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**CHAPTER 228
FOOD (CONTROL)**

Act 21 of 1993



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FOOD (CONTROL)

An Act to regulate and control the manufacture, importation, sale and distribution of food and to provide for matters connected therewith or incidental thereto.

PART 1 – PRELIMINARY

1. Interpretation

(1) In this Act, unless the context otherwise requires –

"adulterated" means the addition of a substance as an ingredient in the preparation of food or subtraction of any constituent from such food or subjection of such food to

any other process or any other treatment so as to –

- (a) render the food injurious to health; or
- (b) affect its character, value, composition, merit or safety;

"article" includes:

- (a) any food, and any labelling or advertising materials in respect thereof;
or
- (b) anything used for the preparation, preservation, packing, carrying and storing of any food; or
- (c) anything connected with the things referred to in paragraphs (a) and (b);

"advertisement" means any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of any food, including –

- (a) words, whether written or spoken or conveyed by any other means;
- (b) symbolic or pictorial representation or design;

"authorized officer" means a person appointed or authorized under section 10 of this Act;

"food" includes drink, chewing gum, and other products of a like nature and use, and articles and substances used as ingredients in the preparation of food or drink or of such products, but does not include –

- (a) water, other than water from natural springs, either in its natural state or with added mineral substances, distilled water and aerated water;
- (b) fodder or feeding stuffs for animals, birds or fish;
- (c) live animals, live birds, live fish (excluding shellfish); or
- (d) articles or substances used as drugs;
- (e) any articles or substances prescribed under section 53 as non-food for the purpose of this Act;

"insanitary condition" means such conditions or circumstances as may contaminate food, with dust, dirt or filth or poison or infection agent, or spoilage, damage, deterioration or perishment or render food injurious to health;

"label" includes any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food;

"local authority" means authorities established under the Municipalities Act [Cap. 126] and Decentralization Act [Cap. 230];

"manufacture" means preparing any food for sale and includes any process or part of a process for making, altering, finishing, packing, labelling or otherwise treating of food except packaging of food in the ordinary course of retail sale;

"Minister" means the Minister responsible for public health;

"official analyst" means a person appointed under section 12 as an analyst for the purpose of this Act;

"package" includes anything in which any food wholly or partly placed or packed and includes any basket, pail, tray or receptacle of any kind whether open or closed;

"person" includes any statutory body, company, partnership or association or body of persons corporate or unincorporate;

"premises" includes –

- (a) any building or tent or other structures permanent or otherwise together with the land on which the same is situated and any adjoining land used in connection therewith and includes any vehicle, conveyance or vessel; and
- (b) for the purpose of section 13(1), a reference to any street, open space or place of public resort, bicycle or other vehicle used for the preservation, packing, storage or conveyance of any article;

"preparation" includes manufacture, processing and any form of treatment, and "prepare" shall be construed accordingly;

"publish" means to bring to the notice of the public in any manner whatsoever, including to –

- (a) insert in a newspaper or other publication;
- (b) send to a person by post or otherwise;
- (c) distribute or deliver to a person;
- (d) leave on premises or any other place in the occupation of a person;
- (e) disseminate by broadcast, telecast, or projected image whether moving or still; and
- (f) display in any place for public attention permanently or otherwise;

"sell" includes offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange, dispose of for any consideration whatsoever, or transmit, convey or deliver in pursuance of a sale, exchange, or disposal, as aforesaid, and "sale", "sold" or "selling" shall be construed accordingly;

"vehicle" means any device, whether or not operational, that is usually caravan, trailer, bicycle, motor vehicle, railway carriage or wagon, vessel, bang, hulk and aircraft.

PART 2 – PROHIBITION IN RESPECT OF FOOD

2. Prohibition on manufacture, importation, sale and distribution of food

(1) No person shall manufacture, import, sell or distribute any food –

- (a) that has upon it any natural or added deleterious substance which renders it injurious to health;
- (b) that is unfit for human consumption;
- (c) that consists in whole or in part of any unclean, putrid, repugnant, decayed, decomposed or diseased animal substance or decayed vegetable substance or is insect infested;
- (d) that is adulterated;
- (e) that has in or upon it any added substance in contravention of the provisions of this Act or any regulation made thereunder;
- (f) in contravention of the provisions of this Act or any regulation made thereunder.

