the land in a condition reasonably similar to the one that existed before the installation of the facilities; and
- (5) Act in good faith.

### **Section 248**

A publishing license shall be refused, if:

- (1) It poses a threat to the sovereignty, security and harmony of the kingdom of Bhutan ~~or a threat to the interests of peace, stability and well being of the nation;~~ or
- (2) It violates **any other** conditions as may be prescribed in the Rules and Regulations.

### **Section 260**

~~A police officer or a customs officer~~ **Any officials representing law enforcement agency** may, after procuring a **court** warrant, seize any book or newspaper found in the possession of any person which the police officer or the customs officer has reasonable cause to

believe has been printed, published, sold or distributed or is intended to be published, sold or distributed in contravention of the provisions of this Act.

### **Section 262**

~~The Authority~~ **The Media Council** shall operate a scheme of accreditation under which journalists holding Bhutanese nationality and working for Bhutanese newspapers or other media organisations shall apply for such status in the prescribed form.

### **Section 263**

~~The Authority~~ **The Media Council** shall operate a scheme of accreditation under which journalists holding Bhutanese nationality and working for foreign media organisations shall apply for such status in the prescribed form.

### **Section 264**

The conditions, privileges and procedure for application and the criteria for the grant of accreditation shall be specified in Rules and Regulations made by the **Media Council**~~Authority~~.

### **Section 265**

Applications for accreditation shall be dealt expeditiously by the ~~Authority~~ **Media Council** and where an application for accreditation is refused; the ~~Authority~~ **Media Council** shall state the reasons for refusal in writing and communicate the reasons to the applicant as soon as possible.

## **Section 266**

Where a foreign journalist intends to be accredited by the ~~Authority~~ **Media Council**, the journalist may apply for 'ad hoc accreditation' with or without conditions, in accordance with the procedure prescribed for this purpose in Rules and Regulations.

## **Section 267**

All applications for ad hoc accreditation shall be dealt expeditiously by the ~~Authority~~ **Media Council** and shall, within thirty days of receipt of an application, inform the applicant whether the application is accepted or refused.

## **Section 268**

If the journalist breaches any of the conditions of accreditation, or where the ~~Authority~~ **Media Council** is satisfied that the continued holding by the journalist of such accreditation is against the public interest, the ~~Authority~~ **Media Council** may, by an order in writing, revoke the accreditation.

## **Section 269**

Revocation of accreditation under section 268 shall be effective as soon as the order is served to the journalist **by the Media Council** where it is not possible or practicable to serve such notice, as soon as a copy of it is delivered to, or affixed upon, the address stated in the application for accreditation.

## **Section 270**

## **National Film Commission**

The Minister shall establish the **National Film Commission supported by a permanent secretariat** responsible for the promotion, development and providing support to the audio visual and film industry in the country.

### **New section:**

**The Members of National Film Commission shall comprise of:**

- 1. Two members nominated by the board of Film Association of Bhutan.**
- 2. One representative from Bhuatn Info Comm and Media Authority**
- 3. One representative from the Ministry of Information and Communications**
- 4. One representative from Ministry of Home and Cultural Affairs**
- 5. Head of the Secretariat as a Member Secretary**

## **Section 271**

**Functions of National Film Commission (new heading)**

**The functions of the National Film Commission shall be to:**

- 1. Provide necessary professional supports to film production firms including training and capacity development.**
- 2. Provide film grants through a dedicated film development fund for meaningful mainstream films, art film and other non commercial films.**

- 3. Participate in international festivals to promote Bhutanese films, scripts for co-productions, and locations.**
- 4. Facilitate FAB in organizing film awards and festivals to recognize films of excellence and to promote film culture;**
- 5. Setup and Maintain Cinematheques or Art house theatre to provide screening platforms for art films and other commercial films in the country, especially in rural areas.**
- 6. Maintain national film archives, film location data base, films crew database, and integrated box office data base.**
- 7. Grant filming permits to both local and foreign productions as per the prescribed rules and regulations**
- 8. Rate and Certify both local and foreign films as per the guidelines developed by Commission**
- 9. Encourage and provide support for the research and development of a Bhutanese film form.**
- 10. Promote Co-production with International investors**
- 11. Promote and support theatrical performances in all sections of society.**
- 12. Provide recommendations on matters relating to Audio visual and other entertainments.**
- 13. Promote distributors in Films within and outside country.**
- 14. Form review Committee for film, music, song and audiovisual.**

## **Section 272**

**The Government shall ensure National Film Commission is adequately financed to enable it to exercise its functions and discharge its responsibilities as provided under this Act.**

- (1) Government support
- (2) Royalties/ filming permit fees from the films;
- (3) Review and Certification fees;
- (4) International donors and agencies;
- (5) Film and entertainment tax levied on or within the film industry;
- (6) Payment for professional services rendered to international film productions;
- (7) Payment for rental of film studio and film equipment; and
- (8) Other fees collected by the Film Commission as may be approved by
- (9) the Government from time to time.

**New section:**

**1. The rates of fees and charges shall be approved and levied by the National Film Commission in accordance with the relevant laws.**

**2. All fees, charges and royalties collected by the film commission shall be deposited in the Government revenue Account.**

**Section 273**

~~In addition to Section 272, the government shall ensure, as far as practicable, that the Film Commission is adequately financed to enable it to exercise its functions~~



~~and discharge its responsibilities as provided under this Act.~~

### **Section 274**

~~The Film Commission shall be constituted with five members appointed by the Cabinet upon recommendation by the Ministry from amongst people who are knowledgeable in the field of film, media or people from relevant background.~~

### **Section 275**

The members of the National Film Commission shall

1. Be a citizen of Bhutan
2. Not be convicted for any criminal offence and sentenced to imprisonment;
3. Not be a registered member or an employee of a political party
4. Not be adjudged insolvent and has not been discharged.

### **Section 276**

The Members of the National Film Commission shall hold office for period of ~~three~~**Five** years and may be reappointed for one additional term.

### **Section 280**

A member of the **National** Film Commission shall be removed by the ~~Cabinet~~**Minister upon the recommendation of the Commission**, if he/she:

1. Is adjudged insolvent
2. Becomes physically and mentally Incapable of acting as a member,

3. Is convicted of ~~any offence~~ and sentence to imprisonment; **or**
4. ~~Acquires financial or other interest as is likely to affect prejudicially the capacity to function as a member; or~~
5. Abuses the position as to render continuance in office prejudicial to the public interest.

### **Section 281**

Where a vacancy occurs in the membership of the **National** Film Commission, the ~~appointment procedure under sections 274, 275 and 276 of this Act~~ Minister shall appoint the new member as early as practicable.

### **New Section after Section 281**

#### **Meetings of the National Film Commission**

**The National Film Commission shall meet at least four times in a year at such time, and place as prescribed in the Rules and Regulations to be adopted by the National Film Commission, and optimize every such meeting by consolidating the agenda items.**

**The meetings of the National Film Commission shall be chaired by the Deputy Chairperson elected amongst the members in absence of the Chairperson.**

### **Section 284**

#### **The Secretariat to the National Film Commission**

There shall be established a secretariat of the **National** Film Commission headed by an Executive level officer who shall be the legal representative of the Commission.

### **Section 285**

The Executive and other employees of the **National** Film Commission shall be appointed by the Royal Civil Service Commission.

### **Section 286**

For the purpose of this Chapter, the Rules and Regulations shall be developed by the ~~Film~~ Commission and approved by the Ministry.

### **Section 289**

The Film Commission shall manage the Film Development Fund in accordance with its Rules and Regulations. ~~approved by the Minister.~~

### **Section 290**

**There shall be Film Development Fund, which shall be managed directly by National Film Commission.**

### **Section 291**

The producer, owner or importer of every film which is intended for public exhibition by any mode of ICT or media within Bhutan shall submit a copy of the film for examination by the Film Commission in such manner and in such format as may be prescribed in the Rules and Regulations ~~approved by the Minister.~~

### **Section 292**

**The National Film Commission shall certify the films for public viewing based on the guidelines developed by the commission.**

### **Section 296**

~~A film intended for public exhibition shall not be advertised to the general public through any medium before the grant of a certificate by the Film Commission.~~

### **Section 299**

Where the Film Commission is satisfied, either on receipt of a complaint from any member of the public or on its own motion, that any film which is publicly exhibited is likely to be detrimental to the public interest or the interests of public order in any area, may, in writing, order the suspension of the screening of the film in that area, **both within and outside Bhutan** for such period as may be specified in the order.

### **Section 300**

~~The effect of any order issued under section 299 of this Act shall be that the film named therein is deemed to be an uncertified film within the area in question.~~

### **Section 301**

Any person who is aggrieved by the **decision** of the Film Commission may submit an appeal to **Alternative Dispute Resolution Centre within 10 working days.**

### **Section 302**

~~Any appeal under section 301 of this Act shall be filed within ten working days from the date of receipt of the order.~~

### **Section 303**

~~The Appellate Tribunal may pass such order as it thinks fit, confirming, modifying or reversing the decision of the~~

~~Film Commission and may make further orders as to costs in relation to any appeal.~~

### **Section 304**

The **National** Film Commission shall require a person who submits a film for certification or shows to pay fees as may be prescribed in the Rules and Regulations.

### **Section 305**

The **National** Film Commission may also charge such fees as it thinks fit for any other service rendered by it to any person under the provisions of this Act.

### **Section 313**

Where a governmental agency performs any of the functions referred to in section~~210~~ **312** of this Act, such agency may specify by notice the following requirements:

- (1)The manner and format in which the data messages must be filed, created, retained or issued;
- (2)In cases where the data message has to be signed, the type of electronic signature required; and
- (3) Any other requirements for data messages or payments.

### **Section 362**

### **Quality of service**

An ICT and Media facility and service provider shall make reasonable endeavour to ensure that their facilities and services are:

- (1) Reliable, **affordable and accessible**;
- (2) Provided with due care and professional skills; and
- (3) Rendered in accordance with the standards reasonably expected of a competent provider of those ICT and Media facilities and services.

