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## **The Gift Rules 2009**

In exercise of the powers conferred by section 133 of the Anti-Corruption Act of Bhutan, 2006, the Anti-Corruption Commission hereby makes these Rules for prohibiting the solicitation, restricting the acceptance and setting procedures on disclosure of gifts.

### **Chapter I Preliminary**

#### **Short title**

1. These Rules may be called the Gift Rules 2009.

#### **Commencement**

2. These Rules shall come into force with effect from such date as announced by the Commission by an order.

#### **Coverage**

3. These Rules shall apply to a public servant of any entity using public resources except as otherwise provided by the Commission from time to time.

#### **Exclusion**

4. The Commission may exclude, by order, any public servant from the application of these Rules only when it determines that such exclusion would not affect adversely the public's confidence in the integrity of the government.

#### **Covered activity**

5. Under these Rules, a 'gratification' has the same meaning as defined by the Act including any gratification that a public servant subjectively believes has value, even one with little or no objective commercial value.

#### **Purpose**

6. These Rules implement paragraph 16 of the schedule of the Act by:
  - (a) generally prohibiting the solicitation and giving of gifts, and restricting the acceptance of gifts;
  - (b) specifying the prohibited sources and exceptions to prohibitions on acceptance of gifts;
  - (c) prescribing the conditions on the use of exceptions to prohibitions on acceptance of gifts;
  - (d) setting the procedures for disposal of gifts;
  - (e) setting the procedures for public disclosure by recipients of any gift;
  - (f) prescribing the penalties for solicitation and acceptance of gifts and other breaches of these Rules; and
  - (g) offering such other guidance as may be necessary for the effective implementation or administration of these Rules.

## **Chapter II**

### **Gifts from prohibited sources**

#### **Gift solicitation prohibitions**

7. A public servant shall not solicit a gift or encourage, directly or indirectly, the solicitation of gift from:
  - (a) a prohibited source; or
  - (b) any source given because of the public servant's official position.
- 7.1. An indirect solicitation or encouragement of gifts include any item solicited by:
  - (a) a public servant's spouse, child, or dependant with the public servant's knowledge and acquiescence because of the giver's relationship to that public servant; or
  - (b) any other person, including any public benefit organization because of the recommendation, or other specification by a public servant.

#### **Gift acceptance prohibitions**

8. A public servant shall not, directly or indirectly, accept a gift:
  - (a) from a prohibited source; or
  - (b) given because of the public servant's official position.
- 8.1. An indirect acceptance of gifts includes any item accepted by:
  - (a) a public servant's spouse, child, or dependant with the public servant's knowledge and acquiescence because of the giver's relationship to that public servant; or
  - (b) any other person, other than government agencies or public benefit organization because of the recommendation, or other specification by a person.

#### **Gift giving prohibitions**

9. A person defined as a prohibited source by Rule (11) shall not, directly or indirectly, give a gift to any public servant including his spouse and dependant.
- 9.1. An indirect giving of gifts includes any item given by a:
  - (a) spouse, child, or dependant of a person defined as a prohibited source by Rule (11) with the person's knowledge and acquiescence because of the giver's relationship to that person; or

- (b) person other than government agencies or public benefit organization under circumstances where the person has promised or agreed to reimburse a giver or to give that giver something of value in exchange for giving the gift.

### **Gifts that constitute a conflict**

- 10. A public servant shall not accept a gift of any value if it would constitute a conflict with the proper discharge of his duties, as well as create the appearance of conflict.

### **Prohibited sources**

- 11. The prohibited source means any person or agency:
  - (a) who seeks official action or business from a public servant's agency;
  - (b) who does business or seeks to do business with a public servant's agency;
  - (c) who conducts activities regulated by a public servant's agency;
  - (d) who has interests that may be substantially affected by performance or non-performance of a public servant's official duties; or
  - (e) whose members are described in paragraphs (a) through (d) of this Rule.

