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THE FOOD ACT OF BHUTAN, 2005

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Royal Government of Bhutan
Ministry of Agriculture

THE FOOD ACT OF BHUTAN, 2005

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PREAMBLE

The purpose of this Act is to protect human health and to regulate and facilitate the import, export and trade of food in the Kingdom of Bhutan.

Be it enacted by the 84th session of the National Assembly of Bhutan on the 29th day of the 9th month of the Female Bird Year corresponding to the 30th day of the 11th month of the year 2005.

CHAPTER I

PRELIMINARY

Title, commencement and extent

- 1 (a) This Act shall be called “The Food Act of Bhutan, 2005”.
- (b) This Act shall come into force from the date to be notified by the Government in the official gazette, provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
- (c) This Act shall extend to the whole of the Kingdom of Bhutan.

Repeal

- 2 This Act hereby repeals any provisions of any law, by-law, rule or regulation which is inconsistent with this Act

CHAPTER II

GENERAL POWERS OF THE MINISTER

General Powers

- 3 The Minister responsible for agriculture shall be the primary authority for the administration of this Act.

- 4 The Minister may, after consultation with the Commission, authorise:
 - (a) any public officer, whether from the Ministry responsible for health, the Ministry responsible for trade, the Ministry responsible for customs or any other government office, to exercise or perform any power, duty or function under this Act;
 - (b) any local authority to enforce within its area of jurisdiction and through its duly authorised officers such provisions of this Act as the Minister may specify.
- 5 The Minister may, after consultation with the Commission, restrict any authority granted under section 4 to such sections as it may specify, and/or may impose any other conditions on the exercise of that authority.
- 6 The Minister, after consultation with the Commission and, where appropriate, in agreement with the Ministers concerned, shall outline the respective duties to be performed under this Act by the department responsible for regulatory services or any other unit within the Ministry, the Ministry responsible for health, the Ministry responsible for customs, the Bhutan Chamber of Commerce and Industry and local authorities, all of which shall cooperate with the Minister in carrying out official activities under this Act.
- 7 The Minister, after consultation with the Commission, may officially recognise institutions to conduct laboratory tests under this Act.
- 8 The fees and fines due under the provisions of this Act shall be collected as prescribed by rules and regulations.
- 9 The Minister shall designate within the “Bhutan Agriculture and Food Regulatory Authority” (BAFRA) a Codex Contact Point, which shall serve as the secretariat of the Commission and of the National Codex Committee.

CHAPTER III

NATIONAL FOOD QUALITY AND SAFETY COMMISSION

Creation of the Commission

- 10 There is hereby established a Commission, to be known as the National Food Quality and Safety Commission, which shall consist of the following members:
- (a) the Minister responsible for agriculture, who shall serve as Chair;
 - (b) the director general, executive director or director of:
 - (i) the “BAFRA” ;
 - (ii) the department of Agriculture, Ministry of Agriculture;
 - (iii) the department of Livestock, Ministry of Agriculture;
 - (iv) the department responsible for public health within the Ministry responsible for health;
 - (v) one department within the Ministry responsible for trade and Industry;
 - (vi) one department within the Ministry responsible for home affairs;
 - (vii) the office responsible for legal affairs.
 - (c) the secretary general of the Bhutan Chamber of Commerce and Industry;
 - (d) one high-level representative from the national agency responsible for the environment;
 - (e) the Codex Contact Point, who shall serve as Secretary.
- 11 The Chair may remove a representative where the Commission has determined and recommended to the Chair that representation by that organization or unit is no longer essential to the functioning of the Commission.
- 12 The Chair may appoint any additional representative or representatives where the Commission has determined and recommended to the Chair that representation by such additional organization or unit is essential to the functioning of the Commission.

- 13 All members of the Commission shall hold office unless and until removed by the Chair.
- 14 A member of the Commission may resign in writing to the Chair; a replacement shall be appointed within 20 days.

Functioning of the Commission

- 15 The Commission may make provision for the scheduling and conduct of its meetings and the procedures to be followed at its meetings; it shall meet at least once a year, and as and when required.
- 16 The Commission may form such temporary committees or working groups, made up of Commission members, non-Commission members or both, as it deems fit, to analyse and report on such technical issues as it may assign to them.
- 17 Where the Commission so authorises, representatives of government organizations and agencies, as well as industry and consumer groups, may attend meetings of the Commission but may not vote.