### **Section 434**

A person who owns or operates any ICT and Media facility or services without a valid license shall be guilty for offence of misdemeanor. ~~and all facilities, apparatus, equipment, device, thing or matter used in the commissioning of the offence shall be liable for forfeiture.~~

### **Section 436**

A person who keeps, maintains, operates, uses or knowingly allows to be used any place which provides ICT and Media facilities and services without a license shall be liable for offence of misdemeanor. ~~and shall be fined an amount as may be prescribed by the Authority in the Rules and Regulations made there under.~~

### **Section 437**

A person involved in effecting any purported transfer of a license other than in accordance with section 150 of this Act, shall be ~~guilty of the offence and liable for~~ **petty misdemeanor** ~~fine as prescribed in Rules and Regulations developed by the Authority.~~

### **Section 440**

Where a declaration is made under section 256 of this Act, any person who imports, sells or distributes, or possesses for sale, within Bhutan a copy of such book or newspaper shall be guilty of the offence of smuggling as per the Penal Code of Bhutan and **Goods shall liable for forfeiture.**

### **Section 446**

A person who does not comply with the direction issued under sections 416 and 419 of this Act with regard to blocking for access by the public and monitoring suspicious traffic data based on court warrant, shall be guilty of an offence of **petty misdemeanour**. ~~liable to conviction of misdemeanour.~~

### **Section 452**

**Retain the Original Section in the Bill**

### **Section 454**

A person who **knowingly** exhibits, or assists in the exhibition, or allows the use of the premises for the exhibition, of the film in respect of which an order under section 295 of this Act, has been made shall be guilty of the offence of breach of public order and **liable for**

**petty misdemeanor** ~~tranquility as per the Penal Code of Bhutan.~~

### **Section 455**

A person shall be liable for offence of **petty misdemeanor**, if he or she willfully disobeys the order under section 299 of this Act, by:

- (1) Organising or taking part in the performance prohibited or in any performance substantially similar to the performance prohibited;
- (2) Assisting in the staging of such performance;
- ~~(3) Remaining present as a spectator during the whole or part of such performance; or~~
- (4) Being the owner or occupier, or for the time being in control, of any premises, using it, or allowing it to be used, for any such performance.

### **Section 465**

If a person knowingly communicates, directly or indirectly **through** a number, code, password or other means of access to a computer to any person other than a person to whom that person is duly authorised to communicate shall be liable for offence of misdemeanour and may be required to pay compensation to the victim for the damage caused, as determined by the Court.

### **Section 466**

A person, who knowingly publishes, distributes or transmits or causes to be published, distributed or transmitted, by means of an ICT apparatus, facility,



service or system, any obscene communication or material shall be liable for offence of ~~felony of fourth degree~~—**misdemeanour**, and be liable to pay compensation to the victim for the damage caused, as determined by the Court.

### **Section 467**

If a person with the intent or knowledge permits the ICT apparatus, facility, service or system under the person's control to be used for publishing, distributing or transmitting or caused to be published, distributed or transmitted any obscene communication or material **shall be liable for an offence of abetting as per the Penal Code of Bhutan.** ~~seen to have abetted such an offence and shall be liable as per the Penal Code of Bhutan.~~

### **Section 469**

A person shall be liable for offence of felony of ~~third~~ **fourth** degree, if he or she:

- (1) Publishes, distributes or transmits or causes to be published, distributed or transmitted any obscene communication or material which depicts children engaged in sexually explicit act or conduct;
- (2) Creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any form depicting children in obscene or indecent or sexually explicit manner;
- (3) ~~Facilitates abusing children using any ICT facilities or services; or~~

- (4) Records in any form, own abuse, or that of others pertaining to sexually explicit act with children.

### **Section 475**

~~A person who knowingly engages in betting or wagering with the use of an ICT facility or ICT service shall be guilty of the offence of gambling under the Penal Code of Bhutan.~~

### **PROHIBITION OF ONLINE GAMBLING**

**(1)** A person shall be guilty of the offence of gambling if he knowingly engages in betting or wagering with the use of an ICT facility or ICT service.

(2) An online gambler and Internet service provider, if involved in any activity related to betting or wagering, shall fall within the purview of Sub-section (1) and the term “betting or wagering” encompasses the offering of prizes in lieu of money.

(3) In addition to the penalties prescribed by the Penal Code for this offence, an additional fine may be imposed as deemed appropriate by the Court.

(4) This Section shall not affect the possibility for a Court or the Authority of requiring the ICT facility or ICT service provider and the Internet service provider to terminate or prevent an infringement.

~~(5) This Section shall not apply to any betting or wagering activity approved or licensed by the Government.~~

### **New Section after Section 475**

**The Section 475 shall not apply to any betting, wagering or gaming activity owned by the State.**

## **Section 478**

### **Retain the Original Section in the Bill**

## **Section 479**

### **Retain the Original Section in the Bill**

## **Section 481**

A person engaged in the operation of a public ICT system who, otherwise than in the course of duty under this Act intentionally discloses to any person the contents of any statement of account specifying the ICT services provided for any other person by means of that system shall be liable for offence of **Petty misdemeanour**, and may be required to pay compensation to the victim for the damage caused, as determined by the Court.

## **Section 482**

Any person who by means of a public ICT system, sends or attempts to send, any message which, to the person's knowledge, is false or misleading with the intent to prejudice the efficiency of any emergency services, cause alarm or endanger the safety of any person or of any vehicle, vessel, aircraft, or spacecraft shall be guilty of an offence ~~and liable for offence of felony of fourth degree, or impose a fine as may be determined by the court or with both.~~

## **Section 483**

### **Retain the Original Section in the Bill**

## **Section 486**

## **Retain the Original Section in the Bill**

### **Section 489**

~~Where any provision of this Act, Rules and Regulations specifies the class of crime for an offence, the person shall be liable to punishment in accordance with the provisions of this Act as well as any additional penalty which may be imposed by a Court in accordance with the Penal Code of Bhutan or any laws in force in Bhutan.~~

### **Section 490**

~~The Authority may impose reasonable penalty prescribed under the Rules and Regulations as endorsed by the Ministry for a particular offence which is not covered by this Act.~~

### **Section 491**

~~In determining the amount of fine or penalty under this Act, the appropriateness of such fine or penalty to the gravity of the offence shall be considered and in the case of a continuing or repeat offence, the Authority may prescribe, in addition to such penalties, a fine of such amount for every day or part of a day during which the offence continues.~~

### **Section 500**

~~The Authority shall take reasonable steps to deliver the property to its rightful owner. any person appearing to it to be its owner.~~

## **Section 510**

### **Power to make Rules and Regulations**

For the purpose of this Act, the Ministry ~~in consultation with relevant government agencies, security institutions,~~ the Authority, Media Council, Film Commission, **in consultation with** representatives of business enterprises and consumers, and providers of ICT facilities and Services may develop and issue Rules and Regulations **taking into consideration the:**

- (1) Interests of the sovereignty, security, unity and integrity of Bhutan;**
- (2) Interest of peace and well-being of the nation; or**
- (3) Objects and other provisions of this Act are not contravened.**

## **Section 515**

### **New Insertion after Definition 88**

**“State” means the Kingdom of Bhutan.**

### **Voting details on the adoption of the Information, Communications and Media Bill of Bhutan 2017**

Date: 28/11/2017; Total Votes: 21; ‘YES’: 21; ‘NO’: 0; ‘Abstain’: 0

#### **The following voted ‘YES’:**

1. Hon’ble Phuntsho Rapten
2. Hon’ble Tashi Wangmo
3. Hon’ble Pema Dakpa
4. Hon’ble Dhan Bdr. Monger

5. Hon'ble Sonam Dorji
6. Hon'ble Sangay Khandu (Gasa)
7. Hon'ble Tashi Phuntsho
8. Hon'ble Tashi Dorji
9. Hon'ble Sangay Khandu (Samtse)
10. Hon'ble Jigme Rinzin
11. Hon'ble Jigme Wangchuk
12. Hon'ble Nima
13. Hon'ble Kamal Bdr. Gurung
14. Hon'ble Rinzin Dorji
15. Hon'ble Kaka Tshering
16. Hon'ble Tharchen
17. Hon'ble Tempa Dorji
18. Hon'ble Pema Tenzin
19. Hon'ble Nima Gyaltshen
20. Hon'ble Kesang Chuki Dorjee
21. Hon'ble Karma Tshering

*(Thursday, 23<sup>rd</sup> November 2017 corresponding to the 5<sup>th</sup> Day  
of the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese  
Calendar)*

### **3. Introduction of the Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries**

The Member-in-charge of the Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries, the Hon'ble Minister for Foreign Affairs said that Bhutan is also one of the members of the 32 landlocked developing countries. Therefore, in order to fulfill the special requirements and to comprehensively and effectively implement the Almaty Program of Action, the issue was discussed in Ministerial Conference held in Almaty, Kazakhstan in August 2003. After the Agreement was officially launched in Ulaanbaatar, Mongolia in 2009, it was later signed in the United Nations. Thereafter, some of the member countries ratified the Agreement. He submitted that in order to get ratification from the Parliament of Bhutan, the National Assembly had ratified the Agreement in the 9<sup>th</sup> session of the Second Parliament. He then moved motion to introduce the Agreement in the National Council for ratification.

He said that the main objective of the Agreement is to make international trade convenient for the landlocked countries lacking territorial access to sea and to strengthen the relations with the en route countries. It will also benefit our country in seeking assistance and support and there is huge opportunity for Bhutan to coordinate and work together with other member countries for economic development. In addition, there is huge benefit from international trade in terms of

human resource development, improvement of high quality researches and finding measures to solve economic challenges for the landlocked countries.

Moreover, he said that if Bhutan ratifies the Agreement, it will enable us to solve challenges of trade routes faced by the country and other difficulties related to being a landlocked country. It will also enable us to get excellent opportunity to do trade with our neighbouring countries. As a member country, Bhutan could also serve in the Board of Governors and Advisory Council and have the opportunity to participate in the United Nations. While there are no major negative implications of the Agreement, Bhutan may have only financial obligation to make annual voluntary contributions to the Think Tank's budget.

He said that the Agreement will have both direct and indirect benefit to Bhutan and will also be useful for capacity building of our people. Therefore, he submitted the Agreement for ratification by the House.

On this, some of the Members asked whether there is any negative implication in its operation as the two immediate trading partners of Bhutan such as India and Bangladesh are not included as a member to the Agreement. They also enquired on how much amount of voluntary contribution is estimated to be given by Bhutan. In response, the Hon'ble Minister clarified that there is no negative implication with the two neighbouring countries; rather it will enhance the relationship with the developing landlocked countries.



