

# ELECTION COMMISSION OF BHUTAN



## **Guidelines for Implementation of Sections 163-174 of the Election Act of the Kingdom of Bhutan, 2008 Relating to Office of Profit, 2009**

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## **Guidelines for Implementation of Sections 163-174 of the Election Act of the Kingdom of Bhutan, 2008 relating to Office of Profit, 2009**

In keeping with the provisions of the Election Act of the Kingdom of Bhutan, 2008, that a person contesting elections to or elected as a Member of Parliament (MP) or the Local Government shall be prohibited from accruing pecuniary gains through employment or filling in any other position as these would entail conflict of interests between the elective office and such other occupation and in order to reduce the risk of such conflict of interests, the Election Commission of Bhutan hereby adopts the *Guidelines for Implementation of Sections 163-174 of the Election Act of the Kingdom of Bhutan, 2008 relating to Office of Profit, 2009*.

### **1. Title and Extent of Application**

1.1 These Guidelines shall:

- 1.1.1 Be called the *Guidelines for Implementation of Sections 163-174 of the Election Act of the Kingdom of Bhutan, 2008 relating to Office of Profit, 2009*;
- 1.1.2 Extend to the whole of the Kingdom of Bhutan
- 1.1.3 apply to a person contesting elections to or elected as a Member of Parliament (MP) or the Local Governments; and
- 1.1.4 Come into force with effect from 25<sup>th</sup> August 2009 corresponding to 5<sup>th</sup> Day of the 7<sup>th</sup> Month of the Earth Female Ox Year of the Bhutanese Calendar.

### **2. Definition**

2.1 In these Guidelines unless provided otherwise:

- 2.1.1 “Candidate” means a person duly-whose nomination has been duly accepted by the concerned Returning Officer;
- 2.1.2 “Commission” means the Election Commission of Bhutan formed in accordance with the Article 24 of the Constitution of the Kingdom of Bhutan;
- 2.1.3 “Electoral Laws” means the Election Act of the Kingdom of Bhutan, 2008, Public Election Fund Act of the Kingdom of Bhutan, 2008 and National Referendum Act of the Kingdom of Bhutan, 2008 and all Rules and Regulations made there-under;

- 2.1.4 “Nomination” means the process wherein the person desirous of contesting election files his/her nomination papers as a Candidate;
- 2.1.5 “Returning Officer” means the person, appointed by the Election Commission, responsible for accepting and scrutinizing nomination papers, conducting, supervising and declaring the result of an election for the *Demkhong* or *Demkhongs* under his/her jurisdiction;
- 2.1.6 “Scrutiny” means the process by which the Returning Officer examines the nomination papers filed to see if the Candidates are eligible to contest the election; and
- 2.1.7 The words importing the singular number shall include the plural number and vice versa.

### **3. Legal Provision and Coverage**

- 3.1 Section 4 (f) of the Article 23 of the Constitution of the Kingdom of Bhutan states that:

“a person shall be disqualified as a candidate or a member holding elective office under the Constitution, if the person holds an office of profit under the government, public companies as prescribed in the electoral laws;”

- 3.2 Section 163 of the Election Act states that no person at the time of filing his/her nomination as candidate for election:

“... be the holder of any office of profit, nor shall such person, if elected, hold any office of profit so long as he/she continues as a Member of Parliament or a Local Government ...”

- 3.3 An office shall be regarded as an Office of Profit, if the Office:

- 3.3.1 is under the Royal Government of Bhutan and appointment, removal, remuneration and other functions are controlled by the Royal Government;
- 3.3.2 has powers to disburse state funds, issue licences and award contracts and scholarships involving state funds;
- 3.3.3 is under a public limited or private limited company incorporated under the Companies Act of Kingdom of Bhutan; or
- 3.3.4 is an entity under licence of the Royal Government of Bhutan.

3.4 A Member of Parliament or a Local Government shall be considered as holding an Office of Profit if on account of holding such office he/she would directly or indirectly accrue personal pecuniary gains, receive fees or incurs the risk of conflict of interests.

#### **4. Prohibited Offices**

4.1 Any person seeking to contest elections to Parliament or Local Government or already serving in such elective offices shall be prohibited from:

4.1.1 Serving as Chairman of the Board of Directors;

4.1.2 Serving as Director on a Board of Directors;

4.1.3 Serving as Chief Executive Officer; or

4.1.4 Serving as Managing Director, Administrative or managerial positions in Government Committees, Boards, Administrative Councils and Tribunals, Public Authorities and Undertakings under the Companies Act, Civil Society Organizations Act, Religious Organizations Act, Financial Institutions Act and any other legal entities.

4.2 The disqualification shall apply to holding of Offices in any company incorporated under the Companies Act irrespective of the ownership as well as selling or purchasing of shares and holding of licences for any trade or commercial activities.

#### **5. Exclusion**

5.1 The holding of following Positions by an MP shall not be treated as holding an Office of Profit:

5.1.1 Minister;

5.1.2 Speaker and Deputy Speaker of the National Assembly;

5.1.3 Chairperson and Deputy Chairperson of National Council;

5.1.4 Leader of Opposition in the National Assembly;

5.1.5 Chairperson or members of any House Committee established by Parliament;

5.1.6 Office Bearer or member of a registered political party;

5.1.7 Members of National Judicial Commission, Judicial Commissions;

- 5.1.8 Members of special purpose delegations or missions; and
- 5.1.9 Members of statutory or non-statutory bodies not in receipt of remunerations other than compensatory allowance.
- 5.2 The holding of following Positions by an elected Member of a Local Government shall not be treated as holding an Office of Profit:
  - 5.2.1 Chairperson and Deputy Chairperson of a *Dzongkhag Tshogdu, Gewog Tshogde, Thromde*; or
  - 5.2.2 Chairperson or Members of any Committee established by the respective Local Government entities;
- 5.3 An Eminent Person shall continue to hold any other position in the Royal Government on Royal Command, after his/her appointment as an MP in the National Council provided that such an official only receives the remuneration and entitlements of the office of an MP.
- 5.4 A Member of Parliament or a Local Government shall not be deemed to be holding an office of profit if he/she derives or receives the remuneration entitled under the laws for the respective elected post.
- 5.5 The Commission shall issue a notification, every six months, listing the positions that are regarded as Offices of Profit.

## **6. Penalties**

- 6.1 Any person found guilty of violation of any provision herein shall be dealt in accordance with the Election Act.

## **7. Power of the Commission to Issue Instructions and Directions**

- 7.1 The Commission may issue further instructions and directions:
  - 7.1.1 For the clarification of any of the provisions of the Electoral Laws;
  - 7.1.2 For the removal of any difficulty which may arise in relation to the implementation of any such provisions; and
  - 7.1.3 In relation to any matter with respect to Section 163 of the Election Act, for which the above are insufficient provision in the opinion of the Commission.

## **8. Authority of Interpretation and Amendment**

8.1 The Commission shall:

8.1.1 In case of differences in meaning, be the final authority for the interpretation; and

8.1.2 Have the power to amend by way of addition, variation or repeal any of the above provisions.

Done under the seal of the Election Commission of the Kingdom of Bhutan on this 18<sup>th</sup> Day of the 8<sup>th</sup> Month of the Year 2009 corresponding to the 28<sup>th</sup> Day of the 6<sup>th</sup> Month of the Earth Female Ox Year in the Bhutanese Calendar.

**Election Commissioner**

**Election Commissioner**

**Chief Election Commissioner**