Mandate of the Commission

- 18 The Commission shall:
 - (a) formulate policy to maximise industry development, protect consumers, foster trade and improve food control in the Kingdom, by proposing goals, strategies and structures, and by developing annual work plans and programmes for all relevant actors in the food control system;
 - (b) on its own initiative, discuss any matter connected with the enhancement of food control in the Kingdom, with regard to production for the national market, import and export;
 - (c) identify the borderlines of responsibility among the Commission and the Committee, and resolve any overlaps or gaps in responsibilities among these bodies;
 - (d) make recommendations to the Minister on the activities of food inspectors, customs officials and staff of the other departments, ministries and organizations referred to in section 3.2, in order to ensure that there are no overlapping responsibilities or gaps in food control activities in the Kingdom;

- (e) in the case of a food emergency, identify the organizations or units responsible for taking action, specify the actions to be taken, coordinate a national response and keep records of any such food emergencies;
 - (f) where food is seized under this Act on suspicion of being harmful to human health, provide advice to the BAFRA, upon request, regarding the appropriate action to be taken;
 - (g) review and approve the work of the National Codex Committee regarding:
 - (i) the development and acceptance of national standards regarding food quality, food safety, ingredients, additives, adulterated food, weights and measures, laboratories and other technical issues;
 - (ii) the preparation of standards, rules and regulations, orders, and notices under this Act, as well as amendments thereto;
 - (h) make recommendations to the Minister on the level of any fees and penalties to be assessed under this Act;
 - (i) recommend educational activities to inform food businesses and the people of Bhutan of the importance of food safety and how they can improve the safety and quality of food in the Kingdom;
 - (j) coordinate responses to the media with regard to all food control issues in Bhutan, and appoint a media spokesperson as necessary;
 - (k) make a record of each of its meetings and make additional reports to the Minister as directed.
- 19 The Codex Contact Point, designated within BAFRA by the Minister, shall serve as the secretariat for the Commission, acting on its behalf in carrying out essential day-to-day tasks.

CHAPTER IV

THE “BHUTAN AGRICULTURE AND FOOD REGULATORY AUTHORITY” (BAFRA)

Mandate of the BAFRA

- 20 Under the general authority and supervision of the Minister, the BAFRA shall have all the powers that are reasonably necessary or expedient to enable it to implement the provisions of this Act.
- 21 Without limiting the generality of the powers under section 7.1, the BAFRA shall exercise the following responsibilities under this Act:
- (a) advise the Commission on all matters relating to the harvest, manufacture, import, export, treatment, packing, labelling, grading, storage, transport, handling and serving of food and all matters incidental thereto;
 - (b) Advise the Commission regarding the declaration of a foreign national authority as “recognised authority” under this Act;
 - (c) implement the food control policies and strategies laid down by the Commission, using its inspectorate and laboratory facilities;
 - (d) oversee the activities and training of food inspectors and analysts, including monitoring all inspection and analysis activities and keeping records;
 - (e) collect fixed penalties under this Act and keep detailed records regarding all warnings and penalties imposed, including whether the level of penalties is linked to the seriousness of the offence;
 - (f) resolve administrative appeals lodged against official decisions and actions taken under this Act;
 - (g) assist in the preparation and amendment of rules and regulations, orders and notices under this Act;
 - (h) recommend educational activities to inform food businesses and the people of Bhutan of the importance of food safety and how they can improve the safety and quality of food in the Kingdom;

- (i) on its own initiative, discuss any matter connected with the enhancement of food control in the Kingdom, with regard to production for the national market, import and export, and application of the general principles of food hygiene and the hazard analysis and critical control point system, and report in writing to the Minister on such deliberations;
- (j) make a record of each of its meetings and make additional reports to the Commission and/or the Minister upon request.

CHAPTER V

NATIONAL CODEX COMMITTEE

Creation of the Committee

- 22 There is hereby established a Committee, to be known as the National Codex Committee, which shall consist of the following qualified members appointed upon nomination of their respective agencies or organizations:
- (a) the Secretary of the Ministry responsible for agriculture, who shall serve as Chair;
 - (b) one representative of BAFRA;
 - (c) one representative of the department of Agriculture, Ministry of Agriculture;
 - (d) one representative of the department of Livestock, Ministry of Agriculture;
 - (e) one representatives of the Ministry responsible for public health;
 - (f) one representative of the Ministry responsible for trade and industry;
 - (g) one representative of the department responsible for urban affairs;
 - (h) one representative of the Bhutan Chamber of Commerce and Industry;
 - (i) the Codex Contact Point, who shall act as secretary of the Committee..
- 23 The Chair may remove a representative where the Committee has determined and recommended to the Chair that representation by that organization or unit is no longer essential to the functioning of the Committee.

