

**DRAFT FOOD LAW OF
THE ISLAMIC REPUBLIC of AFGHANISTAN**

January 15, 2012

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Food Act

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DRAFT FOOD LAW

General Provisions

Article 1: The basis

This Act has been promulgated in the light of provisions of constitutional law of Afghanistan to establish a legal basis for controlling supplying, manufacture, processing, storage, transportation, sale, import and export of food; to guarantee safety, and adequate, nutritious, safe and secure food; and to provide for related matters.

Article 2: Purpose of legislation:

The propose of this Act are to:

- (1) protect human health;
- (2) facilitate trade in food products;
- (3) promote the reconstruction and sustainable development of the national economy;
- (4) improve livelihoods and food security; and
- (5) To establish regular inspection, evaluation, Microbiological and Chemical residue testing
- (6) Examination of food and food products.
- (7) Chemical analysis of food.
- (8) Application of hygienic procedure in food production, processing units, packaging, storage, transportation vehicles and marketing facilities.
- (9) Safety and quality of imported, exported, and locally made foods.
- (10) Promote training and capacity building of workers.
- (11) Improving health of workers involved in food production process, sanitation and environmental pollution.

Article 3: Definitions

- (1) **Additive** means any substance not normally consumed as food by itself, such as spices, flavors, (colors, anti fungal), volume

- food or any substance represented as food;
- (4) **Appliance** means the whole or any part of any implement, machine, instrument, apparatus or other object used or capable of being used in or in connection with the production, manufacture, treatment, packing, packaging, labeling, transport, handling, serving or storage of any food;
 - (5) **Authorized officer** means an authorized and qualified person who carries out his duties in the framework of food control authority;
 - (6) **Authority** means the Food Control Authority established in Article 5 of this Act;
 - (7) **Board** means the Board of the Food Control Authority, established in Article 8 of this Act;
 - (8) **Committee** means the Scientific Committee established in Article 11 of this Act;
 - (9) **Contaminant** means any substance not intentionally added to food, which is present in such food as a result of the production, manufacture, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination, but does not include insect fragments, rodent hairs or other extraneous matter;
 - (10) **Contamination** means the introduction or occurrence of a contaminant in food;
 - (11) **Export** means to export from Afghanistan by any means;
 - (12) **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 exported from Afghanistan;
 - (13) **Food** means any substance, whether processed, semi processed or raw, which is intended for human consumption and is used in order to fulfill human tissues needs for generating energy and continuity of life. This does not include cosmetics or tobacco or substances used only as drugs;
 - (14) **Food business** means any business, however small, where production, manufacture, preparation, treatment, packing, packaging, transport, handling, serving, storage or sale in relation to food is carried out, whether for profit or not;
 - (15) **Food Hygiene** applies to all the terms and conditions necessary to ensure safety and suitability of food throughout all the stages of production chain;
 - (16) **Food production chain** means all stages of production from primary production of food to food handling and food

- (21) **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 imported into Afghanistan;
- (22) **Improvement notice** means a notice served under Article 25 of this Act;
- (23) **Ingredient** means any substance, including a food additive, used in the manufacture or preparation of a food and present in the final product although possibly in a modified form;
- (24) **Label** means any tag, brand, mark, pictorial or other descriptive matter written, printed, stenciled, marked, embossed or impressed on, or attached to, a container of food or its package;
- (25) **Manufacture** includes processing and preservation and other food production related activities except primary food production;
- (26) **Official analyst** means a person authorized and qualified to act under this Act;
- (27) **Official laboratory** means a laboratory designated or approved as such under Paragraph 17, Article 6 of this Act;
- (28) **Owner or person in charge**, in relation to anything, includes any person having for the time being the possession, custody or control thereof;
- (29) **Packaging** includes anything in which food is wholly or partially placed or wrapped (and includes any basket, container, pail, tray or receptacle and other similar means) to help protect foods from damage while transporting and storing;
- (30) **Person** includes a natural person or a body corporate (legal person);
- (31) **Premises** includes any building, tent or other structure, permanent or otherwise, together with the land on which the same is situated and any adjoining land employed in connection therewith, used for the production, manufacture, packing, packaging, transport, handling, serving, storage or sale of any food;
- (32) **Primary Food Production** means the cultivation, rearing or growing of food including harvesting, milking and farmed animal production prior to slaughter;
- (33) **Sell** includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale;
- (34) **Stages of production** includes import, storage, transport and sale of foods;
- (35) **Street food** means ready to eat food prepared or sold in streets and other public places;
- (36) **Substance** includes any solid, liquid or gaseous materials;
- (37) **Traceability** means the ability to discern and identify, through all stages of production, manufacture and distribution, the origin and the final destination of a food producing animal, food or substance intended to be or expected to be incorporated into a food;
- (38) **Treated** means colored, stained, powdered, polished, coated, mixed, preserved, flavored, diluted or thickened with any substance;
- (39) **Unsanitary conditions** mean such conditions or circumstances as might cause contamination of food or render the same injurious or dangerous to health;
- (40) **Vehicle** means any vessel, aircraft, train, conveyance, cart, container, animal or other thing that can transport food from one place to another;
- (41) **Wholesome**, in relation to food, means to be natural, clean, safe and not adulterated.