(2) No person shall manufacture, prepare, preserve, package or store for sale any food under insanitary conditions.

(3) No person shall import, sell or distribute any food manufactured, prepared, preserved, packaged or stored for sale under insanitary conditions.

(4) In determining for the purposes of this Act whether an article of food is injurious to health, regard shall be had not only to the probable effect of that article on the health of a person consuming it, but also to the probable cumulative effect of articles of substantially the same composition on the health of a person consuming such articles in ordinary quantities.

3. Labelling, packaging, advertising, etc.

(1) No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading, deceptive or likely to create an erroneous impression regarding its character, value, quality, composition, merit or safety.

(2) Any food that is not labelled or packaged as required by the regulations made under this Act or is labelled or packaged contrary to such regulations shall be deemed to be labelled or packaged contrary to subsection (1).

(3) In proceedings under this section for an offence consisting of the advertisement for sale of any food, it is a defence for the person charged to prove that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement

for publication in the ordinary course of business.

4. Where standard is prescribed

Where a standard is prescribed for any food, no person shall label, package, sell or advertise any food which does not conform to that standard in such a manner as is likely to be mistaken for the food for which the standard has been prescribed.

5. Sale for purposes other than human consumption of food rendered unfit for human consumption

No person shall offer for sale, expose for sale or sell for use as animal food or for other purposes any food which has been spoiled or rendered unfit for human consumption except with the permission of, and in accordance with the directions issued by, the Chief Food Authority or such other person authorized by him in writing in that behalf.

6. Warranty

(1) No manufacturer or a distributor of or a commission agent or a dealer in any food shall sell such food to any vendor unless he also gives that vendor a warranty in the prescribed form in respect of the nature, substance and quality of that food.

(2) A bill, cash memorandum or invoice, in respect of the sale of any good given by a manufacturer or distributor of or a commission agent or a dealer in any such food to the vendor of that food, shall be deemed to be a warranty under subsection (1) in respect of that food, if such bill, cash memorandum or invoice contains a description of the nature, substance and quality of that food.

(3) No manufacturer or distributor of, or a commission agent or dealer in, any food shall under subsection (1) give a warranty which is false.

PART 3 – ADMINISTRATION

7. Chief Food Authority

(1) The Director of Preventive Services and Rural Water Supply shall be the Chief Food Authority for the purposes of this Act.

(2) The Chief Food Authority shall be responsible for –

(a) the nutritional well-being and food safety of the public and preventing fraud in the preparation, sale and use of food;

(b) the administration and enforcement of this Act;

(3) The Chief Food Authority shall supervise, guide and co-ordinate the work of all Food Authorities under section 10.

(4) The Chief Food Authority may give such directions as he thinks necessary to any Food Authority regarding the carrying into execution, and the enforcement of all or any of the provisions of this Act or regulations made thereunder, and every Food Authority to whom

directions are given shall comply with such directions.

8. Power of delegation

(1) The Chief Food Authority may, by writing from time to time either generally or particularly delegate any of his powers under this Act to the Principal Environmental Health Officer or to any authorized officer.

(2) Subject to any general or specific directions given by the Chief Food Authority, the officer to whom any power or function is delegated may exercise such power or function in the same manner and with the same effect as if it had been conferred on him directly by this Act and not by delegation.

(3) Every officer acting or purporting to act in accordance with a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified classes of officers.

(5) A delegation under this section does not prevent or prejudice the exercise or performance of a power or function by the Chief Food Authority.

9. Food Authority

(1) Save as otherwise provided in subsection (4), for every administrative area of a local authority there shall be a Food Authority to carry into execution and enforce within the administrative area of the respective local authority the provisions of this Act and the regulations made thereunder.

(2) The Food Authority under subsection (1) for the administrative area of –

(a) a municipality shall be the Municipal Council constituted for that area and designated in accordance with section 28(b) of the Municipalities Act [Cap. 126];

(b) any other local authority shall be –

(i) the local authority constituted for that area, where that local authority is designated by the Minister in accordance with section 18J(2) of the Decentralization Act [Cap. 230] as the Food Authority for that area; or

(ii) the Environmental health officer for that area where the local authority constituted for that area is not appointed as the Food Authority under paragraph (i).