This is mainly because the Agreement is not directly concerned with the issues related to trade route but on the development of research to benefit from international trade. With regard to voluntary contribution fee, he said that Bhutan is expected to contribute around 5000 USD although the amount is not confirmed at the moment.

### **3.1 Deliberations and Ratification of the Agreement**

The National Council thoroughly deliberated on the Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries on 23/11/2017, made an amendment on the Dzongkha translation of a section and ratified it. The House resolved to submit the same to His Majesty the King for Royal Assent.

#### **Voting details on the ratification of the Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries**

Date: 1/12/2017; Total Votes: 21; 'YES': 21; 'NO': 0; 'Abstain': 0

#### **The following voted 'YES':**

1. Hon'ble Phuntsho Raptan
2. Hon'ble Tashi Wangmo
3. Hon'ble Pema Dakpa
4. Hon'ble Dhan Bdr. Monger

5. Hon'ble Sonam Dorji
6. Hon'ble Sangay Khandu (Gasa)
7. Hon'ble Tshering Dorji
8. Hon'ble Tashi Phuntsho
9. Hon'ble Tashi Dorji
10. Hon'ble Sangay Khandu (Samtse)
11. Hon'ble Jigme Rinzin
12. Hon'ble Jigme Wangchuk
13. Hon'ble Nima
14. Hon'ble Kamal Bdr. Gurung
15. Hon'ble Kaka Tshering
16. Hon'ble Tharchen
17. Hon'ble Tempa Dorji
18. Hon'ble Pema Tenzin
19. Hon'ble Nima Gyaltshen
20. Hon'ble Kesang Chuki Dorjee
21. Hon'ble Karma Tshering

*(Thursday, 1<sup>st</sup> December 2017 corresponding to the 13<sup>th</sup> Day of  
the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese  
Calendar)*

#### **4. Re-deliberation of the Audit Bill of Bhutan 2017**

The National Council during its 19<sup>th</sup> session comprehensively deliberated on the Audit Bill of Bhutan 2017 and submitted it to the National Assembly along with 59 amendments. After having deliberated on the Bill during its 10<sup>th</sup> session, the National Assembly sent it back to the National Council along with 89 amendments. The National Council re-deliberated on the Bill and accepted 81 amendments made by the National Assembly but could not agree on the following sections. Therefore, the House resolved to submit these to His Majesty the Druk Gyalpo for command to deliberate in a Joint Sitting of Parliament.

#### **Section 6**

The Auditor General shall be assisted by ~~the~~ **an Advisory Committee** ~~Board of the Authority established under this Act~~ **in discharging his or her mandates including, making major policy and executive decisions of the Authority.**

#### **Section 8**

**There shall be** ~~The~~ Regional Offices and Training Center of the Authority **and it shall be headed by senior officials of appropriate ranks.** ~~an official equal to the rank of the Deputy Auditor General and Director respectively.~~

#### **Section 14**

~~As part of the mechanism instituted by the Parliament~~  
**As** per section 13 in this Act, the Authority shall have right to appeal to the Parliament if it considers that funds provided to the Authority are not adequate to carry out its functions effectively.

### **Section 15**

~~The Authority's budget shall be directly charged to the consolidated fund by Parliament.~~ In case of the decision of Parliament on National Budget is delayed, the **Ministry of Finance** Authority shall be provided **the Authority** with interim funds, which shall be at least equal to the previous year's **current** budget.

### **Section 17**

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

### **Section 18**

**The Authority shall have independence and powers to regulate appointments, management and dismissal of its staffs other than the Auditor General in accordance with the Civil Service Act.**

### **Section 19**

~~Except for the Auditor General, the Authority shall regulate appointment, management and dismissal of its employees in accordance with the Civil Service Act.~~

### **Section 38-47**

## **~~Establishment of the Advisory Board of the Authority~~**

- ~~38. The Authority shall establish the Advisory Board of the Authority, herein after referred to as the Board, which shall assist the Auditor General in discharging his mandates including making major policy and executive decisions of the Authority.~~
- ~~39. The Board shall consist of the Auditor General, Joint Auditor General and all the Deputy Auditors General.~~
- ~~40. The Auditor General shall be the chairperson of the Board the Head of Policy and Planning Division as the Member Secretary to the Board.~~
- ~~41. The presence of at least two third members shall form the quorum of a Meeting.~~
- ~~42. The Board shall meet at least four times annually at a time and place as determined by the Auditor General.~~
- ~~43. The agenda and Minutes of the Meeting shall be documented and duly authenticated under the signatory of the Auditor General and the Member Secretary.~~
- ~~44. The Joint Auditor General shall be the Vice Chairperson of the Board.~~
- ~~45. The Auditor General may require such other person or persons of the Authority to attend any Board Meetings as invitee to provide expert opinion or provide information and explanations on specific items of the agenda.~~
- ~~46. Decisions of the Board shall not be invalidated merely because of procedural defects in convening the meeting.~~

## **Functions of the Board**

47. ~~The Board shall assist Auditor General to:~~

- ~~(1) Make strategic decision and set priorities of the Authority;~~
- ~~(2) Approve strategic, operational and annual plans of the Authority;~~
- ~~(3) Determine organizational structure and staffing pattern of the Authority in accordance with the Civil Service Act;~~
- ~~(4) Issue terms of reference for various committees established;~~
- ~~(5) Adopt regulations framed under this Act;~~
- ~~(6) Review and endorse Human Resource plan;~~
- ~~(7) Monitor all appointments carried out by the Human Resources Governance Committee as may be required;~~
- ~~(8) Select officials of the Authority for secondment or deputation;~~
- ~~(9) Approve and issue auditing standards, manuals, guidelines developed by experts or adopt standards and guidelines issued by recognized national or international standard setting bodies;~~
- ~~(10) Review and endorse the decisions taken by other Committees as may be required by the Auditor General;~~
- ~~(11) Approve arrangements with internal auditors upon satisfying itself of the work performed by the Internal Auditors ;~~
- ~~(12) Approve strategies and plans of Training Center including training programmes and qualifications;~~
- ~~(13) Make decision on any other matters as may be required by the Auditor General; and~~
- ~~(14) Institute award schemes to employees of the Authority, audited entities and others as provided in Section 68 (23) &(24) of this Act.~~

## **Voting details on the adoption of the Audit Bill of Bhutan 2017**

Date: 23/11/2017; Total Votes: 21; 'YES': 21; 'NO': 0; 'Abstain': 0

### **The following voted 'YES':**

1. Hon'ble Tashi Wangyal
2. Hon'ble Phuntsho Rapten
3. Hon'ble Tashi Wangmo
4. Hon'ble Pema Dakpa
5. Hon'ble Dhan Bdr. Monger
6. Hon'ble Sonam Dorji
7. Hon'ble Sangay Khandu (Gasa)
8. Hon'ble Tshering Dorji
9. Hon'ble Tashi Phuntsho
10. Hon'ble Tashi Dorji
11. Hon'ble Sangay Khandu (Samtse)
12. Hon'ble Jigme Rinzin
13. Hon'ble Nima
14. Hon'ble Kamal Bdr. Gurung
15. Hon'ble Kaka Tshering
16. Hon'ble Tharchen
17. Hon'ble Tempa Dorji

18. Hon'ble Pema Tenzin
19. Hon'ble Sonam Wangchuk
20. Hon'ble Kesang Chuki Dorjee
21. Hon'ble Karma Tshering

*(Thursday, 30<sup>th</sup> November 2017 corresponding to the 12<sup>th</sup> Day of the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

## **5. Narcotic Drugs, Psychotropic Substances and Substance Abuse (Amendment) Bill of Bhutan 2017**

The Member-in-charge of the Narcotic Drugs, Psychotropic Substances and Substance Abuse (Amendment) Bill of Bhutan 2017, Hon'ble Member of Bumthang Dzongkhag, the Chairperson of Social and Cultural Affairs Committee said that the Amendment Bill was accepted as an urgent Bill by both the Houses mainly based on the principle of social security. The National Assembly had deliberated on the Bill during the current session and made 2 amendments and transmitted to the National Council. He said that despite time constraints, the Social and Cultural Affairs Committee thoroughly reviewed the Bill and submitted altogether 16 proposals for amendment. He then moved the motion to introduce the Bill in the House.

He said that the main reason to amend the Act was to address the issue in light of the new drug Spasmo Proxyvon plus (SP+) which is causing lots of problem in



the society relating to imprisonment of many people. In general, people are of the view that Parliament is at fault for not envisioning drug-related problems in the future when it passed the Act in 2015. However, he clarified that in reality, the fault is not with the Parliament but on the implementation part as the punishment for the recently emerged new drug Spasmo Proxyvon plus (SP+) was also imposed similar to that of other narcotic drugs. This is mainly because while the drug Spasmo Proxyvon (SP) was clearly included in the schedule when the Act was passed in 2015, the new drug Spasmo Proxyvon plus (SP+) was not included in the schedule as it did not exist at that time. However, when the new drug emerged later on, the punishment was imposed similar to that of Spasmo Proxyvon (SP) whereby it has caused bigger problems in the society.

Therefore, he submitted that the Parliament after taking further concern on the issue decided to deliberate the Bill as an urgent Bill with the objective that the amendment of the Act will resolve such problems. The main amendments made by the National Assembly are on section 59 and in the schedule. However, in addition to the amendments made by the National Assembly, the National Council has made a total of 14 amendments on the Act. He submitted that the proposals for amendment be deliberated and adopted by the House.

### **5.1 Deliberations on the Bill**

The National Council deliberated on the Narcotic Drugs, Psychotropic Substances and Substance Abuse

(Amendment) Bill of Bhutan 2017 on 30/11/2017 and 1/12/2017 and accepted the amendments made by the National Assembly. The following additional amendments and changes were made which shall be submitted to the National Assembly for re-deliberation in accordance with Article 13.7 of the Constitution of Bhutan.