- 24 The Chair may appoint any additional representative or representatives where the Committee has determined and recommended to the Chair that representation by such additional organization or unit is essential to the functioning of the Committee.
- 25 Each member of the Committee shall, unless earlier removed by the Chair of the Committee, hold office for a period of three years from the date of appointment, and, upon the expiry of that period, shall be eligible for re-appointment.
- 26 Members of the Committee may resign in writing to the Chair; a replacement shall be appointed within 20 days.

Functioning of the Committee

- 27 The Committee may make provision for the scheduling and conduct of its meetings and the procedures to be followed at its meetings; it shall meet at least two times per year, and as and when required.
- 28 The Committee may form such temporary sub-committees, made up of Committee members, non-Committee members or both, as it deems fit, to provide advice of a technical nature to the Committee, the Commission and/or the Minister.
- 29 Any member who cannot attend the meeting of the Committee may designate an alternate, who shall attend in that member's stead and who may exercise all the responsibilities of such member, including voting.
- 30 Where the Committee so authorises, representatives of governmental organizations and agencies, as well as industry and consumer groups, may attend meetings of the Committee but may not vote.

Mandate of the Committee

- 31 The Committee shall:
 - (a) serve as the main contact point for Codex and other food control matters within the Kingdom, studying Codex documents and collecting and analysing all relevant information in order to formulate advice to the government;
 - (b) act as liaison with the food industry, consumers, traders and all other concerned persons and organizations, distributing information received from the Codex Alimentarius Commission Secretariat and facilitating wide consultation in order to ensure that the government is provided with an appropriate balance of policy and technical advice on which to

base decisions relating to the acceptance of Codex standards and all other food control matters in the Kingdom;

- (c) coordinate responses to Codex questionnaires and other requests for information, and cooperate with the Codex Alimentarius Commission Secretariat in nominating delegates to attend regional or international meetings;
- (d) draft standards, rules and regulations, orders, and notices under this Act, as well as amendments thereto, and make proposals to the Commission regarding any necessary legislative changes;
- (e) review international and regional food standards, collect and analyse data for elaborating national food standards and establish standards for food of all types in the Kingdom, ensuring that such standards are practicable in the local environment;
- (f) cooperate with other local and foreign organizations whose tasks concern food standards;
- (g) make a record of each of its meetings and make additional reports to the Commission and/or the Minister as directed.

- 32 The Committee may form such temporary committees or working groups, made up of Committee members, non-Committee members or both, as it deems fit, to analyse and report on such technical issues as it may assign to them.

CHAPTER VI

FOOD INSPECTORS AND ANALYSTS

Responsibility for Inspection Services

- 33 The BAFRA shall exercise all responsibility for and oversight of food inspection activities carried out in Bhutan.

Appointment of Inspectors and Analysts

- 34 The Minister shall appoint, designate or authorise such qualified persons as it deems fit as food inspectors who shall be vested with the powers, duties and functions of food inspectors under this Act.
- 35 The Minister shall appoint, designate or authorise such qualified persons as it deems fit as analysts who shall be vested with the powers, duties and functions of analysts under this Act. The Minister shall also designate the approved laboratories for the purpose of this Act.
- 36 Each person appointed, designated or authorised under section 12.1 or section 12.2 shall be provided with an identification card signed by or on behalf of the Minister, certifying that such person has been designated a food inspector or analyst, as the case may be, under this Act.

Object of Inspections

- 37 Inspections carried out under this Act shall have as their object:
- (a) the hygiene of food businesses and their surroundings and installations, as well as means of transport, equipment and materials;
 - (b) food, ingredients, additives, disinfectants or any substances or processes used in food manufacturing, food handling or food preservation;
 - (c) the health and hygiene status of personnel employed at food businesses, as well as their knowledge of and training in good handling practices and hygiene control in food businesses;
 - (d) packaging materials as well as the methods and processes of packing;
 - (e) cleaning, disinfection and maintenance carried out at food businesses, including the state of storage facilities and the maintenance level of equipment;
 - (f) labelling.
- 38 Inspections carried out under this Act shall have as their purpose:
- (a) enforcement, with inspectors responsible for seeking out violations of this Act;
 - (b) auditing, with inspectors monitoring the controls in place and carried out by food businesses;
 - (c) education, training and sensitisation of owners and persons in charge of food businesses, as well as employees of such food businesses;

- (d) the provision of assistance to owners and persons in charge of food businesses in implementing and improving controls on their own operations.