### **Exceptions to prohibitions**

- 12. A public servant may, subject to Rules (32) and (33), accept a gift given because of his official position or from any source under the circumstances described in Rules (13) through (31).
- 13. Any item paid for by the government or a governmental entity or secured under a government or a governmental entity's contract.
- 14. A gift from an immediate relative when the circumstances make clear that it is that relationship rather than the position of a public servant concerned which is the motivating factor.
- 15. A gift provided by an individual solely on the basis of a personal relationship when the circumstances make clear that it is that personal relationship rather than the official position of the persons concerned which is the motivating factor.
  - 15.1 The following factors shall be considered as relevant in making determination under Rules (14) and (15):
    - (a) the history of the public servant's relationship with the giver, including previous exchange of gifts;
    - (b) whether, to the public servant's knowledge, the giver personally paid for the gift, or whether the giver sought a tax deduction or reimbursement for it; and
    - (c) whether, to the public servant's knowledge, the giver at the same time gave the same or similar gifts to other public servants.

16. Opportunities and benefits that are in the form of loans from banks and other financial institutions on terms generally available to the public, including a loan from a person other than a financial institution if the loan is on commercially reasonable terms, including requirements for repayment and a reasonable rate of interest.
17. A pension and other benefits resulting from plans maintained by the former public servant.
18. Informational materials such as books, articles, periodicals, or other written materials, which are generally available to public.
19. Widely available opportunities and benefits such as those:
  - (a) available to the public or to a class consisting of all public servants, whether or not restricted on the basis of geographic consideration;
  - (b) given to members of a group or class in which membership is unrelated to their status;
  - (c) given to members of an organization, such as architects' association in which membership is related to public employment and similar opportunities are available to large segments of the public through similar organizations;
  - (d) given to a group or class that is not defined in a manner that specifically discriminates among public servant on the basis of branch of government or type of responsibility, or on a basis that favours those of higher rank or rate of pay; or
  - (e) in the form of reduced membership or other fees for participation in organization activities given to all public servants by professional organizations if the only restrictions on membership relate to professional qualifications.
20. Awards and prizes that are given to competitors in contests or events open to the public.
21. A bona fide award and honorary degree (and associated travel, food, refreshments and entertainment that are provided in connection with the presentation of such award) for meritorious public contribution given by a Public Benefit, religious, professional, social, fraternal, non-profit educational, recreational, public service, or civil organization.
  - 2.1. The following factors shall be considered as relevant in making determination under this Rule:
    - (a) the nature of the awarding organization;
    - (b) whether the award is made as part of an established program and has been made on a regular basis;

- (c) whether in the past non-public servants have been recipients of the award; and
  - (d) whether there are specific, written criteria for the selection of the awardees.
- 22. Training, if it is in the interest of the public servant's agency, including food and refreshments furnished to all attendees as an integral part of the training.
- 23. A free attendance at all or appropriate parts of an event if:
  - (a) the event is widely attended;
  - (b) invitation came from the sponsor of the event; and
  - (c) attendance at the event is in the interest of the agency because it will further agency's programs and policies.
- 23.1. A public servant who attends a widely attended event may also accept a waiver of all or part of any attendance fee, as well as food, refreshments, entertainment, local transport, instruction and materials furnished to all trainees as an integral part of the event.
- 23.2. A public servant shall not accept any entertainment collateral to the event, or meals taken other than in a group setting with all other trainees or travel and lodging.
- 24. An educational event, seminar and lecture (including meals given as part of these events) sponsored by universities, foundations, "think tanks," or similar non-profit, non-advocacy organizations.
- 25. Meals, lodgings, transportation and other benefits resulting from the business or employment activities of a public servant's spouse when it is clear that such benefits have not been given or enhanced because of the public servant's official position and the benefits must be ones that are "customarily provided to others in similar circumstances."
- 26. Meals, lodgings, transportation and other benefits resulting from the business or employment activities of a public servant when it is clear that such benefits have not been given or enhanced because of his official position and the benefits must be ones that are "customarily provided to others in similar circumstances"
- 27. Meals, lodgings, transportation and other benefits customarily provided by a prospective employer in connection with bona fide employment business if the prospective employer has no interests that could be affected by the performance or non-performance of the public servant's duties.
- 28. A free attendance given by the sponsor of event on the day of a public servant's presentation when he is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event.

29. Commemorative items such as a plaque, trophy, certificate or other similar item intended solely for presentation.
30. Any item, the receipt of which is authorized by laws.
31. Primarily advertising or promotional products of nominal value such as pencils, pens, note pads, and calendars from any business entity.