(3) Every environment health officer shall, within the area for which he is appointed supervise and co-ordinate the work of the Food Authorities under subsection (1) in that area.

(4) For the administrative area of every local authority, the Director of Customs shall be a Food Authority in relation to food the importation of which is prohibited under this Act.

10. Appointment of authorized officers

(1) The Minister may appoint –

- (a) any environmental health officer;
- (b) any health inspector of a local authority;
- (c) any meat inspector;
- (d) any veterinary officer;
- (e) any fisheries officer; and
- (f) any suitable person,

to be an authorized officer of a Food Authority for the purposes of this Act.

(2) Where the Food Authority is the Director of Customs, any person authorized in writing by the Director of Customs shall be an authorized officer of that Food Authority.

11. Appointment of analysts

(1) The Minister may appoint persons to be analysts for the purposes of this Act.

(2) An analyst appointed under subsection (1) may be responsible for more than one administrative area of a local authority as may be specified in the instrument of appointment.

(3) No person shall be appointed to be an analyst –

- (a) if he does not possess the prescribed qualifications; and
- (b) if that person is engaged directly or indirectly in any trade or business connected with the sale of food.

PART 4 – ENFORCEMENT

12. Examinations and investigations

The Chief Food Authority may conduct or cause to be conducted any examination or investigation as he thinks necessary for the purposes of this Act.

13. Powers and duties of authorized officers

(1) An authorized officer may for the performance of his duties and the exercise of his powers –

- (a) enter and inspect at any reasonable time any premises where he believes any food is manufactured, prepared, preserved, packaged or stored and examine any such food and take samples thereof and also examine anything that he believes is used or

capable of being used for the manufacture, preparation, packaging, preservation or storing of that food;

- (b) examine any food which is, or appears to him to be, intended for human consumption;
- (c) for the purpose of search, stop or detain any vehicle in which he believes that any food is being conveyed, search that vehicle and examine such food and take samples of that food;
- (d) open and examine any receptacle or package that he believes to contain any food;
- (e) require any person to answer questions put to him by the authorized officer to ascertain if this Act is being complied with, examine any books, documents or other records found in any other premises mentioned in paragraph (a) that he believes to contain any information relevant to the carrying into execution or the enforcement of this Act or any regulations made thereunder with respect to any food and make copies thereof or take extracts therefrom;
- (f) seize and detain for such time as may be necessary any food by means of or in relation to which he believes any provision of this Act or regulation made thereunder has been contravened;
- (g) where he is of the opinion that a special procedure is necessary for the examination of any food which has been imported, or where at the request of the importer he has recourse to such special procedure, direct the importer or any other person in possession of the food to provide all such facilities as may be required for the examination of the food.

(2) An authorized officer acting under this section shall, if so required, produce some duly authenticated document showing his authority.

(3) The owner or person in charge of any premises entered by an authorized officer in pursuance of subsection (1) and every person found therein shall give the authorized officer all reasonable assistance in his power and furnish him with such information and such samples as he may require.

(4) Admission to any place under subsection (1) used only as a private dwelling house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(5) If it appears to any authorized officer that any food whether seized under the provisions of subsection (1) or not, is unfit for human consumption or that any of the provisions of any regulations made under section 53 have been contravened in respect of any such food, he may

- (a) affix to such food a mark, seal or other designation or
- (b) destroy or otherwise dispose of such food or cause the same to be destroyed or otherwise disposed of, in the prescribed manner.

(6) Before any food is destroyed or otherwise disposed of under the provisions of subsection (5), there shall be recorded a description and such other details as will suffice to identify such food and the Food Authority shall keep such record in its custody for a period of not less than 12 months.

(7) In the case of any conviction for an offence under sections 2, 3 or 6 or for an offence under any of the provisions of any regulations made under section 53, the court may order that any food to which the conviction relates and any similar food found on the defendant's premises or in his possession at the time of the commission of the offence or of the seizure of the food in question, shall be forfeited, together with all packages containing the same.

(8) Any food and any package containing the same, forfeited under the provisions of subsection (7) shall be disposed of in the prescribed manner.