General Powers of Inspectors

39 A food inspector may at any reasonable time enter any food business or other premises

- (a) inspect or search any part of such premises, and examine any food, appliance, product, material, object or substance which is being or is suspected of being used or destined for use in connection with the harvest, manufacture, import, export, treatment, packing, labelling, grading, storage, transport, handling or serving of food;
- (b) demand any information regarding any food, appliance, product, material, object or substance at such premises, from the owner or person in charge;
- (c) weigh, count, measure, mark, seal, open and remove samples of any food, material, object or substance at such premises, or lock, secure, seal or close any door or opening giving access to them;
- (d) examine or make copies of, or take extracts from, any book, statement or other document found at such premises which refers to or is suspected to refer to any food, appliance, product, material, object or substance referred to in section 39(a);
- (e) demand from the owner or any person in charge an explanation of any entry in any book, statement or other document at that premises;
- (f) inspect and demand from the owner or person in charge information regarding any operation or process used in such premises;
- (g) read any values recorded by measuring instruments installed at the premises;
- (h) make controls with his or her own instruments;
- (i) take photographs;
- (j) seize any food, appliance, product, material, object, substance, book, statement or document which appears to provide proof of a contravention of any provision of this Act, providing a signed receipt which shall be countersigned immediately by the owner or person in charge of such premises or object.

- 40 A food inspector may stop and search any vehicle in which any food is being or is suspected of being treated, packed, stored, transported, handled or served or in which any other operation or activity in connection with food is being or is suspected of being carried out.
- 41 A food inspector may stop and search any person whom he or she suspects of committing an offence under this Act. Where a person refuses to be searched, such person may be detained for the conduct of search. The person so detained shall be handed over to the Royal Bhutan Police with a statement in writing of the grounds for such detention.

Unsafe Food

- 42 Where it appears that any food discovered in a food business, premises or vehicle or in the possession of any person is unfit for human consumption or is likely to cause harm or danger to human health, a food inspector shall:
- (a) seize, mark and seal such food, issuing a notice to the owner or person in charge of the food that the food or any specified portion of it is temporarily not to be sold, removed, manipulated, tampered with or otherwise altered, without authority or without being under the supervision of the food inspector; and/or
 - (b) issue a written notice temporarily ordering the food removed to some specified place.
- 43 Any food seized under section 39 and 42 may be sent for analysis to a laboratory authorised under section 7, in accordance with the procedures prescribed by rules and regulations.
- 44 Analysts receiving any items under section 39 and 43 shall follow the prescribed procedures for marking and maintaining the items seized.
- 45 As soon as is reasonably practicable, a food inspector taking any action under section 42 shall review the situation to determine whether the circumstances which caused the notice to be issued no longer exist, and:
- (a) if the food inspector is so satisfied, he or she shall withdraw the notice, and where appropriate, allow the release of any items from the place where they are stored;

- (b) if the food inspector is not so satisfied, he or she may refer the matter to the BAFRA, which may consult with the Commission as necessary, and which may order that any food referred to under section 42 be destroyed or disposed of under the supervision of a food inspector.

Urgent Destruction

- 46 Notwithstanding section 45, where there is a clear and present danger for human health or the environment, a food inspector may immediately destroy or order the destruction of unsafe food.
- 47 Where food is destroyed or ordered to be destroyed under section 46, the food inspector must submit a sample of the food to an authorised laboratory in accordance with the procedure prescribed by rules and regulation.

Public Safety

- 48 Where any action is taken under section 42, 45(b) or 46 because of a threat to human health, the food inspector shall immediately notify the BAFRA. The Minister shall take all measures necessary to ensure public safety and the protection of consumers, such as instructions to relevant agencies or units, public warnings, recall orders, marketing restrictions, marketing bans or other appropriate measures.
- 49 To facilitate reaction and response in the case of a threat to human health, the Minister, after consultation with the Commission, may establish standing instructions, guidelines and procedures assigning responsibility for certain actions to specific government units.

Conduct of Inspections

- 50 A food inspector shall exhibit the identification card by virtue of which he or she is authorised as a food inspector:
 - (a) before carrying out any inspection under section 39, 40 or 41; and
 - (b) on demand by any person affected by the exercise or performance of any power, duty or function of such food inspector under this Act.
- 51 A food inspector carrying out an inspection under section 39, 40 or 41 may request the presence of such other food inspectors or law enforcement personnel as the food inspector considers necessary.