(15) Represent Afghanistan in bilateral, multi lateral, regional and international forums related to food safety matters; and

(16) The Food Control Authority in order to implement the provision of this Act and other relevant regulations determines a specific laboratory as an official laboratory, in near future.

(17) carry out other relevant duties in accordance with the provisions of this Act;

Article 7: Funding

In addition to an annual budgetary allocation of Parliament, funds of the Food Control Authority shall include:

(1) such fees as may be charged by the Food Control Authority for services rendered by it; and

(2) such moneys or other assets as may accrue to or vest in the Authority by way of grants, subsidies, donations, gifts or penalties (in case of violation of law) ;

(3) The amounts provided in Paragraph 1 and 2 of this Article are deposited in the government import account, in the bank.

Article 8: Food Control Board

(1) The Food Control Board is established in the structure of ministry in

Where the Food Control Board fails to carry out its duties, the minister of (.....) may, in order to advise the board to carry out its duties in timely and proper manners, issue a directive; and if the board fails to follow the directive the minister with consultation of director of the Food Control Authority may make an appropriate decision regarding the board. ”

Article 10: Board members

(1) The Board shall consist of members representing the following organizations:

- (i) Director of Food Control Authority
- (ii) Authorized representative from the ministry of Agriculture, irrigation and livestock
- (iii) Authorized representative from the ministry of Public Health
- (iv) Authorized representative from the ministry of Commerce

3. providing

commencing their business activities, obtain their business license from Food Control Authority;

Article 16: Traceability

(1) Food businesses shall establish and implement a particular system in order to identify, from start to end stage in production chain, following persons:

- (a) Their Supplier
- (b) Individuals/companies to whom they supplied products

(2) Upon request of the Food Control Authority, food businesses shall make available all information collected under the system established under sub Article (1).

Article 17: Labeling

Every package of food intended for sale in Afghanistan shall have a label;

Article 18: International Standards

(1) International standards for food safety, where they exist, shall be used as the basis for establishing national standards for food safety and developing national food safety measures.

(2) Where international standards do not exist, or where a national standard for food safety/national food safety measure deviates from international standards, the national standard for food safety/national food safety measure shall be based on scientific principles and available scientific evidence.

Article 19: Scientific basis and risk assessment

(1) Food safety measures shall only be applied to the extent necessary to achieve protect human health or life, and without unjustified discrimination between food products produced domestically and imported food products, or between different suppliers of imported food products

(2) Food safety measures shall not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail, including between Afghanistan and exporting countries.

(3) Food safety measures shall be based on an assessment, appropriate to the circumstances, of the risks to human health, taking into account risk assessment techniques developed by international organizations.

Article 20: Equivalence

Food safety measures of other countries shall be accepted as equivalent, even if these measures differ from Afghanistan's measures or those of other countries, if an exporting country objectively demonstrates that its measures achieve Afghanistan's level of protection.

Article 21: Notification and Publication of National Food Safety Measures

(1) All proposed food safety measures, that do not conform to international standards or for which no international standards exist, and it is expected that they may have a

significant effect

- (f) Take photographs.
- (g) Record or confiscate any food, machinery, products, materials, objects and goods, books, or documents as proof of the Declaration against violation of the provisions of this Act is considered.