#### **New Section 4A**

**Such other drugs or substances of similar nature, effect, group or properties as those listed under Schedules I to VI of this Act shall be subject to the same measures of control as the controlled drug or substance listed under this Act.**

#### **Section 26**

The authorised officers may enter premises, make seizures and take samples wherever the operations referred to in section 25 of this Act are carried out in accordance with the Civil and Criminal Procedure Code of Bhutan **and rules and regulations.**

#### **New Section 47 A**

**A person charged under Section 152 of this Act shall remain under custody of the authorized officer or law enforcement agency until he or she is produced before the treatment assessment panel till the completion of the treatment as provided in the rules and regulations.**

#### **Section 54**

**Appointment of the Board members**

The Board members shall be appointed by the Royal Government **and shall comprise of:** ~~from amongst relevant ministries, departments, agencies and civil society organizations; and the Board shall be chaired by a relevant Cabinet Minister.~~

- 1. Minister, Ministry of Health as Chairperson**
- 2. Secretary, Ministry of Home and Cultural Affairs**
- 3. Secretary, Ministry of Education**
- 4. Chief of Police, Royal Bhutan Police**
- 5. Head, Department of Revenue and Customs**
- 6. Head, Department of Trade**
- 7. Heads of two relevant Civil Society Organizations nominated by CSO Authority**
- 8. Head, Drug Regulatory Authority**
- 9. Director General, Bhutan Narcotic Control Agency**

### **Section 56**

In case of vacancy, the Royal Government shall appoint another person to fill the vacancy **within 30 working days.**

### **New Section 59 A**

**The board shall submit to the Parliament for information as and when the schedules are revised or updated.**

### **Section 83**

Body search of a woman under this Act shall be carried out by a woman. ~~and if that is not possible, in the presence of a woman.~~

## **Section 85**

### **Drug Screening and drug testing**

**The Authority or** an agency designated by the Authority may conduct drug screening and testing of any person, substance, **container** or sample in accordance with the laws based on credible information **rules and regulations.**~~if:~~

~~(1) A person causes public nuisance or poses probable risk to the public and is under reasonable ground suspected to have consumed or consuming any substances controlled under this Act in any public place; or~~

~~(2) A container or suspected goods contains controlled substance listed under Schedules I to V of this Act with or without authorization.~~

## **Section 86**

If the defendant or suspect declines to provide specimen of his or her blood/urine or other samples for the test, the agency shall detain the suspect and obtain the required samples as per the procedures laid down under the Civil and Criminal Procedure Code of Bhutan **and rules and regulations.**

## **Section 133**

### **Illicit trafficking of cannabis and its derivatives**

A defendant shall be guilty of an offence of illicit trafficking of cannabis and its derivatives, regardless of

the degree of purity, if he or she **possesses**, imports, exports, stores, sells, purchases, transports, distributes, or supplies cannabis or its derivatives if it is more than the quantity determined in Schedule VII of this Act.

**Section 136**  
**(Amended in Dzongkha)**

**Section 141**

The offence of illicit trafficking of any substance listed under Schedule III and IV of this Act shall be:

- (1) A felony of third degree if the quantity ~~is equal to or~~ more than two times the quantity determined in Schedule VII of this Act; or
- (2) A felony of fourth degree, if the quantity is ~~equal to~~ ~~or~~ more than the quantity determined in Schedule VII of this Act but **equal to or** less than two times the quantity determined.

**New Section 141 A**

**Notwithstanding the provisions of this Act, a person possessing equal to or less than two times the quantity determined in Schedule VII of this Act shall be liable for offence of substance abuse under Section 152 of this Act in lieu of the offence of illicit trafficking, provided all of the following conditions are present:**

- (1) The substance in possession is Cannabis and its derivatives or a substance under Schedule III or IV of this Act;**
- (2) Tested positive for the substance in possession;**

- (3) No past criminal record related to illicit trafficking of controlled drugs or substances; and**
- (4) Absence of proof against illicit trafficking.**

## **Section 152**

### **Offence of substance abuse**

A ~~defendant~~**person** shall be liable for an offence of substance abuse if he or she:

- (1) Is tested positive for any substance under Schedule I or II of this Act **(except cannabis and its derivatives)** but not in possession; and/or
- (2) Is found consuming or to have consumed any substance under Schedule III or IV of this Act unless prescribed by a registered ~~medical officer~~; **physician**; and/or
- (3) Possesses such substance under Schedule III or IV of this Act ~~within~~**or cannabis and its derivatives equal to or less than** the quantity determined in Schedule VII of this Act and tested positive for the substances in possession; **and/or**
- (4) Is ~~tested positive for~~**found consuming or to have consumed** any substance under Schedule VI of this Act.

## **Section 154**

### **Offence of substance abuse by minor**

Notwithstanding section 153 of this Act, a minor committing an offence of substance abuse for:

- (1) The First time shall be liable to be referred to institutional based counselling. An out of school or non-school going minor shall be referred to an approved

treatment centre for minor or drop-in centre for a period of not less than two weeks;

(2) The Second time shall be liable to undergo compulsory treatment and rehabilitation for not less than one month in an approved treatment centre for minor as assessed by the Treatment Assessment Panel ~~or community service as specified under rules and regulations;~~

(3) The Third time shall be liable to undergo compulsory treatment and rehabilitation for not less than three months **or community service or both as specified under rules and regulations;**

(4) The Fourth time shall be liable to undergo compulsory treatment for one year or less at a juvenile correctional centre **or community service or both as specified under rules and regulations** and early release on good conduct and early recovery as recommended by the Treatment Assessment Panel.

## **Section 157**

### **Grading of unauthorized advertising**

The offence of unauthorized advertisement of controlled drugs and substances listed under this Act shall be a misdemeanor.

~~Provided that every successive offence thereafter, shall be subject to enhanced punishment as per the Penal Code of Bhutan.~~

## **Definitions**

### **Section 165**

Unless the context otherwise requires:

**(1) “Advertisement”** means the broadcasting **and/or display** of controlled drugs or substances in any **form and medium for commercial purposes**.

**(4) “Authorized officer”** means ~~an officer duly assigned by~~ **designated official of the Authority and/or an official of an agency authorized** by the Narcotics Control Board ~~from relevant agencies to carry out the~~ provisions of this Act.

**(9) “Cannabis”** means **the cannabis plant including the flowering or fruiting tops**, ~~of the cannabis plant (excluding the seeds and/or leaves when not accompanied by the tops) from which the resin has not been extracted;~~ by whatever name they may be designated;

**(28) (Amended in Dzongkha)**

**(39) “Psychotropic substance”** means a substance with ~~mind~~ **mind** altering properties as listed under Schedule II and IV of this Act;

**(40) “Registered Physician”** means practitioner of the science of medicine who is duly authorized and registered under the ~~Bhutan~~ **Bhutan** Medical and Health Council of Bhutan **or other countries** as a medical professionals;

**New Insertion after Definition 44**



**(45) "Illicit trafficking"** means possession, import, export, store, sell, purchase, transport, traffic, distribute, or supply of controlled drugs and substances under Schedule I to VI for any pecuniary or material benefit contrary to the provisions of the Act;

### **Schedule I**

#### **Narcotic Drugs with no medicinal value**

19. AH-7921

20. U-47700

21. Propiram

### **Schedule II**

#### **Psychotropic Substances with no medicinal value**

29. 25B-NBOMe

30. 25C-NBOMe

31. 25I-NBOMe

32. PMA

### **Schedule III**

#### **Narcotic Drugs with medicinal value**

100. Tramadol

101. MT-45

102. Dihydromorphine

103. Oripavine

### **Schedule IV**

#### **Psychotropic Substances with medicinal value**

75. Dexamfetamine

77. Fenetylline

80. Metamfetamine

81. Metamfetamine Racemate

- 82. Methaqualone
- 85. Phenmetrazine
- 88. AM-2201
- 89. N-Benzylpiperazine
- 90. 2C-B
- 91. JWH-018
- 92. Levomethamphetamine
- 93. MDPV
- 94. Mephedrone
- 95. Methoxetamine (MXE)
- 96. Methylone
- 97.  $\alpha$ -PVP
- 98. 4,4'DMAR
- 99. Phenazepam

### **Schedule V**

#### **Precursor Chemicals under Table I and II of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988**

##### **Table I:**

- 14. — ~~Safrole~~ **Alpha phenyl acetoacetonitrile (APAAN)**
- 15. Phenyl Acetic Acid (~~w.e.f 17.1.2011~~)

### **Schedule VII**

#### **Narcotic Drugs with no medicinal value**

- 19. AH-7921
- 20. U-47700
- 21. Propiram

### **Schedule VII**

#### **Quantities determined for Psychotropic Substances with no medicinal value**

- 29. 25B-NBOMe
- 30. 25C-NBOMe
- 31. 25I-NBOMe
- 32. PMA

### **Schedule VII**

#### **4. Quantities determined for Narcotic Drugs having medicinal value**

- 100. Tramadol
- 101. MT-45
- 102. Dihydromorphine
- 103. Oripavine

### **Schedule VII**

#### **5. Quantities determined for Psychotropic Substances having medicinal value**

- 75. Dexamfetamine
- 77. Fenetylline
- 80. Metamfetamine
- 81. Metamfetamine Racemate
- 82. Methaqualone
- 85. Phenmetrazine
- 88. AM-2201
- 89. N-Benzylpiperazine
- 90. 2C-B
- 91. JWH-018
- 92. Levomethamphetamine
- 93. MDPV
- 94. Mephedrone
- 95. Methoxetamine (MXE)
- 96. Methylone
- 97.  $\alpha$ -PVP

98. 4,4'DMAR

99. Phenazepam

### **Schedules I to VII**

Propose to rearrange substances in all schedules in alphabetical order

### **Voting details on the adoption of the Narcotic Drugs, Psychotropic Substances and Substance Abuse (Amendment) Bill of Bhutan 2017**

Date: 2/12/2017; Total Votes: 21; 'YES': 21; 'NO': 0; 'Abstain': 0

#### **The following voted 'YES':**

1. Hon'ble Phuntsho Rapten
2. Hon'ble Tashi Wangmo
3. Hon'ble Pema Dakpa
4. Hon'ble Dhan Bdr. Monger
5. Hon'ble Sonam Dorji
6. Hon'ble Sangay Khandu (Gasa)
7. Hon'ble Tashi Phuntsho
8. Hon'ble Tashi Dorji
9. Hon'ble Sangay Khandu (Samtse)
10. Hon'ble Jigme Rinzin
11. Hon'ble Jigme Wangchuk
12. Hon'ble Nima

13. Hon'ble Kamal Bdr. Gurung
14. Hon'ble Rinzin Dorji
15. Hon'ble Kaka Tshering
16. Hon'ble Tharchen
17. Hon'ble Tempa Dorji
18. Hon'ble Pema Tenzin
19. Hon'ble Nima Gyaltshen
20. Hon'ble Kesang Chuki Dorjee
21. Hon'ble Karma Tshering

*(Saturday, 2<sup>nd</sup> December 2017 corresponding to the 14<sup>th</sup> Day of the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

## **6. Tourism Levy Exemption Bill of Bhutan 2017**

The Member-in-charge of the Tourism Levy Exemption Bill, the Hon'ble Minister for Finance said that the purpose of the Bill is mainly to exempt the existing royalty of USD 65 for international tourists visiting six Eastern Dzongkhags. This is because tourism sector is the second most contributors in the country in terms of revenue generation for the economy. Therefore, in order to promote tourism in the country, the government decided to make changes in the policy and submitted the Bill as a Money Bill which was deliberated in the National Assembly. He then moved motion to introduce the Bill in the National Council for deliberation.