- 52 During an inspection under section 39 or 40, the owner or other person in charge of the food business or vehicle:
- (a) may accompany the food inspector;
 - (b) shall supply any information or documents requested by the food inspector relevant to any inspection object outlined in section 37;
 - (c) shall permit the taking of samples and evidence such as photographs.

CHAPTER VII

FOOD AND FOOD BUSINESSES

Operation of Food Businesses

- 53 All food businesses in Bhutan are subject to standards established by the Minister, after consultation with the Commission, concerning their construction and operation.
- 54 In granting a licence to operate a business in Bhutan, the Minister responsible for trade shall, in addition to its own requirements, apply and impose any additional standards and conditions established by the Minister after consultation with the Commission.
- 55 Any owner or person in charge of a food business shall ensure that all employees meet the standards for health and safety established by the Minister after consultation with the Commission.
- 56 Any person preparing, handling or serving food in the Kingdom is subject to a medical examination at intervals to be set by the Minister, after consultation with the Commission, to ensure that the person is not suffering from a disease or condition which may render that person liable to contaminate food.

Food and Food Testing

- 57 All food sold in Bhutan shall meet the prescribed standards for quality and safety established by the Minister after consultation with the Commission.

- 58 Any owner or person in charge of a food business from which food is submitted for analysis to an approved laboratory under section 43 may be subject to such fees for that analysis as the Minister may establish after consultation with the Commission.

Genetically modified food

- 59 The Minister after consultation with the National Food Quality and Safety Commission shall regulate food business pertaining to genetically modified food.
- 60 For the purpose of Section 59 the rules and regulations may define genetically modified organism and genetically modified food.

CHAPTER VIII

IMPORT AND EXPORT

Imported Food

- 61 The Minister, after consultation with the Commission, may establish requirements for the obtaining of prior permission before food may be imported into Bhutan.
- 62 All food imported into Bhutan must be certified by the recognised authority in the exporting country, and must meet the applicable standards for that particular food established in Bhutan.
- 63 The containers, packaging material, labelling and ingredients of food imported into Bhutan are subject to inspection by a food inspector, and fees for such inspection may be levied as established by the Minister after consultation with the Commission.
- 64 Food may only be imported into Bhutan at an officially designated border point.

Exported Food

- 65 The containers, packaging material, labelling and ingredients of food exported from Bhutan are subject to inspection by a food inspector, and fees for such inspection may be levied as established by the Minister after consultation with the Commission.
- 66 Exporters wishing to export food from Bhutan shall inform the BAFRA of any inspection, analysis or documentation required by the relevant importing country or countries, and any such inspection, analysis or documentation may be subject to such fees as the Minister may establish after consultation with the Commission.
- 67 Food may only be exported from Bhutan at an officially designated border point.

CHAPTER IX ENFORCEMENT

Improvement Notice

- 68 If a food inspector has reasonable grounds for believing that an owner or person in charge of a food business is failing to comply with this Act, he or she may serve an improvement notice on that owner or person in charge:
- (a) stating the food inspector's grounds for believing that the owner or person in charge of the food business is failing to comply with the Act;
 - (b) specifying the measures which the owner or person in charge must take in order to remedy the failures referred to in paragraph 68(a); and
 - (c) requiring the owner or person in charge to take those measures, or measures which are at least equivalent to them, within such period as may be specified in the notice.

Appeals

- 69 Any person aggrieved by a decision or action of a food inspector under this Act may appeal to the BAFRA in writing, in the manner established by the rules and regulation.

- 70 Any person not satisfied with a decision of the BAFRA under section 69 may lodge a complaint with the Royal Court of Justice in accordance with the relevant provisions of the Civil and Criminal Procedure code.

Liability

- 71 No food inspector or other person, including the Royal Government, shall be jointly or severally liable in respect of anything done in good faith in the exercise of a power or duty under this Act unless the act or omission contravenes any of the provisions of this Act or any rule, direction or order made there under.