(3) stop and search any vehicle in which food is being or is suspected of being transported, produced, manufactured, treated, graded, packed, packaged, stored, handled, prepared, served or sold or in which any other operation or activity in connection with food is being or is suspected of being carried out;

(4) Identify and report entities committing violations (offence) of the provisions of this Act have been located or are suspected, to the competent authorities of justice and legal.

(5) An authorized officer of inspection office in implementation of tasks set forth in paragraph 4 of this Article may request the presence and assistance of law enforcement personnel if necessary. The mentioned employees shall be recognized by their official identification card.

Conduct and Responsibility of owner

Article 25

During an inspection carried out under Article 18, the owner or other person in charge of the food business or any other person present at the food business:

- (a) May accompany the authorized officer;
- (b) shall supply any information or documents requested by the authorized officer relating to installations, appliances, materials, procedures or other matters relevant to any inspection; and
- (c) Shall permit the taking of samples and the gathering of evidence including photographs.

Failure (Deficit) and the appropriate measures

Article 26

If an authorized officer has reasonable grounds for believing that an owner or person in charge of a food business is failing to comply with this Act, the authorized officer may serve an improvement notice on that owner or person in charge with regarding the following issues:

- (a) stating the authorized officer's grounds for believing that the Act is not being complied with;
- (b) Specifying the measures which the authorized officer deems that the

owner or person in charge must take in order to remedy the failures referred to in paragraph (a);

(c) Requiring the owner or person in charge to implement those measures, or measures which are at least equivalent to them, within the time period specified in the notice.

No Match with Standards (Failure to meet standards)

Article 27

(1) Where it is proved that a food is unfit or a food business is producing food unfit for human consumption or is likely to cause harm or danger to human health, an authorized officer can adopt the following necessary measures:

(a) Seize the mentioned food or stop distributing of food, and issue a notice to the owner or the person in charge of the food business that it is not to be sold, remgeproved

- (1) No article of food shall be imported or otherwise brought into Afghanistan unless it is accompanied by the prescribed documents and unless it is offered up for inspection by the Food Control Authority at the port of entry.
- (2) Imported food shall comply with relevant national food safety measures..

Sampling and Testing

Article 29

- (1) An authorized officer may inspect any food imported into Afghanistan and, for the purposes of analysis or inspection thereof, and if necessary take samples of any such food. The criteria and procedures for sampling shall be prescribed in Regulations.
- (2) Where samples are taken under first paragraph of this Article, the authorized officer shall, in the presence of the owner or importer or any person in apparent control of the food, seal and mark them as prescribed in Regulations.
- (2) Where a sample is taken from food, the consignment from which it was taken shall not be released by an authorized officer except upon production

Article 31

(1) When determining levels of protection and establishing import inspection procedures, the Food Control Authority shall minimize negative effects on trade.

(2) For any procedure to check and ensure the fulfillment of food safety measures, the Food Control Authority shall ensure that:

(a) It is undertaken and completed without undue delay and in no less favorable manner for imported products than for like domestic products;

(b) The Food Control Authority in order to facilitate the import process for countries interested in Afghanistan adopts the following measures:

- i. At the request of the applicant, the estimated process time for the application shall be provided.
- ii. Without delay completion of document shall be reviewed
- iii. inform the applicant in a precise and complete manner of all deficiencies
- iv. transmit as soon as possible the results of the procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary;
- v. If the application has shortcomings, the Food Control authority, based on the applicant's request, where it is applicable offer explanation of information required for completion of application.
- vi. Based on the request, the applicant's condition and stage of investigation and shall notify them of any delays in processing.

(c) Information requirements shall be limited to what is necessary for appropriate control, inspection and approval procedures, including ~~and~~ appropriate

(e) any requirements for control, inspection and approval of individual specimens of a product shall be limited to what is reasonable and necessary;''

(f) any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any foreign country and shall be no higher than the actual cost of the service;

(g) the same criteria shall be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;''

(h) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product shall be limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned;''and

(i) a procedure shall exist to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified.'

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(2) The seller according the first paragraph of this Article shall be in violation when that food is determined to be harmful to human health.

Food not meeting Food Safety Measures

Article 34

(1) Any person who prepares or sells any food for which there is a food safety measure prescribed shall be guilty of an offence unless the food complies with that standard.

(2) Any person who sells any food which bears or has attached to it, or is contained in a package which bears or has attached to it, a name for a food for which there is a prescribed food safety measure, shall be guilty of an offence unless the food complies with the food safety measure prescribed for that food.