The main objectives of the Bill are to ensure balanced regional development; to ensure tourism benefits the country as a whole; and to improve the tourism business in the country. To achieve this, he said that the proposed Bill will exempt the levy for a period of three years on a trial basis for international tourist visiting the eastern circuit. Further, re-opening of the Yonphula domestic airport and the completion of the widening of the east-west highway would also contribute significantly to this initiative.

To this, the Members sought clarifications on whether the Bill would cover the earlier exemptions provided in tourism sector, whether proper assessment is carried out prior to initiating the Bill, why such initiatives could not be started in the central and southern regions, how are they going to monitor it, whether inclusion of Samdrup Jongkhar Dzongkhag in the list is not contradictory as it was previously declared a security zone and whether the Bill will not directly undermine the much cherished principle of “High Value Low Impact” tourism policy followed by our country. In response, the Hon’ble Minister said that the earlier exemptions will be not be covered by this Bill and it will be as per the Taxation Policy of 1992. He stated that such initiatives could not be started in the southern dzongkhags owing to security reasons and also submitted that the Bill will not have negative impact on the “High Value Low Impact” tourism policy but rather there will be benefits from it.

## 6.1 Deliberations on the Bill

The National Council comprehensively deliberated on the Tourism Levy Exemption Bill of Bhutan 2017 on 2/12/2017 (Saturday) and resolved to reject the Bill on the basis of the following objections which shall be submitted to the National Assembly for re-deliberation:

### **Objections of the National Council on the Tourism Levy Exemption Bill of Bhutan 2017**

The National Council of Bhutan,

Recognizing the importance and impact of the tourism sector, the National Council discussed, reviewed and made several recommendations to the Government in the past on, amongst others, the need to improve the regional spread of tourism across the country. In particular, its recommendation emphasized the need for infrastructure development, product diversification and service improvement in different parts of the country. It also emphasized the need for a clear and transparent policy and an Act to govern the Tourism sector.

During a Question Hour in the 19<sup>th</sup> session of National Council, the Hon Prime Minister stated that the Government is committed to uphold the policy of “High value, Low impact” tourism by **maintaining the minimum tariff** which comprises of the sustainable development fee (royalty fee) and visitors travel expenses.

1. The Tourism Levy Exemption Bill of Bhutan 2017 seeks to grant exemption of the levy (sustainable development fee of \$65 per night halt) for a period of 3 years for international tourists visiting the eastern circuit. This directly contradicts the policy of the Royal Government as stated by the Hon Prime Minister.
2. Section 7, Chapter 3 states that: “An international leisure tourist visiting eastern circuit shall be exempted from payment of applicable tourism levy for the duration of their stay.”
  - I. The provisions will directly undermine the much cherished principle of “High Value Low Impact Tourism” that Bhutan has followed based on the wisdom and guidance of His Majesty the Fourth Druk Gyalpo. The Sustainable Development Fee forms the cornerstone of the policy as reiterated by the Hon Prime Minister to the National Council.
  - II. The Hon’ble Finance Minister repeatedly emphasized during the presentation of the Bill to National Council that the Tourism Levy Exemption for the Eastern Circuit was a trial (*motab*) initiative. Since it is a trail initiative, the National Council’s endorsement of the Bill risks paving way for total elimination of the tourism levy across the country if future Governments deems the trial successful. This will subsequently bring an end to the “high value, low impact” tourism policy.



- III. Section 7 of the Bill provides exemption of \$65 levy for those international tourists visiting Eastern *Dzongkhags*. There is no provision in the Bill on the status of various other discounts and levy exemptions, which are currently being provided by the Tourism Council of Bhutan.
- IV. Through the provision provided under this section of the Bill, the present government could inadvertently be promoting lower-end tourism (including backpackers) in Eastern Bhutan while keeping the more upper class tourists to Western Bhutan. Besides, it segments tourism along regional lines as the Bill has no such favorable provision for southern and central *dzongkhags*.
3. According to Bhutan Tourism Monitor Report 2016, the majority (67.7%) of international tourists who visited Bhutan said that they receive value for money even with the \$65 tourism levy. The report further notes that average length of stay of the majority of tourists is a week. It is expected that the completion of the widening of the east-west later highway would shorten travel time. The re-opening of the domestic airports is further expected faster travel across the country within that length of stay. The Royal Government's tabling of the Bill, as another initiative therefore, preempts the impact of these most developments.

4. The National Council has raised concerns regarding the need to regulate the flow of regional tourists due to exponential growth in numbers that could exceed Bhutan's ecological, cultural and infrastructural carrying capacity. Accordingly, the Tourism Council of Bhutan (TCB) has proposed to levy a daily fee on regional tourists to regulate the flow of regional tourists. The National Council recognizes this initiative. However, it is concerned that exemption of the levy on international tourists in the Eastern Circuit could hamper the principle of the application of such levy for regional tourists.
5. As affirmed by the Performance Audit of Tourism Sector conducted by the Royal Audit Authority in 2016, TCB confronts challenges in curbing malpractices in the tourism sector. The National Council is uncertain if TCB has the monitoring capacity to ensure the provision for exemption is not misused.
6. Finally, the National Council is not convinced that the low volume of tourists visiting eastern Bhutan is due to the Tourism Levy. It believes that the Royal Government must consider other improvements such as infrastructure development, service improvement and product diversification.

**Voting details on the adoption of the Tourism Levy Exemption Bill of Bhutan 2017**

Date: 28/11/2017; Total Votes: 20; 'YES': 5; 'NO': 12; 'Abstain': 3

**The following voted 'YES':**

1. Hon'ble Tashi Phuntsho
2. Hon'ble Jigme Rinzin
3. Hon'ble Jigme Wangchuk
4. Hon'ble Tharchen
5. Hon'ble Tempa Dorji

**The following voted 'NO':**

1. Hon'ble Tashi Wangyal
2. Hon'ble Phuntsho Rapten
3. Hon'ble Tashi Wangmo
4. Hon'ble Pema Dakpa
5. Hon'ble Sonam Dorji
6. Hon'ble Sangay Khandu (Gasa)
7. Hon'ble Tshering Dorji
8. Hon'ble Tashi Dorji
9. Hon'ble Nima
10. Hon'ble Kamal Bdr. Gurung
11. Hon'ble Pema Tenzin
12. Hon'ble Nima Gyaltshen

**The following 'abstained' from voting:**

1. Hon'ble Dhan Bdr. Monger
2. Hon'ble Sangay Khandu (Samtse)
3. Hon'ble Karma Tshering

*(Friday, 24<sup>th</sup> November 2017 corresponding to the 5<sup>th</sup> Day of the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

## **E. Issues related to Review of Policies**

### **1. Review Report on Legal Aid to Indigent Person**

The Legislative Committee reported that the issue of providing legal aid to indigent persons was discussed in different sessions of the National Council particularly during the deliberations on annual budget and appropriation bills. This was because a small amount of budget for this purpose was allocated every year but had never been utilized thus far. The issue was also debated during the amendment of Jabmi Act 2016. A new clause related to the provision of legal aid was incorporated with the intent of assuring such services to the needy people. The National Council during its Strategic Workshop held in Paro from June 25-26, 2017 once again deliberated upon the merit of the issue and decided to undertake a comprehensive review. The Legislative Committee was assigned the task of conducting the review and therefore, the Committee submitted its review report to the House.

In order to undertake a comprehensive review on the issue, the Committee conducted consultative meetings with six agencies and also reviewed relevant laws and literatures. Most importantly, the Committee took time to make a study visit to two countries in Asia (Singapore and Thailand) and had the opportunity to learn from their best practices.

It was submitted that the constitutional provisions concerning legal aid are enshrined in Article 9.5, 9.6, 7.15 and 7.21 of the Constitution of Kingdom of Bhutan. Apart from the above constitutional provisions, Penal Code of Bhutan 2004, Civil and Criminal Procedure Code of Bhutan 2001, Child Care and Protection Act of Bhutan 2011, Evidence Act of Bhutan 2005 and Jabmi (Amendment) Act of Bhutan 2016 also has provisions that support legal aid to indigent persons.

The Committee reported that some of the observations and key findings after reviewing the relevant laws and conducting numerous consultative meetings included the need of clear definition of an indigent person; no rightful institution to initiate legal aid and relevant agencies such as the Office of the Attorney General (OAG), Judiciary, Bhutan National Legal Institute (BNLI) and the National Commission for Women and Children (NCWC) etc. do not seem appropriate to initiate legal aid in the country due to conflict of interests and differing mandates. Further, it was reported that legal aid services, if provided, should be made eligible to both civil and criminal cases.

Based on the above observations, the Committee then submitted the proposed recommendations which consists of provision of legal aid services to both civil and criminal cases; legal aid services to be made available not only when an indigent is at the stage of trial court but from the time when the accused is held in custody; legal aid services to be provided based on the circumstances; provision of adequate budget; a need for a separate legislation and proper legal education and awareness programmes about existence of such legal aid services.

On this, members asked who is at fault for not even utilizing the small amount of budget allocated by the government for legal aid services. They also said that there will be major financial impact if such services are provided to both civil and criminal cases. The members also had comprehensive discussion on the issues related to providing of legal aid services by the Bar Council and that there is no need to establish a separate institution to provide such services.