(9) If a magistrate, on sworn information in writing –

- (a) is satisfied that there is reasonable ground for entry into any premises for any such purpose as is mentioned; and
- (b) is also satisfied either –
 - (i) that admission to the premises has been refused, or a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier; or
 - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the magistrate may by warrant signed by him authorize any authorized officer to enter the premises, if need be by force.

(10) An authorized officer entering any premises by virtue of this section, or of a warrant issued under it, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against trespassers as he found them.

(11) Nothing in this section authorizes any person except with the permission of a veterinary officer under the Animal Disease (Control) Act [Cap. 220], to enter any premises –

- (a) in which an animal affected with any disease or an in-contact animal to which section 7 of that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

14. Movement of imported food

Without prejudice to any power of examining food conferred by this Part, an authorized officer may give directions to the person in possession of any food imported with a view to

sale for human consumption prohibiting or restricting its removal or delivery –

(a) during any period not exceeding 6 days exclusive of Saturdays, Sundays and public holidays which may be reasonably required for the examination of such food; and

(b) if within that period the officer so requires, until that person has notified the officer of the name of the person to whom, and the address to or at which, he proposes to send or deliver the food.

15. Power to examine food in course of transit, etc.

(1) Subject to the provisions of subsection (2), any authorized officer who has reason to suspect that any vehicle, vessel or container contains any food which is in the course of delivery after sale for human consumption may examine the contents of such vehicle, vessel or container and may for that purpose, if necessary, detain the vehicle, vessel or container, and, in the case of a vehicle or vessel in motion, may call upon such vehicle or vessel to stop.

(2) Nothing in this section shall authorize the detention of any vehicle, vessel or container used by a carrier of goods for the purposes of his trade as such a carrier.

16. Inspection and control of infected food

(1) If an authorized officer has reasonable ground for suspecting that any food of which he has procured a sample under this Act is likely to cause injury to health, he may give notice to the person in charge of the food that, until his investigations are completed –

(a) the food, or any specified portion of it, is not to be used for human consumption; and

(b) either is not to be removed, or is not to be removed except to some place specified in the notice.

(2) If, as a result of his investigations, the authorized officer is satisfied that the food in question, or any portion of it, is likely to cause injury to health, he may deal with it as food falling within section 13(1); but if, he is satisfied that it may be safely used for human consumption, he shall forthwith withdraw his notice.

(3) If a notice given under subsection (1) is withdrawn by an authorized officer, or if the Court before whom any food is brought under this section refuses to condemn it, the Food Authority shall compensate the owner of the food to which the notice relates for any depreciation in its value resulting from the action taken by the authorized officer.

17. Power to arrest

(1) An authorized officer may –

(a) arrest without a warrant any person who commits an offence under this Act or any regulations made thereunder and every offence under this Act or any regulations made thereunder shall be triable by the Magistrates' Court;

(b) require any person to give his name and address who he reasonably suspects of having committed an offence against this Act or regulations made thereunder and if any person so required fails to give his name and address or gives a name and address which the authorized officer has reason to believe is false he may arrest such person without warrant.

(2) The provisions of section 17 of the Criminal Procedure Code [Cap. 136] or any provisions replacing them shall apply to the disposal of any person arrested in accordance with subsection (1).

18. Improvement notices

(1) Pursuant to this Act, an authorized officer may –

(a) serve an improvement notice on the owner, occupier or person in charge of any trade or business engaging in the manufacture and sale of food if he is of the opinion that –

(i) the premises or equipment or utensils used in the premises do not meet hygienic requirements; or

(ii) the operations carried on at the premises do not comply with the Act, or any regulations made thereunder,

requiring the owner, occupier or person in charge of the trade or business to take such corrective measures as shall be specified in the notice;

(b) serve a prohibition notice on the owner or occupier and person in charge of any trade or business engaging in the manufacture or sale of food, if he has reasonable grounds to believe that the premises, vehicle or vessel is creating a situation that is injurious to health, requiring the owner, occupier or person in charge of the trade or business to stop doing any act specified in the notice.

(2) Notwithstanding the fact that a prohibition notice has been issued, an authorized officer may take all such measures he considers necessary to prevent any threat to health.