#### **Conditions on use of prohibitions**

32. A public servant shall not solicit a gift or encourage or coerce, directly or indirectly, the solicitation of a gift even under the circumstances described in Rules (13) through (31).
33. A public servant shall not accept, directly or indirectly, a gift even under the circumstances described in Rules (13) through (31):
  - (a) so frequently that a reasonable person might think that the public servant was using public office for private gain;
  - (b) in return for being influenced in the performance or non-performance of his official duty; or
  - (c) in violation of any law.

#### **Refusal**

34. It may be prudent or appropriate for any public servant to decline even a permissible gift.

#### **Unacceptable gift**

35. A public official shall orally report to his supervisor immediately all offers of gifts against his will, including those rejected by the public official.
36. An oral report under Rule (35) shall be reduced to writing and a copy of the note shall be kept by the public servant and a copy given to his supervisor, who should also sign and date it, and then place it in an appropriate file.

#### **Unwilling gift to be state property**

37. If a public official's refusal is ignored, or for other reasons a gift cannot reasonably be returned, the gift shall be regarded as the property of the agency concerned.

### **Disposal of prohibited gifts**

38. A public servant who has received a gift that cannot be accepted under these Rules shall:
- (a) within fifteen (15) days after receiving the gift, return it to the giver if it's a tangible item; or
  - (b) pay the giver fair value for the gift, or make an exchange of equal or greater value if return of a gift would cause an embarrassment to the giver, which shall be treated as the state property.
39. When it is not practical to return a gift because it is perishable, the gift shall be promptly:
- (a) given to a bona fide public benefit organization; or
  - (b) shared within the recipient's office.

## **Chapter III**

### **Gifts between public servants**

#### **Gifts to superior prohibitions**

40. A subordinate public servant shall not, directly or indirectly, give a gift to a superior public servant except as permitted by Rules (42) and (43).
- 40.1. An indirect giving of gifts includes any item given to:
- (a) a superior public servant's spouse, child, or dependant with the public servant's knowledge and acquiescence because of the giver's relationship to that public servant; or
  - (b) any other person, other than government agencies or public benefit organization because of the recommendation, or other specification by the superior public servant.

#### **Gift solicitation prohibitions**

41. A subordinate public servant shall not solicit a gift, directly or indirectly, for a superior public servant except as permitted by Rules (43) and (44).
- 41.1. An indirect solicitation of gifts include any item solicited by:
- (a) a subordinate public servant's spouse, child, or dependant with the subordinate public servant's knowledge and acquiescence because of the giver's relationship to that subordinate public servant; or
  - (b) any other person, including any public benefit organization because of the recommendation, or other specification by the subordinate public servant.



### **Gift acceptance prohibitions**

42. A superior public servant shall not accept a gift from a subordinate public servant except as permitted by Rules (43) through (45).

### **Annual occasions exceptions**

43. A subordinate public servant shall, subject to Rule (49), on annual occasions where gifts are traditionally exchanged, give to a superior public servant:
- (a) Item other than cash which, considered together, are worth no more than ten days' minimum wage or less on each occasion;
  - (b) modest item such as food and refreshments to be shared among public servants in the office;
  - (c) item given to a host in connection with the receipt of personal hospitality, if the cost of such item, considered together, is within the ten days' minimum wage; and
  - (d) personal hospitality for not official reason provided in the subordinate public servant's residence or facilities owned by that public servant or public servant's family which is of a type and value customarily provided by the subordinate public servant to personal friends.

### **Special occasions exceptions**

44. A subordinate public servant shall, subject to Rule (49) and subject to being modest, reasonable and customary to the occasion, give to a superior public servant the following:
- (a) nominal amounts for a gift to a superior public servant on a special infrequent occasions of personal significance such as marriage, illness, the birth of a child, or death; or
  - (b) nominal amount for a gift on occasions that terminate the subordinate-superior relationship such as retirement, resignation or transfer.

### **Group gifts exceptions**

45. A subordinate public servant shall, subject to Rule (49), make or solicit voluntary contributions of nominal amounts for gifts to a superior public servant under the circumstances mentioned in Rules (43) and (44).
46. Gifts from a public servant of own agency may not be accepted and public servants may not solicit a gift or encourage the solicitation of a gift unless it has been approved by the head of agency in advance.
47. Nominating an agency or individual for an award is not considered soliciting a gift.