The National Council thoroughly deliberated on the Review Report on Legal Aid to Indigent Person on 24/11/2017 and 28/11/2017 and resolved as follows:

The National Council of Bhutan,

*Respecting* the constitutional provision of treating all persons as equal before law and its intent of not denying equality of opportunity to secure justice;

*Concerned* that the provision of legal aid services and legal aid to indigent person has not been initiated

despite having clear provisions in the Constitution and other existing laws;

*Noting* that the following legal provisions anticipate provision of legal aid to Bhutanese citizens:

Constitution (Articles 7.15, 7.21, 9.5 and 9.6), Civil and Criminal Procedure Code of Bhutan, 2001 (Sections 31, 31.1 and 34), Child Care and Protection Act of Bhutan, 2011 (Sections 107, 151 and 180), Domestic Violence Prevention Act of Bhutan, 2013 (Section 27.4), Evidence Act of Bhutan, 2005 (Section 86) and Jabmi Amendment Act of Bhutan, 2016 (Sections 9(f) and 9(g));

*Observing* that only a token amount of annual budget has been allocated for this purpose and that this too has never been utilized thus far;

*Also observing* that there is neither an agency designated for providing legal aid services nor public defender office in the country;

*Acknowledging* that the Office of Attorney General has drafted the guideline on the establishment of legal aid center in absence of any codified procedure and guideline for legal aid, and that this guideline is under consideration of the Royal Government;

*Concerned* that the country does not have a dedicated ministry dealing with law or justice and that existing institutions such as the Office of the Attorney General, Judiciary, Bhutan National Legal Institute, National Commission for Women and Children and Bar Council

do not seem appropriate to initiate legal aid in the country due to conflict of interests and differing mandates;

*Considering* that the country does not have a separate law dealing with legal aid;

*Hereby* calls upon the Royal Government to:

1. Formalize the provision of legal aid services and legal aid to indigent person in the country as top priority by:
  - 1.1) Ensuring that legal aid services is provided to both the civil and criminal cases;
  - 1.2) Ensuring that in the case of civil matters, due caution be exercised right from the beginning to prioritize the nature of cases such as those concerning family (matrimonial), children, domestic violence, monetary matters, land/property issues and issues arising from infringement of constitutional rights for the purpose of providing legal aid to indigent persons;
  - 1.3) Ensuring that the legal aid services and legal aid to indigent person is available from the time the accused is held in the custody to facilitate sufficient means to fairer judicial determinations;
  - 1.4) Considering adoption of either of the following annual income of a person to be eligible for legal aid as an indigent person unless a better alternative is found:
    - 1.4.1) Nu 39,000 in a year based on national minimum wage of Nu.125 per day (Nu.3,250/month), or



- 1.4.2) Nu 69,648 in a year for urban areas and Nu 39,012 in a year for rural areas based on the mean monthly per capita household expenditure of 2012;
- 1.5) Ensuring the provision of adequate budgetary support and creating options to receive donations, grants, subsidies, financial assistance from other legal sources;
2. Consider drafting a separate legislation on legal aid, and, until such legislation is enacted, make appropriate arrangement to deliver legal aid services and legal aid to indigent person; and,
3. Carry out educational and awareness program to raise awareness of the importance and availability of legal aid services to the general public and in particular, among police, courts and community functionaries.

**Voting details on the adoption of recommendations on the Legal Aid to Indigent Person**

Date: 28/11/2017; Total Votes: 21; 'YES': 21; 'NO': 0; 'Abstain': 0

**The following voted 'YES':**

1. Hon'ble Phuntscho Raptan
2. Hon'ble Tashi Wangmo
3. Hon'ble Pema Dakpa

4. Hon'ble Dhan Bdr. Monger
5. Hon'ble Sonam Dorji
6. Hon'ble Sangay Khandu (Gasa)
7. Hon'ble Tashi Phuntsho
8. Hon'ble Tashi Dorji
9. Hon'ble Sangay Khandu (Samtse)
10. Hon'ble Jigme Rinzin
11. Hon'ble Jigme Wangchuk
12. Hon'ble Nima
13. Hon'ble Kamal Bdr. Gurung
14. Hon'ble Rinzin Dorji
15. Hon'ble Kaka Tshering
16. Hon'ble Tharchen
17. Hon'ble Tempa Dorji
18. Hon'ble Pema Tenzin
19. Hon'ble Nima Gyaltshen
20. Hon'ble Kesang Chuki Dorjee
21. Hon'ble Karma Tshering

*(Monday, 27<sup>th</sup> November 2017 corresponding to the 9<sup>th</sup> Day of  
the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese  
Calendar)*

## **2. Report on Assessment of Access to and Use of Government-to-Citizen (G2C) Services**

The Special Committee comprising of members from the Natural Resources and Environment Committee (NREC) and the Social and Cultural Affairs Committee (SCAC) reported that pursuant to the Paro Retreat Workshop (23 – 26 June 2017) resolution and subsequent decisions of the House from ensuing plenary meetings, a Special Committee comprising eleven members was formed and was assigned the task to undertake a comprehensive review on the access to, and use of, Government-to-Citizen (G2C) services by people. In order to obtain holistic understanding of the services provided by the Government to the citizens, the Committee conducted consultative meetings with relevant experienced agencies. In particular, a nation-wide research survey was administered mainly by the Assistant Research Officers supervised by a few Researchers from the National Council Secretariat. The Committee submitted that the review report is the result of such research study undertaken by the Committee.

The objectives of the research study are mainly to ascertain types of public services delivered by agencies under G2c initiative; gauge the accessibility of general population to public service delivery; gauge the usage of public service, i.e., to understand the efficiency and effectiveness of public service delivery; ascertain if the services are delivered within the standard delivery time (Turn Around Time - TAT) as set by G2C Office for

various G2C services; and to understand challenges faced by public service delivery agencies and opportunities as perceived by service delivery agencies.

It was reported that the research survey was conducted nation-wide in all 20 Dzongkhags, in randomly selected Gewogs and Chiwogs from 20 Dzongkhags and in 22 towns including Phuentsholing and Gelephu towns. A total of 1201 respondents were successfully interviewed. The majority of the respondents who participated in the survey were male and in terms of respondents by occupation, the majority were found to be farmers.

As per the survey findings on the general awareness of G2C online services, the Committee reported that about 63.6% of the total respondents were aware of the G2C services whereas 27.8% were unaware of the G2C services. The sources of information on the availability of G2C online services were mainly through advertisements and family and friends. Amongst various occupational groups, most of the farmer respondents were not aware of the G2C services. Likewise, some of the civil servants and Local Government officials were also reported to be not aware of G2C services. However, the Committee reported that most of the literate respondents, particularly respondents with high school and above educational background were aware of G2C services.

With regard to frequency of G2C services availed, the Committee reported that based on the responses, about

480 respondents have availed the services in the past 1 year. However, the remaining 721 respondents have not availed the services. Out of the total 120 G2C online services offered, only 7 G2C services have been commonly availed by the respondents up until November 2014 and these included Security Clearance, Birth Registration, Household Information, Rural Timber Permit, Trade License Renewal and Firewood Permit. The Committee also reported that majority of the respondents have availed the services independently and through community centers, family and friends and relevant agencies.

In terms of time taken (in days) to deliver various online G2C services, the Committee reported that of those who have availed Household Information, about 93.4% have reported that it was delivered in one day. Similarly, about 79% of those who have availed Security Clearance and 72% of those who have availed Firewood Permit reported that they received services in one day. On the other hand, it was reported that obtaining of Rural Timber Permit took one week to receive the services. Therefore, the Committee reported that when people were asked to rate the level of satisfaction with different online services, it was found that generally people were very satisfied with the online services provided to them. For instance, satisfaction with Household Information and Firewood Permit was rated very high. Likewise, the Committee also submitted that they have reviewed not only the G2C online Services availed but also the G2C Services availed through offline mode.

The Committee reported that some of the major challenges faced by the Community Centers in delivering services included internet connectivity/network problem and system breakdown, lack of adequate human resource, not approving services on time, frequent power breakdown, limited office space and high G2C service charge etc. It was also reported that some of the opportunities for the Community Centers would be to include other services like census transfer, payment of utility bills and issuance of marriage certificate etc.

On this, the members extensively deliberated on the issues related to G2C services such as expenses incurred on the G2C services provided, who is the core agency providing G2C services, provision of adequate basic infrastructures to provide effective services, inclusion of additional services etc.

The National Council thoroughly deliberated on the Report on Assessment of Access to and Use of Government-to-Citizen (G2C) Services on 27/11/2017 and 1/12/2017 and resolved to submit the following recommendations to the government and relevant agencies:

### **THE NATIONAL COUNCIL**

***Acknowledging*** that the Government-to-Citizen (G2C) Office, which was initially a public service delivery initiative project, is institutionalized as Public Services Grievance Reddressal Division (PSGRD) under Cabinet

Secretariat with primary objective to simplify and enhance the delivery of public services;

**Concurring** that while the public services are simplified and made available through various channels by PSGRD in collaboration with respective public service dispensing agencies, it is the mandates of these respective agencies to provide it responsibly;

**Acknowledging** that the Royal Government had established Community Centers (CC), earlier known as Community Information Centers (CICs), in Gewog Centers across the country to improve living standard of communities by facilitating faster, affordable and reliable public service delivery to the citizens using Information Communication Technology (ICT) tools and applications;

**Further concurring** that CCs, which were initially operated and managed by Bhutan Postal Corporation Ltd. was later transferred to Bhutan Development Bank Ltd. (BDBL) by the present Government in view of BDBL's excellent outreach;

**Conducted** a review on the assessment of access to, and use of, Government-to-Citizen (G2C) services by the general public to understand the efficiency and effectiveness of public service delivery by relevant agencies;

**Observed** through a nation-wide survey that:

1. 28% of the total respondents were not aware of the online G2C services being offered while 64% of the survey respondents knew some of the online G2C services offered;
2. More women compared to their male counterparts were unaware of the G2C services, i.e., with 32% of female respondents as opposed to 24% of male with difference being 8 percentage points
3. By occupational group, more housewives (51%) and farmers (34%) were not aware of G2C services. Similarly, 4% of civil servants respondents and 7% of local government officials respondents were not aware of G2C online services;
4. By education background, 17% of high school and above respondents were not aware of G2C online services while 54% of illiterate respondents reported that they were unaware of online G2C services;
5. 35% of respondents have known about G2C services from BBS advertisements followed by 24% from Community Centers (CC) and 23% from family and friends;
6. 49% of respondents have availed the services in the last 12 months. From the male respondents, 51% have availed the online services compared to 46% females from the female respondents;
7. From the G2C online services availed in the past 12 months, security clearance with 19.7% was found popular followed by birth registration with 9.7%, household information with 7.7% and rural



timber permit with 6%. Trade License renewal was at 5.3% and Firewood Permit at 4.8%;

8. From the total of 120 public services available through G2C portal, only 7 public services (5.8%) have been commonly availed by the respondents. These 7 services are from Ministry of Home & Cultural Affairs, Ministry of Agriculture & Forest, and Ministry of Economic Affairs;
9. Majority of the respondents have availed services through CCs such as firewood permit with 94.4% followed by rural timber permit with 91.43%, household information with 89.13% and birth registration with 86.21%;
10. In terms of time taken to deliver various online services, 93.4% of those who have availed household information were delivered in one day. Similarly, about 79% of those who have availed security clearance, 72% of those who have availed firewood permit and about 63% of those who have renewed trade licenses were also delivered in one day.