CHAPTER X

OFFENCES AND PENALTIES

Offences

- 72 Notwithstanding section 71, any food inspector who:
- (a) seizes any food for any reason other than that the food is likely to cause harm or danger to human health or that the hygiene conditions are liable to cause a food safety hazard;
 - (b) agrees to do, abstains from doing, permits, conceals or performs any act which is contrary to the proper exercise of official powers under this Act or which is otherwise contrary to the laws of Bhutan; or
 - (c) discloses to any other person any information acquired in the exercise of official powers under this Act, relating to the business or affairs of any other person, except for the purpose of enforcing this Act or where required to do so by any court or under any law;
- shall be guilty of an offence and punishable under “Administrative Discipline Rules and Regulations” of the Bhutan Civil Services Rules and Regulations 2002.
- 73 Notwithstanding section 71, any analyst who:
- (a) agrees to do, abstains from doing, permits, conceals or performs any act which is contrary to the proper exercise of official powers under this Act or which is otherwise contrary to the laws of Bhutan; or

- (b) discloses to any other person any information acquired in the exercise of official powers under this Act, relating to the business or affairs of any other person, except for the purpose of enforcing this Act or where required to do so by any court or under any law;
- shall be guilty of an offence and punishable under “Administrative Discipline Rules and Regulations of the Bhutan Civil Services Rules and Regulations 2002.

74 Any person who sells, manufactures, exports or imports any food:

- (a) which contains or has been treated with a prohibited substance or which has otherwise been contaminated;
- (b) which contains or has been treated with a particular substance in a greater measure than that permitted by the rules and regulation;
- (c) which does not comply with any standard of quality, strength, weight, measurement or purity prescribed the rules and regulation;
- (d) to which any substance has been added so as to increase the mass or volume of such food with the object to deceive;
- (e) from which any substance or ingredient has been removed or omitted with the result that the food’s nutritive value or other properties, in comparison with those of a food in a normal pure and sound condition, are diminished or otherwise detrimentally affected;
- (f) which has been treated in such a manner that its damaged or unsound condition or inferior quality is concealed either entirely or partly;
- (g) which has otherwise been adulterated;
- (h) which has not been labelled in accordance with this Act or its rules and regulation;
- (i) which has passed its expiration date; or
- (j) which is otherwise declared by the Minister after consultation with the Commission to be harmful or dangerous to human health;

shall be guilty of an offence and punishable under section 79 of this Act.

75 Any person who:

- (a) uses a prohibited process, container or object in connection with the harvest, manufacture, handling, serving, treatment, packing, grading, labelling, sale, transport, import, export or storage of any food, or sells, exports or imports such food;

- (b) sells, prepares, packages or stores for sale any food under unsanitary conditions;
- (c) furnishes a warranty with respect to food, which is false or misleading in any respect;
- (d) operates a food business without a licence properly issued under the laws of Bhutan;
- (e) operates a food business contrary to any conditions imposed by the Minister responsible for trade or by the Commission;
- (f) fails to report an offence as required under section 86; or
- (g) as the owner or person in charge of a food business:
 - (i) fails to ensure that all employees of the food business follow the prescribed health and safety procedures; or
 - (ii) fails to carry out within the specified time period any measures specified in an improvement notice issued under section 68;

shall be guilty of an offence and punishable under section 79 of this Act.

76 Any person who:

- (a) publishes a false or misleading advertisement of any food; or
- (b) for purposes of import, export or sale, describes or labels any food in a manner which is false or misleading as regards its origin, nature, substance, quality, strength, nutritive value or other properties, or the time, mode or place of its manufacture;

shall be guilty of an offence and punishable under section 79 of this Act.

77 Any person who:

- (a) obstructs or hinders a food inspector in the exercise of official powers under this Act;
- (b) fails to provide, upon the request of a food inspector, any licence or other document issued under this Act or the laws of Bhutan;
- (c) where a food inspector demands information relating to a matter within his or her knowledge, refuses or fails to give such information, or gives information which is false or misleading knowing it to be false or misleading;

- (d) removes, obliterates, alters, damages, breaks or opens a seal or fastening placed by a food inspector on any food or its package or container or on any door or opening giving access to it;
- (e) retakes any sample or other article seized under this Act, or hinders or obstructs the seizure of any such sample or other article;
- (f) falsely makes use of any warrant, certificate, report, invoice or other document under this Act;
- (g) impersonates a food inspector; or
- (h) fails to inform the Minister of any offence committed or likely to be committed under this Act;

shall be guilty of an offence and punishable under section 79 of this Act.

Defences

- 78 In any proceeding for an offence under this Act, it shall be a defence for the defendant to prove:
- (a) that he or she purchased food from another person who furnished a written warranty as to the safety and quality of the food in question, and that the defendant imported or sold the food in the same condition as when he or she purchased it;
 - (b) that he or she could not with reasonable diligence have ascertained that the import, export or sale of the food would be in contravention of this Act or its rules and regulations.