48. The prohibitions set forth in Rules (7) and (8) do not apply to a gift given or accepted under the circumstances described in Rules (43) through (44).

#### **Conditions on use of exceptions to prohibitions**

49. A superior public servant shall not, directly or indirectly, coerce the giving of a gift from a subordinate public servant.

### **Chapter IV Other gifts transactions**

#### **Gifts to agencies or public benefit organizations**

50. A public servant may accept a gift from any source other than prohibited source, on behalf of his agency or public benefit organization if that gift is:
- (a) transferred promptly to the intended agency or organization;
  - (b) accepted with a prior approval of a head of recipient agency or organization; and
  - (c) requested by a giver in a duly completed gift donation form.

#### **Approval criteria**

51. In determining whether or not to accept a gift, a head of agency or organization shall consider the following criteria:
- (a) whether the gift is appropriate for use (including liquidation) by the agency or organization;
  - (b) whether any condition the giver places on the agency's or organization's acceptance or use of the gift is acceptable to the agency;
  - (c) whether a public servant of an agency or organization solicited the gift or encouraged its solicitation; and
  - (d) whether acceptance of the gift is appropriate and advisable from the perspective of conflict of interest, including whether acceptance of the gift would create the appearance of impropriety.

#### **Gifts from foreign governments**

52. A public servant shall not:
- (a) request or otherwise encourage the giving of a gift; or
  - (b) accept a gift from foreign governments except as permitted by Rules (53) and (54).

#### **Foreign gifts exceptions**

53. A public servant may accept a gift given and received as a souvenir or mark of courtesy from a foreign government.

### **Foreign gifts to be state property**

54. All foreign gifts are deemed to have been accepted on behalf of the government and shall, upon acceptance become the property of the government of Bhutan.

### **Disposal of foreign gifts**

55. A public servant shall, within seven days after arrival in Bhutan, after accepting all foreign gifts on behalf of his agency or public benefit organizations:
- (a) deposit a tangible gift for disposal with his agency; or
  - (b) subject to the approval of his agency, deposit all gifts with his agency for official use or for display in his office.
56. A gift that has been deposited for disposal, in a prescribed disclosure form, with his agency under Rule (55) (a) shall be disposed of in accordance with the procedures for disposing of government properties.
57. The Rules (52) through (56) apply not only to public servants but also to the spouse or dependant of the public servants.

## **Chapter V Public disclosure**

### **Gifts received in Bhutan**

58. A public servant shall disclose any gift received from any source, including a permissible gift within (7) working days after receiving the gifts.

### **Gifts received outside Bhutan**

59. A public servant shall disclose any gift received from any source, including a permissible gift within (7) working days after arrival in Bhutan.

### **Disclosure contents**

60. Such a disclosure under Rules (58) and (59) shall include for each gift reported:
- (a) the name and position of the recipient public servant;
  - (b) a brief description of the gift;
  - (c) date of acceptance;
  - (d) estimated fair market value;
  - (e) current disposition or location;
  - (f) the identity, if known, of the giver and the name and position of the individual who presented the gift;
  - (g) the circumstances justifying acceptance; and

- (h) whether the gift is being returned to the giver or retained for official or personal use.

#### **Commission's access to disclosure**

61. The Commission may ask from agencies a report prepared under Rule (60) and may include it in its annual report to His Majesty, the Prime Minister and Parliament.

#### **Gifts disclosure data base**

62. On receiving a disclosure, a head of agency shall cause the particulars of the disclosure containing all the information encompassed by a disclosure, as well as the previous year's disclosure and sanctions, if any, to be entered in a data base.

#### **Disclosure maintenance**

63. Every disclosure made under these Rules shall be maintained for a period of ten years as from the day of its receipt by the head of agency unless otherwise required.

### **Chapter VI**

#### **Penalty for breach**

#### **Jurisdiction**

64. The competency of an agency to assume jurisdiction over a public servant to levy penalty for breach as prescribed by these Rules shall be in accordance with the respective agency's applicable laws or rules.