On the contrary, for those who have applied for online rural timber permit, about 13% had taken more than one month as opposed to the Turn-Around-Time (TAT) standard of 30 days as set by the Department of Forests and Park Services;

11. 92% of those who have availed online household information service have very high satisfactory rating, followed by 78% of those who have availed online firewood permit, birth registration (66%) and trade license renewal (63%). On the other hand, 10% of those who have availed online rural

timber permit have expressed as dissatisfied service;

12. People continue to avail services offline through submission of hard-copy application forms to relevant agencies even though the Government has initiated several e-services. Most of the common services availed offline in order of frequency are renewal/first-time issuance of citizenship identity card (CID) with 40%, followed by rural timber permit with 19%, birth registration with 14%, firewood permit with 12%, and trade license renewal with 12%;

13. In terms of time taken to deliver offline services, 75% of those who have availed household information, 84% of those who have availed trade license renewal and 60% of those who have availed security clearance services were delivered within one day. On the extreme side, about 47% of those who have availed first-time/renewal of CID have taken more than one month as opposed to the standard TAT of 5 days. Similarly, 19% of those who have availed rural timber permit have taken more than one month as opposed to the standard TAT of 30 days.

As regards the time taken for issue of CID, respondents from fifteen Dzongkhags (excluding Chhukha, Dagana, Lhuntse, Samtse and Tsirang) have reported that they had taken more than one month to get their CIDs delivered. For instance, 78.57% of those respondents in Mongar Dzongkhag and 70% each from Sarpang and

- Pemagatshel Dzongkhags have reported to have taken more than one month to get CIDs;
14. On the level of satisfaction with different offline services availed, about 97% rated either 'very satisfied' or 'satisfied' with trade license renewal followed by about 90% with firewood permit and 88% with household information services. However, about 21% reported either 'very dissatisfied' or 'dissatisfied' with first-time issue/renewal of CID followed by about 18% with rural timber services;
  15. About 40% of CC operators reported internet connectivity/network problem and system breakdown as the major challenge followed by about 20% with lack of adequate human resource and training while about 16% of CC operators blamed the delay in approving by concerned agencies and about 12% blamed frequent power breakdown as major challenge; and
  16. The CC operators expressed if the G2C service providers could have an authority to approve change of head of household, change of date of birth, census transfer, and issuance of marriage certificate from the CC Office. They further expressed if people could directly pay their utility bills like electricity and telephone and apply for LPG gas through CC.

**Therefore, the National Council recommends the Royal Government to**

1. Initiate an annual awareness program on available G2C services with ministries concerned to educate public on the availability of services that are not commonly used;
2. Make use of radio, television, social media and other platforms to reach mass audience in rural and urban settings;
3. Conduct G2C online awareness programs at the CCs focusing on women and farmers in particular;
4. Review the basis of TAT determination in view of disparate time taken as opposed to the standard TAT for several services;
5. Address hindrances that prevent the G2C services to be delivered as per the Turn-Around-Time standard;
6. Equip Community Centers and inaccessible areas in remote communities with reliable infocom network connectivity and power supply; and
7. Provide Community Centers Operators with periodical trainings by agencies concerned on available G2C services.

**Voting details on the adoption of recommendations on the Report on Assessment of Access to and Use of Government-to-Citizen (G2C) Services**

Date: 1/12/2017; Total Votes: 20; 'YES': 20; 'NO': 0; 'Abstain': 0

**The following voted 'YES':**

1. Hon'ble Phuntsho Raptan
2. Hon'ble Tashi Wangmo

3. Hon'ble Pema Dakpa
4. Hon'ble Dhan Bdr. Monger
5. Hon'ble Sangay Khandu (Gasa)
6. Hon'ble Tshering Dorji
7. Hon'ble Tashi Phuntsho
8. Hon'ble Tashi Dorji
9. Hon'ble Sangay Khandu (Samtse)
10. Hon'ble Jigme Rinzin
11. Hon'ble Jigme Wangchuk
12. Hon'ble Nima
13. Hon'ble Kamal Bdr. Gurung
14. Hon'ble Kaka Tshering
15. Hon'ble Tharchen
16. Hon'ble Tempa Dorji
17. Hon'ble Pema Tenzin
18. Hon'ble Nima Gyaltshen
19. Hon'ble Kesang Chuki Dorjee
20. Hon'ble Karma Tshering

*(Monday, 4<sup>th</sup> December 2017 corresponding to the 16<sup>th</sup> Day of the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

**F. Any Other Business**

**1. Entitlement of leave encashment to Local Government Members**

The Hon'ble Member of Bumthang Dzongkhag moved motion on the issue pertaining to entitlement of leave encashment to local government members which is not implemented as per the provisions of the Local Government Members Entitlement Act 2015. The Hon'ble Member of Lhuentse Dzongkhag supported the motion and the House adopted the proposed motion for deliberation.

Presenting the background, the Hon'ble Member of Bumthang Dzongkhag said that the issue related to entitlement of leave encashment to local government members was acknowledged by the National Council in the 19<sup>th</sup> Session during the discussion on the pay revision report for the local government members. The House recommended the government to incorporate the entitlement of leave encashment to the local government members as per the provision of the Act when revising their pay. During the re-deliberation on pay revision report by the National Assembly, the Hon'ble Minister

for Home and Cultural Affairs had stated that the issue would be clearly provided in the rules and regulations to the Act and it would be implemented upon the endorsement by the Cabinet.

However, he said that the rules and regulations is not finalized and is reported to be in a draft stage. It is also a cause of concern as the draft rules and regulations doesn't contain anything on the leave encashment. The National Council after having further concern on the issue, therefore, submitted a motion calling upon the government to respect the rule of law and to implement the provisions of the Local Government Members Entitlement Act 2015 with regard to entitlement of leave encashment. It was also submitted that an immediate executive order to that effect should also be provided.

On this, most of the Hon'ble Members supported the motion and submitted that such entitlements should be made certain in accordance with the Act. They also submitted that the rules and regulations should be immediately endorsed and implemented without any further delay. In addition, the Hon'ble Members submitted that there are no clear provisions on those who work in the local government such as Geydrungs and this should also be confirmed at the earliest.

After lengthy deliberation on the issue, the National Council resolved to submit a postulate requesting the government to ensure entitlement of leave encashment to local government members in accordance with section 15 of the Local Government Members

Entitlement Act 2015 and to immediately finalize the rules and regulations to the Act for implementation.

**Voting details on the adoption of recommendations on the Entitlement of leave encashment to Local Government Members**

Date: 4/12/2017; Total Votes: 20; 'YES': 20; 'NO': 0; 'Abstain': 0

**The following voted 'YES':**

1. Hon'ble Phuntsho Rapten
2. Hon'ble Pema Dakpa
3. Hon'ble Dhan Bdr. Monger
4. Hon'ble Sonam Dorji
5. Hon'ble Sangay Khandu (Gasa)
6. Hon'ble Tashi Phuntsho
7. Hon'ble Tashi Dorji
8. Hon'ble Sangay Khandu (Samtse)
9. Hon'ble Jigme Rinzin
10. Hon'ble Jigme Wangchuk
11. Hon'ble Nima
12. Hon'ble Kamal Bdr. Gurung



13. Hon'ble Rinzin Dorji
14. Hon'ble Kaka Tshering
15. Hon'ble Tharchen
16. Hon'ble Tempa Dorji
17. Hon'ble Pema Tenzin
18. Hon'ble Nima Gyaltshen
19. Hon'ble Kesang Chuki Dorjee
20. Hon'ble Karma Tshering

## **2. Omission of Budget Allocated for Black-topping of Chuzomsa-Baylangdra Road in Wangduephodrang Dzongkhag**

The Hon'ble Member of Wangduephodrang Dzongkhag moved motion on the issue pertaining to omission of budget allocated for black-topping of Chuzomsa-Baylangdra road in Wangduephodrang Dzongkhag. The Hon'ble Member of Thimphu Dzongkhag supported the motion and the House adopted the proposed motion for deliberation.

Presenting a brief background on the issue, the Hon'ble Member of Wangduephodrang Dzongkhag stated that during the presentation of National Budget Financial Year 2017-18 in the 9<sup>th</sup> session of the Second Parliament, a budget of Nu. 130.441 million was approved under the activities of road sector to be funded by the Government of India for black-topping of Chuzomsa-Baylangdra road under Wangduephodrang Dzongkhag. However, when the implementation of this activity was about to start, the government, and the

Ministry of Works and Human Settlement in particular, deemed this to be a mistake and reported that there is no budget allocated for the construction of this road even though the budget has been passed by the Parliament.

Therefore, he said that Members must know in detail as to why the budget is omitted or not allocated for the implementation of this activity. This is because, if similar kind of issue related to omission of budget come up in the future even after the budget proposed by the respective agencies as per the plans is endorsed by the Ministry of Finance and approved by the Parliament, then it will greatly hamper the developmental activities in the country. Therefore, he submitted that the government needs to take measures to ensure such mistake do not happen in future and moreover to provide the omitted budget allocated for the implementation of this activity.