(3) The cost of all emergency measures taken under this Act shall be borne by the owner, occupier or person in charge of the premises, vehicle or vessel, as the case may be.

19. Order for closure

(1) If the person to whom an improvement notice under section 18 has been served does not comply with the direction in that notice and does not remedy the situation within the period specified in that notice, the authorized officer may order the closure of the premises, vehicle or vessel until the situation is remedied to the satisfaction of the Food Authority.

(2) An order for closure shall be in the prescribed form and shall state that –

(a) no food shall be prepared, packed, stored for sale, or be sold, or be handled for sale in that premises; or

- (b) no food shall be sold in, or from that vehicle or vessel or conveyed or delivered for sale in that vehicle or vessel, as the case requires, until a certificate of inspection is obtained indicating that the situation has been remedied and no contravention do exist.
- (3) The order for closure shall refer to the improvement notice served under section 18 and the warning, if any, given under that section.
- (4) A person shall be considered to be in compliance with the direction given in an improvement notice if he took any other measures equally effective for the purpose.
- (5) Notwithstanding the emergency measures taken under subsection (2) of section 18, if a person to whom a prohibition notice has been served fails to comply with the direction in that notice and does not remedy the situation within the specified period, the authorized officer may order the closure of the premises under this section.

20. Provisions as to the taking of samples for analysis

(1) An authorized officer who takes a sample under the provisions of section 13(1) of any food, or substance for the purpose of analysis shall forthwith divide such sample into 3 parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall –

- (a) with respect to one part of the sample comply with the provisions of subsection (2); and
- (b) with respect to the remaining parts of the sample comply with the provisions of subsection (3);

Provided that this subsection shall not apply to any sample taken to bacteriological examination.

(2) (a) If the samples were obtained by purchase from a dealer in the food or substance in question the authorized officer shall give the one part to the vendor, such vendor being permitted to select such part from the 3 parts.

(b) If the sample was obtained by purchase from an automatic machine –

(i) if the name and address (being an address in Vanuatu) of a person stated to be the proprietor of the machine appears on the machine, the officer shall give the one part of the sample to that person;

(ii) in any other case, the officer shall give the one part to the occupier of the premises on which the machine stands or to which it is affixed.

(c) If the sample is of any food or substance consigned from outside Vanuatu and was taken by the officer before delivery to the consignee, the authorized officer shall give the one part of the sample to the consignee.

(d) If the sample is of any food or substance in transit from a consignor within Vanuatu to a consignee (whether within or without Vanuatu), the officer shall give the one part of the sample to the consignor.

(e) If none of the foregoing paragraphs of this subsection apply, the officer shall give the one part of the sample to the person appearing to him to be the owner of the food or substance of which the sample was taken.

(3) Of the remaining 2 parts of the sample, the authorized officer shall, unless he decides not to have an analysis made, personally submit one to the official analyst, and retain the other for future comparison.

(4) In every case to which the provisions of subsection (2) apply, the authorized officer shall inform the person to whom the part of the sample is given that the sample was taken for the purpose of analysis by the official analyst.

(5) When any sample which has been taken for analysis consists of the contents of an unopened package, the authorized officer shall retain the packing material and, if he decides to have an analysis made, deliver such sample, together with such packing material and any label which may have been attached thereto at the time when the sample was taken, to the official analyst with the part of the sample submitted in accordance with the provisions of subsection (3).

(6) Any part of a sample which under the provisions of this section is to be given to any person may be given either by delivering it to him or to his agent, or by sending it to him by post in a registered packet:

Provided that where, after reasonable inquiry, the authorized officer is unable to find the person to whom the part of the sample is to be given or to ascertain his name and address, he may, in lieu of giving the part to that person, retain it.

(7) If it appears to the authorized officer that any food or substances of which he has taken a sample for the purpose of analysis was manufactured or put into its wrapper or container by a person (not being a person to whom one part of the sample is required to be given by virtue of the provisions of subsection (2)), having his name, and an address in Vanuatu, displayed on the wrapper or container, the officer shall, unless he decides not to have an analysis made, within 3 days after taking such sample, send to that person a notice informing him that the sample has been taken by him and where the sample was taken or, as the case may be, from whom it was purchased.