#### **Public servant**

65. A public servant shall, at the first instance, be reprimanded if he:
- (a) accepts, solicits or encourages the acceptance or solicitation, directly or indirectly, of impermissible gifts;
  - (b) without reasonable justification, refuses or fails to disclose gifts;
  - (c) knowingly hides or falsely disclose gifts; or
  - (d) any other breaches of these Rules.
66. A public servant who commits any of the acts described by Rule (65) (a) through (d) for the second time or receives a gifts from a prohibited source, if proven in proper administrative proceedings, shall be reverted or demoted to a lower position or grade level.
67. A public servant who commits any of the acts described by Rule (65) (a) through (d) repeatedly or receives a gifts from a prohibited source for the second time, if proven in proper administrative proceedings, shall be terminated from service.

### **Forfeiture of illegal gifts**

68. All items received in breach of these Rules shall be forfeited and treated as the state property, which shall be disposed of in accordance with these Rules.

### **Head of agency and gift disclosure administrator**

69. A head of agency or gift disclosure administrator shall be reverted or demoted to a lower position or grade level; if he, without reasonable justification, refuses or fails to perform his duties in relation to the enforcement of these Rules for the first time.
70. A head of agency or gift disclosure administrator shall be terminated from service; if he, without reasonable justification, refuses or fails to perform his duties in relation to the enforcement of these Rules for the second time.

### **Penalties not exclusive**

71. If any violation of these Rules is punishable by a heavier penalty under another law, that law shall apply.

## **Chapter VII Miscellany**

### **Disclosure administrator designation**

72. Every agency shall designate a disclosure administrator as required by these Rules who shall also follow the terms of reference that may be issued from time to time by the Commission.

### **Commission's review**

73. An agency or public servant may inquire from the Commission any issue concerning conformity of his conduct with these Rules in accordance with the procedures established by the commission.

### **Rules of construction**

74. As used in these Rules, the singular shall include the plural and the masculine shall include the feminine and vice versa.

### **Definitions**

75. As used in these Rules:
- (a) Act means the Anti-Corruption Commission Act of Bhutan.
  - (b) Agency means a Ministry, Autonomous Agency, Dzongkhag, Office or a statutory Agency of the Royal government.

- (c) Commission means the Anti-Corruption Commission established under the Act.
- (d) Fair market cost means the value established by reference to the retail cost of similar gratifications of like quality or by looking to what would be paid by the general public.
- (e) Foreign government means:
  - (i) any unit of foreign governmental authority, including any foreign national, state, local, and municipal government;
  - (ii) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (i); and
  - (iii) any agent or representative of any such unit or such organization, while acting as such.
- (f) Gift is a status gift if it would not have been solicited, offered, or given had the public servant not held the status, authority or duties associated with his official position.
- (g) Nominal value means an amount less than the ten days' minimum wage;
- (h) Public benefit organization shall have the same meaning as in the Civil Society Organization Act.
- (i) Public servant means a public servant as defined by the Act, including any individual working in any organization that uses public resources. Furthermore, it includes a candidate for office.
- (j) Relative means an individual who is related to the public servant as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, step son, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the public servant, and shall be deemed to include the fiancé or fiancée of the public servant.
- (k) Solicit means to request contributions by personal communication or by general announcement.
- (l) Sponsor of an event means the person, entity, or entities that are primarily responsible for organizing the event but excludes an individual or entity that merely contributes money to an event.
- (m) Status gift means one that would not have been solicited or accepted if you held some other position, or if it is offered or given because of a public servant's status, authority or duties associated with his official position.
- (n) Superior public servant means any anyone whose official responsibilities include directing or evaluating the performance of the public servant's official performance or any other superior public servant of the subordinate public servant.
- (o) Superior public servant means anyone whose official responsibilities involve directing or evaluating the performance of the public servant's official duties or those of any other official superior of the employee. The term is not limited to immediate supervisors, but applies to officials up the supervisory chain.

- (p) Voluntary contribution means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing public servant except as otherwise provided.
- (q) Widely attended event means an event where there is a reasonable expectation that at least 2/3 of persons, other than a particular public servant, will attend the event, and attendance at the event is open to individuals from throughout a given industry or profession, or those in attendance represent a range of persons interested in a given matter. Individuals who are public servants of other branches or levels of government count toward the required minimum of twenty-five, but spouses and others who accompany the public servant do not count toward the required minimum.