On this, most of the Members submitted that the budget once passed by the Parliament is passed through Budget and Appropriation Bill and becomes an Act for implementation purposes. They submitted that there is a need to fix accountability in case if it is not implemented as per the Act. In order to avoid such mistakes in the future, it is important for the government officials to be very mindful while carrying out their duties. They also submitted that, for clarity, Members must be provided with detail background report attached to the Budget while submitting the Budget Bill to the Parliament so that such issues can be resolved. Therefore, the government needs to acknowledge the mistake and take appropriate measures to ensure such lapses do not occur in the future.

The National Council unanimously adopted the motion taking into consideration the importance of the issue pertaining to the omission of budget allocated for black-topping of Chuzomsa-Baylangdra road in Wangduephodrang Dzongkhag. It resolved to submit a postulate to the government requesting it to implement the Budget and Appropriation Bill passed by the Parliament like any other Acts and to fix immediate accountability in the event of violation of the Act. Moreover, in order to ensure effective deliberation during the discussion on budget in the Parliament, detail background documents related to budget must be submitted to the Parliament. Further, it also resolved that the government take measures to provide the budget allocated for the black-topping of Chuzomsa-Baylangdra road as earlier passed by the Parliament.

**Voting details on the adoption of recommendations on the Budget Allocated for Black-topping of Chuzomsa-Baylangdra Road in Wangduephodrang Dzongkhag**

Date: 4/12/2017; Total Votes: 20; 'YES': 20; 'NO': 0; 'Abstain': 0

**The following voted 'YES':**

1. Hon'ble Phuntsho Rapten
2. Hon'ble Pema Dakpa
3. Hon'ble Dhan Bdr. Monger
4. Hon'ble Sonam Dorji
5. Hon'ble Sangay Khandu (Gasa)
6. Hon'ble Tashi Phuntsho

7. Hon'ble Tashi Dorji
8. Hon'ble Sangay Khandu (Samtse)
9. Hon'ble Jigme Rinzin
10. Hon'ble Jigme Wangchuk
11. Hon'ble Nima
12. Hon'ble Kamal Bdr. Gurung
13. Hon'ble Rinzin Dorji
14. Hon'ble Kaka Tshering
15. Hon'ble Tharchen
16. Hon'ble Tempa Dorji
17. Hon'ble Pema Tenzin
18. Hon'ble Nima Gyaltshen
19. Hon'ble Kesang Chuki Dorjee
20. Hon'ble Karma Tshering

*(Friday, 24<sup>th</sup> November 2017 corresponding to the 5<sup>th</sup> Day of the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

## **G. Proceedings of Question Time**

### **1. Hon'ble Minister for Works and Human Settlement**

The Hon'ble Member of Trongsa Dzongkhag said that there is lack of adequate professionals and human

resource capacity in the local governments to provide quality community services. He also raised his doubts on whether the existing human resources are competent enough to shoulder the responsibilities. Moreover, he said that there is a lack of technical experts to provide technical supports at the local governments. As a result, most development activities in the Gewogs either suffers from delay in implementation or poor-quality output. Therefore, he asked as to how the Royal Government from now on intends to enhance the technical human resource capacity of local governments to ensure effective implementation and proper monitoring of the developmental activities in the local governments.

To this, the Hon'ble Minister for Works and Human Settlement said that according to the assessment report of the Royal Civil Service Commission, it is being reported that there are adequate engineers in all the agencies. The Ministry, on their part is also distributing adequate engineers in all the agencies. However, she said that quality is being compromised when there is only one engineer to look after different activities. This is mainly because small contractors and community contractors don't have sufficient engineers for themselves. Therefore, she submitted that the government is taking measures to provide an engineer to each and every Gewogs.

*(Thursday, 30<sup>th</sup> November 2017 corresponding to the 12<sup>th</sup> Day of the 10<sup>th</sup> Month of Fire Female Bird Year of the Bhutanese Calendar)*

## **2. Hon'ble Minister for Education**

The Hon'ble Member of Tsirang Dzongkhag said that the National Council acknowledges the Royal Government for establishment of new colleges in the country and also for making plans to establish more colleges hereafter with an objective to develop education. However, he said that Damphu Central School under Tsirang Dzongkhag has not been upgraded to college as of now despite having plans to do so. Therefore, he asked about the plans of the Royal Government to upgrade Damphu Central School to a college as it would benefit students from nearby Dzongkhags especially in the south-central region. In response, the Hon'ble Minister for Education said that while the prospect is huge to upgrade Damphu Central School to a college, it is likely that there will be problems related to basic infrastructures when it is upgraded to a college. Therefore, he submitted that it was not possible to upgrade it immediately.

On this, some of the Hon'ble Members raised their doubts on whether the establishment of colleges in the country by the government is in line with the relevant guidelines and also enquired how the government is considering the policy of balanced regional development in such initiatives. To this, the Hon'ble Minister for Education said that it is very much in line with the guidelines and further submitted that the government is very mindful of the policy of balanced regional development and other criterions while carrying out the works.

*(Thursday, 7<sup>th</sup> December 2017 corresponding to the 19<sup>th</sup>  
Day of the 10<sup>th</sup> Month of Fire Female Bird Year of the  
Bhutanese Calendar)*

## **H. Closing Ceremony**

### **1. Vote of Thanks by Hon'ble Deputy Chairperson**

The Hon'ble Member of Haa Dzongkhag, Deputy Chairperson said that with the introduction of democracy in 2008, the National Council was also established as a new institution of the Parliament. However, he said that the foundation for the transition was laid many years before and thus we were able to establish strong institutions mainly due to the profound advice and guidance of His Majesty the Fourth King and His Majesty the King. Therefore, he expressed his sincere and deepest gratitude to them.

On behalf of the House, he also expressed his deepest gratitude and appreciation to the Hon'ble Chairperson, DASHO DR. SONAM KINGA for providing his valuable insights, knowledge, expertise and wise guidance under his leadership in continuing to build the institution of the National Council since its establishment. He said that it is under his dynamic leadership that the institution was able to extend its good reputation and credibility across the country. Further, the institution also benefitted through his professionalism in establishing systems related to procedures of the House, public services and sense of unity among others. With

that, he prayed for the wellbeing of the Hon'ble Chairperson and wished him all the best in his future endeavors.

Similarly, he expressed his gratitude to all the Chairpersons of the Committees and the Hon'ble members of the National Council for upholding the status of the institution by inspiring trust and confidence and in carrying out their responsibilities sincerely and through unity and consensus. In addition, he said that such kind of good relations developed during the course of their tenure should be continued for lifetime.

In conclusion, the Deputy Chairperson offered his sincere prayers for the long lives and prosperity of deeds of His Majesty the King (the symbol of unity of all Bhutanese people), Her Majesty the *Gyaltsuen*, His Majesty the Fourth Druk Gyalpo, the members of Royal Family and especially to the beloved of the nation, His Royal Highness the *Gyalsey*.

## **2. Closing Address of the Hon'ble Chairperson**

The Hon'ble Chairperson, in his concluding remarks, expressed his special gratitude to Dasho Gyalpoi Zimpon who has come to represent His Majesty the King from His Majesty's Secretariat, the Hon'ble Prime Minister of the government and the Hon'ble Speaker of the National Assembly for gracing the closing ceremony of the final session of the second term of the National Council. He said that their presence indicates the



support and respect for the National Council as an important institution. Besides, he said that it is a good omen to have the presence of such high-level guests for the closing ceremony.

His Excellency said that members began their term with the profound advice and guidance from His Majesty the King granted to them during the conferring of *Dakyaen* on the auspicious occasion of Lord Buddha's Parinirvana. Recalling the innumerable valuable advice from His Majesty the King, he stated that, in particular, His Majesty had advised about how the previous National Council has served beyond expectations and that the institution of the National Council must always strive to inspire trust and confidence of the people and that National Council is not an opposition but an instrument of check and balance. He said that in keeping with the wise advice and guidance of His Majesty the King, the National council has served to the best of their abilities to fulfill the aspirations and expectations of the people. He submitted that the second term of the National Council had deliberated on more than 40 legislative issues, 81 constituency issues, 57 question hour sessions and other policy related issues.

In particular, the Hon'ble Chairperson said that the National Council had amended the law related to entitlement of constitutional post holders, made recommendations on the election procedures and upheld the Constitution and the rule of law in carrying out its functions. He said that since ensuring check and

balance is vital in a democracy, the National Council has exercised this mandate and have not passed two money Bills. He also stated in carrying out its review functions on matters affecting the security and sovereignty of the country, the National Council had deliberated on issues related to foreign workers and illegal immigration etc. with successful results.

The Hon'ble Chairperson extended his special gratitude to the Secretary General, Director and the staff of the National Council Secretariat for their support in rendering the required services to the Hon'ble members without which the success of the works would not have been possible. He also thanked all the Hon'ble members for the support rendered to him through consensus after being elected as the Chairperson. Likewise, he thanked the people of 20 Dzongkhags for electing a member each from their Dzongkhag to represent them and in particular, he thanked the people of Trashigang Dzongkhag for electing him as their representative in the National Council.

Similarly, he thanked the Department of National Properties for making all logistical arrangements during the session as well as when the National Council is not in session, the Royal Bhutan Police for providing security services, Jigme Dorji Wangchuck National Referral Hospital for providing medical services and the Bhutan Broadcasting Service for broadcasting the live proceedings of the National Council session.

He expressed his deepest gratitude to His Majesty the King, a symbol of unity, for nothing can be achieved

without his profound advice and guidance even if all the internal and external arrangements are in place. Further, he said that His Majesty's presence on the Golden Throne itself inspires confidence and motivates in serving the nation.

Lastly, the Hon'ble Chairperson expressed his appreciation for the blessings of the *Kenchog Sum* and the protection of the guardian deities for the successful conclusion of second term of the National Council without any problems and misfortunes. Moreover, he also attributed the success to the prayers and rituals performed by His Holiness the *Je Khenpo* and other Venerable Lams and *Trulkus*. The Hon'ble Chairperson also thanked His Majesty the King, Her Majesty the *Gyaltsuen*, His Majesty the Fourth King and the members of the Royal Family for carrying out every deed in a humble manner for the welfare of the country and bringing in convincing outcomes. The 20<sup>th</sup> session, which is the last session of the second term of the National Council, concluded with *Tashi Moenlam* and prayers for the long lives and prosperity of deeds of the Royal Family.