(8) Where a sample taken under the provisions of section 25 has been analysed by the official analyst, any person to whom a part of the sample was given in accordance with the provisions of subsection (2) shall be entitled, on payment of the prescribed fee to be supplied with a copy of the certificate given by such official analyst under section 21.

(9) Any person who, for the purpose of advertisement, uses any certificate of analysis obtained under the provisions of subsection (3) shall be guilty of an offence.

21. Certificate of analysis

(1) In every case in which a sample for analysis is delivered to the official analyst under the provisions of section 20 the official analyst shall cause it to be analysed as soon as practicable and shall give to the officer requesting the analysis a certificate specifying the result of the analysis in the form prescribed in the Schedule.

(2) A certificate of the results of an analysis given by the official analyst in pursuance of the provisions of subsection (1) shall be signed by him, but the analysis may be made by an assistant official analyst or any person acting under his directions.

22. Minister's power to obtain information

(1) The Minister may direct any person who at the date of the direction or at any subsequent time who carries on a trade or business which includes the manufacture, preparation or sale of food to furnish to the Minister, within such time as may be specified in such direction, such particulars, as may be so specified, of the composition and use of any such substance sold or for sale in the course of that trade or business or such substance or process used in the preparation of food.

(2) Without prejudice to the generality of subsection (1), a direction made thereunder may require the following particulars to be furnished in respect of any substance or process –

- (a) particulars of the composition and chemical formula of the substance;
- (b) particulars of the manner in which the substance or process is used or proposed to be used in the preparation of food;
- (c) particulars of any investigation carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance or process, or any product formed when the substance or the process is used as aforesaid, is injurious to, or in any other way affects health;
- (d) particulars of any investigations of enquiries carried out by or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming the substance or food prepared by the process in ordinary quantities;
- (e) any information regarding any prohibition or restriction on the use of the substance or the process in any country or in any international standards or code of recommended practices; and
- (f) any information in scientific literature regarding potential risk or danger of the substance or the process.

PART 5 – LEGAL PROCEEDINGS AND OFFENCES

23. Institution of proceedings

(1) A prosecution for an offence under this Act or the regulations made thereunder shall not be instituted –

- (a) except by the Public Prosecutor;
- (b) after the expiration of a period of three years or one year from its discovery by the Public Prosecutor, whichever is the earlier.

(2) An authorized officer shall report offences committed against this Act or any regulations made thereunder directly to the Public Prosecutor.

(3) Where a sample has been procured under this Act, no prosecution in respect of the article or substance sampled shall begin after the expiry of 2 months beginning with the date on which the sample was procured.

(4) Subsection (3) does not apply where the court before whom the information is laid certifies that it is satisfied on oath that having regard to the circumstances of the particular case it was not practicable to lay the information at an earlier date.

(5) In any proceedings under this Act in respect of an article or substance sampled –

(a) the summons shall not be made returnable less than 14 days from the day on which it is served; and

(b) a copy of any certificate of analysis obtained on behalf of the Public Prosecutor, and of any certificate given by a court under subsection (4) shall be served with the summons.

(6) In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who took it shall be produced at the hearing.

24. Procedure in respect of articles seized

(1) Where an article in respect of which an offence has been committed is seized under this Act by an authorized officer, such article may be destroyed or otherwise disposed of in the prescribed manner where the Food Authority is satisfied that there has been a contravention of any of the provisions of this Act or any regulations made thereunder and where the owner of such article or the person in possession of such article at the time of seizure consents in writing to the destruction of such article.

(2) Where the owner or the person in possession of such article does not consent in writing to the destruction of such article, the authorized officer –

(a) shall, release such article if he is satisfied that the provisions of this Act or any regulations made thereunder in respect of such article have not been contravened; or

(b) shall, with the approval of the Public Prosecutor, where he is satisfied that there has been a contravention of any provisions of this act or any regulations made thereunder, forthwith, with notice to such owner or person in possession of the article, inform the court having jurisdiction over the area in which the offence was committed of the seizure of the article in respect of which the offence was committed.