Penalties

- 79 Any person who commits an offence against this Act shall be liable to:
- (a) a warning, at the discretion of a food inspector, who shall however provide the BAFRA with the name of the offender, the date of the offence and a description thereof;
 - (b) a fixed penalty paid to the BAFRA, as outlined in sections 80 and 81;
 - (c) upon conviction through a court process, a penalty as outlined in section 82;
 - (d) a penalty imposed under section 83; or
 - (e) any of the above penalties in combination.

- 80 Where a food inspector has reason to believe that any person is committing or has committed an offence under this Act, the food inspector may then and there serve notice in writing charging that person with an offence, informing such person that he or she must:
- (a) appear before the BAFRA on the date specified; or
 - (b) in accordance with procedures and penalties set out by the rules and regulation, pay the applicable fixed penalty to the BAFRA, in lieu of appearance before it.
- 81 Any person who chooses to pay the fixed penalty as outlined in paragraph 80(b) shall, within seven days of the date of the notice, sign the notice in acknowledgement of guilt and return it, together with the sum cited therein, to the BAFRA.
- 82 Any person charged and convicted by a court for an offence under this Act shall be liable:
- (a) on a first conviction, to a fine established by the rules and regulation, or to imprisonment for a period not exceeding 3 months, or to both;
 - (b) on a second conviction to a fine established by the rules and regulation, or to imprisonment for a period not exceeding 6 months, or to both;
 - (c) on a subsequent conviction, to penalties commensurate with the offence as determined by the court, taking into account the offender and the nature of the offence;
 - (d) to the forfeiture to the Royal Government of Bhutan of any food, appliance, vehicle, product, material, substance or other object used in connection with the commission of the offence.
- 83 Upon the imposition of a penalty under sections 81 or 82 for any offence under this Act, the BAFRA or the Commission may, in addition to any other penalty lawfully imposed, recommend to the Minister responsible for trade that:
- (a) new or amended conditions be imposed in connection with any licence to operate a food business issued to the offender;
 - (b) any licence to operate a food business issued to the offender be suspended, cancelled or revoked; and/or
 - (c) the offender be prohibited from participating in the management of the food business with respect to which the offence was committed, or in the management of any food business in Bhutan.

- 84 The BAFRA shall from time to time examine the circumstance or circumstances which led to the imposition of any penalty under section 83, and where such circumstances are no longer in effect, it shall recommend to the Minister responsible for trade the reversal of any penalty imposed under that section.
- 85 The penalties and offences which are not covered under this act shall be imposed as per the Bhutan Penal Code 2004

Duty to Report Offences

- 86 Any person with knowledge of an offence committed or likely to be committed under this Act shall furnish to the nearest local office of the Ministry without delay any information he she may possess regarding such offence.

Payments Due

- 87 Payments due under this Act, if not paid in a timely fashion or if not covered by the proceeds of sale of anything seized, shall be recovered through the courts.

CHAPTER XI

MISCELLENEOUS

Rules and Regulations

- 88 In accordance with the provisions of this Act, the concerned Ministry shall have the power to make the rules and regulations.

Authoritative Text

- 89 In the event of any difference, variation or inconsistency in terms of meaning, language or such other variations between the Dzongkha and English text, the text in Dzongkha shall prevail.

Amendment

90 The Food Safety and Quality Commission may review the Act from time to time and propose amendments thereto as and when necessary to the National Assembly of Bhutan for approval.

Definitions

91 In this Act, unless the context otherwise requires:

- i “additive” means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of food, whether or not it has nutritive value, the intentional addition of which to a food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such food;
- ii “adulterated”, with regard to food, means:
 - (a) any constituent part has in whole or in part been omitted or abstracted;
 - (b) damage or inferiority has been concealed in any manner;
 - (c) any substance has been substituted wholly or in part;
 - (d) any substance has been added or mixed or packed with food so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is;
 - (e) any constituent exceeds the amount stated on the label or permitted by the rules and regulation;
 - (f) it consists wholly or in part of any filthy, putrid, rotten, decomposed animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption; or
 - (g) it has been processed, packed, stored or distributed under unsanitary conditions.
- iii “advertisement”, in relation to any food, means any written, pictorial, visual or other descriptive matter or verbal statement, communication, representation or reference:
 - (a) appearing in a newspaper or other publication;
 - (b) distributed to members of the public; or

(c) brought to the notice of members of the public in any manner, and which is intended to promote the sale or encourage the use of food;

and “advertise” has a corresponding meaning.