False or misleading labeling

Article 35

(1) Any person who packs or labels or sells any food in a manner which is false or misleading shall be guilty of an offence and according the provisions of this Act and other enforce laws of the country is required to compensation

Irregularities and offences

Article 36

The following actions and activities considered as violations from the provisions of this Act:

- (a) Prepares, stores, handles or sells food under unsanitary conditions;
- (b) Imports, exports, produces, manufactures, prepares, stores or sells food which otherwise violates any provision of this Act;
- (c) operates a food business without any license required by this Act or by any other legislation in force in country;
- (d) Fails to comply with an order issued under Article 13 or 14 of the Act;
- (e) fails to establish and implement a traceability system in accordance with Article 16 of this Act;
- (f) Fails to follow the applicable hygiene rules established under this Act;
- (g) Fails to ensure that all personnel of a food business follow prescribed procedures;
- (h) Fails to label food as prescribed under Article 29;
- (i) Fails to comply with an improvement notice issued under Article 26;
- (j) Tamper with any food samples taken under this Act;
- (k) Breaks any seal or alters any markings made by an authorized officer without permission;

- (l) Fails to provide access, samples or information to an authorized officer upon request;
- (m) Gives false information to an authorized officer;
- (n) Attempts to improperly influence an authorized officer in the exercise of his or her official functions under this Act;
- (o) Poses as an authorized officer;
- (p) seizes food for any reason other than those prescribed in this Act;
- (q) Discloses any information acquired in the course of exercising his or her official functions

- (a) Suspend or cancel any license to operate a food business and import issued to the convicted person;
- (b) Declare any food, appliance, product, material, substance or other object in respect of which the offence has been committed or which was used in connection with the commission of the offence forfeited to the state and disposed of as the court may direct.

(3) If the owner of a food business (person) is convicted of an offence under this Act, the court before which he or she is convicted may by order impose a temporary or permanent prohibition:

- (a) Use of a particular process or particular equipment at the food business; or
- (b) Use of the premises for the purposes of running a food business; or
- (c) The participation by the owner in the management of the food business with respect to which the offence was committed,

(2) A court shall cancel a temporary order issued under sub Article (3) where an authorized officer certifies that the conditions which led to the issuance of the order are no longer in effect.

CHAPTER SEVEN MISCELLANEOUS

Right of appeal Article 39

(1) Any person aggrieved by an action or decision of an authorized officer or an official analyst under this Act may appeal to the Board within the prescribed time period.

(2) If the aggrieved person is not satisfied with the decision of the Board, he or she may, in accordance with the provision of this Act, appeal to commercial court whose decision shall be final.

Irresponsibility Article 40

No member of the Board, authorized officer, official analyst or other representative of the Authority shall be liable to suit or to prosecution in respect of anything done in good faith in the performance of his or her functions under this Act.

Presumptions
Article 41

(1) In any proceedings under this Act, a certificate of analysis purporting to be signed by the director or head of an official laboratory or by an official analyst shall be accepted as prima facie evidence of the facts stated therein, provided that:

- (a) The party against whom it is produced may require the attendance of the official analyst who performed the analysis, for purpose of cross examination;
- (b) No such certificate shall be admissible in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

(2) Evidence that a package containing any food to which this Act applies bore a name, address or registered trademark of the food business or person by whom it was produced, manufactured or packed, shall be prima facie evidence that such food was produced, manufactured or packed, as the case may be, by that food business or person.

(3) Any substance commonly used for human consumption, if sold or offered, exposed or kept for sale, shall be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale for human consumption.

(4) Any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance, and any substance commonly used in the production or manufacture of articles for human consumption which is found on premises used for the preparation, storage or sale of those articles, shall be presumed, until the contrary is proved, to be intended for human consumption.

(5) Any substance capable of being used in the composition or preparation of articles for human consumption shall be presumed, until the contrary is proved, to be intended for human consumption.

(2)

- (m) The forms to be used for the purposes of this Act, including applications, licenses, permits, improvement notices and receipts for articles seized;
- (n) Offences and penalties;
- (o) Any other matters deemed necessary to achieve the purposes of this Act.

Enforcement Date

Article 44

This law is effective following date of approval and should be published in official gazette. With enforcement of this law, other related laws will be null and void. In the event of any conflict or inconsistency

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