- iv “analyst” means an official analyst designated under section 35 of this Act;
- v “any reasonable time” means during regular business hours;
- vi “appliance” means the whole or any part of any implement, machine, instrument, apparatus or other object used or capable of being used in connection with the manufacture, treatment, packing, labelling, grading, storage, transport, preparation, handling or serving of any food;
- vii “approved laboratory” means a laboratory designated under section 35 of this Act.
- viii “BAFRA” means the Bhutan Agriculture and Food Regulatory Authority under the Ministry of Agriculture or any Government agency that may in future take over it’s responsibilities;
- ix “border point” means any airport or border crossing designated as an official border point by the Minister;
- x “Codex Alimentarius Commission” means the commission that implements the joint Food and Agriculture organisation/ world Health Organisation food standard progammme, the purpose of which is to protect the health of consumers and to ensure fair practices in the food trade.
- xi “Commission” means the National Food Quality and Safety Commission established under section 10 or any agency that may in the future take over it’s responsibilities;
- xii “Committee” means the National Codex Committee established under section 22 or any agency that may in the future take over it’s responsibilities;
- xiii “container” means a box, bag or other receptacle in which food has been or is being transported;

- xiv “contamination” means the presence in food of any substance not including an additive, as a result of its production including crop production or animal husbandry, or due to its manufacture, treatment, packing, packaging, transport or storage or due to environmental effects, and not including insect fragments, rodent hairs and extraneous matter, and “contaminate” has a corresponding meaning;
- xv “export” means to export from the Kingdom of Bhutan by any means, and “exportation” has a corresponding meaning;
- xvi “exporter” includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any food;
- xvii “food” means any article or substance, intended for human consumption, whether processed, semi-processed or raw, including water and beverages which may contain any flavouring matter or condiments, except for pharmaceutical drugs, tobacco and cosmetics;
- xviii “food business” means any business where harvesting, manufacture, handling, serving, treatment, packaging, grading, labelling, transport, import, export or storage of food is carried out, whether for profit or not;
- xix “food emergency” means a food shortage or a food-borne disease outbreak;
- xx “food inspector” means a person authorised by the Minister meeting any essential qualifications established by the Minister, and designated as such under section 34 of this Act;
- xxi “import” means to import into the Kingdom of Bhutan by any means, and “importation” has a corresponding meaning; “importer” includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any food;
- xxii “improvement notice” means a notice served under section 68 of this Act;
- xxiii “ingredient” means any substance, excluding an additive, used in the manufacture or preparation of food and present in the final product;
- xxiv “label” means any brand or mark or any written, pictorial or other descriptive matter appearing on or attached to or packed with any food or its package and, when used as a verb, means to brand or mark with or to attach or to provide in any other manner any written, pictorial or other descriptive matter;

- xxv “local authority” means:
- (a) a municipal administration; or
 - (b) a dzongkhag administration.
- xxvi “manufacture” includes production, preparation, processing, preservation or other similar process, and “manufacturer” and “manufacturing” have corresponding meanings;
- xxvii “Minister” means the Minister responsible for agriculture;
- xxviii “owner or person in charge” in relation to any thing, includes any person having for the time being the possession, custody or control thereof;
- xxix “package” means anything by or in which any food is covered, enclosed, contained or packed;
- xxx “packaging material” means any article or substance which is intended to or may come into contact with food, including any containers such as cans, bottles, cartons, boxes, cases or sacks, or wrapping and covering material such as foil, film, metal, paper, wax paper or cloth;
- xxxi “premises” means any land, building or other structure;
- xxxii “prescribed” means prescribed by this Act or its rules and regulation;
- xxxiii “prohibited” means prohibited under this Act or its rules and regulation;
- xxxiv “recognised authority” means a foreign national authority officially recognised by the Minister as responsible for certification for export;
- xxxv “Rules and regulations” means and includes any rule, notification, order and the rules and regulation made under this Act;
- xxxvi “sell” includes to offer, advertise, keep, store, display, transmit, transport or deliver for sale, or to exchange, or to dispose of to any person in any manner whether for a consideration or otherwise, and “sold”, “selling” and “sale” have corresponding meanings;
- xxxvii “treated” means coloured, stained, powdered, polished, coated or steamed, or mixed, preserved, flavoured, diluted or thickened with any substance, and “treat” and “treatment” have corresponding meanings;
- xxxviii “unsanitary conditions” means such conditions or circumstances as might cause contamination of food or might render food dangerous or harmful to human health;

- xxxix “vehicle” means any vessel, aircraft, train, conveyance, cart, container, animal or other thing that can transport food from one place to another;
- xxxx “warranty” means a label on any food making an express or implied undertaking that the food is fit for human consumption and fulfils all specified conditions contained in such label.