(3) On information furnished to the court under subsection (2)(b) such court shall –

(a) if, after trial, it finds the owner or person in possession of the article, guilty of contravening any of the provisions of this Act or regulations made thereunder, order that such article be forfeited to the Food Authority to be disposed of as the court may

direct:

Provided, however, that where the offender is not known or cannot be found such article shall be forfeited to the Food Authority without the institution of proceedings in respect of such contravention; or

(b) if, after trial, it finds the owner or person in possession of the article not guilty of contravening any of the provisions of this Act or regulations made thereunder, order that such article be released to such owner or person in possession.

25. Disclosure of information

No authorized officer may disclose any information acquired in the course of his duty except—

- (a) for the purpose of his functions;
- (b) for the purpose of any criminal proceedings or any proceedings under this Act;
or
- (c) with the written consent of the person who have provided that particular information.

26. Obstruction of authorized officers

(1) Any person who assaults, obstructs, hinders, threatens, abuses, insults or intimidates an authorized officer in the execution of his duties and functions under this Act is guilty of an offence.

(2) If any authorized officer applies under section 13 to obtain samples of any food exposed for sale and the person exposing the food refuses to sell to the authorized officer such quantity thereof as he may require or refuses to allow that authorized officer to take the quantity which he is empowered to take as samples, the person so refusing shall be deemed for the purposes of subsection (1) to have obstructed the authorized officer.

27. Failure to provide information

Any person who, without reasonable excuse, fails to furnish information or a document that the person is required under this Act to furnish, is guilty of an offence.

28. False information

(1) Any person who, in relation to any matter arising under this Act, knowingly or recklessly

- (a) furnishes information that is false or misleading in a material particular; or
- (b) makes a material omission from information furnished in purported compliance with a requirement under this Act,
- (c) fabricates evidence or destroys evidence with intent to mislead examinations or investigations,

is guilty of an offence.

(2) It is a defence to a prosecution of a person for an offence under subsection (1) if it is proved that, at the time the information was given, the person believed, on reasonable grounds

–

(a) in the case of false information, that the information was true; or

(b) in the case of misleading information, that the information was not misleading.

29. Interfering with seized articles

Any person who removes, alters, tampers or interferes with any article seized under this Act without the authority of an authorized officer shall be guilty of an offence.

30. Contraventions due to some other person

(1) A person against whom proceedings are brought under this Act shall, upon information duly laid by him and on giving to the prosecution not less than 3 clear days' notice of his intention, be entitled to have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings, and, if, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.

(2) Where the defendant seeks to avail himself of the provisions of subsection (1) –

(a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;

(b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

(3) Where it appears to the relevant Food Authority that an offence has been committed in respect of which proceedings might be taken under this Act against some person and the Food Authority is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and the first-mentioned person could establish a defence under subsection (1), the Food Authority may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person, and, in any such proceedings, the defendant may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

(4) In proceedings instituted under the provisions of subsection (3), the information or complaint shall set out the facts and state that the Food Authority concerned is reasonably satisfied that the offence of which complaint is made was due to the act or default of the person against whom the proceedings are brought.

31. Conditions under which warranty may be pleaded as defence

(1) Subject to the provisions of this section, in any proceedings for an offence under this Act, being an offence consisting of selling, or offering, exposing or advertising for sale or having in possession for the purpose of sale, any article or substance, it shall be a defence for the defendant to prove –

- (a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as aforesaid, or, as the case may be, could lawfully be sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and
- (b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and
- (c) that it was then in the same state as when he purchased it.

(2) A warranty shall only be a defence in proceedings under this Act if –

- (a) the defendant –
 - (i) has, not later than 3 clear days before the date of the hearing, sent to the Public Prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it; and
 - (ii) has also sent a like notice to that person; and
- (b) in the case of a warranty given by a person resident outside Vanuatu, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.

(3) Where the defendant is a servant or agent of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer or principal would have been entitled to do if he had been the defendant.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(5) For the purposes of this section and of section 32 a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Act.

32. Offences in relation to warranties or certificates of analysis

(1) A defendant who in any proceedings under this Act wilfully applies to any article or substance a warranty or certificate of analysis given in relation to any other article or

substance shall be guilty of an offence.

(2) A person who, in respect of any article or substance sold by him, being an article or substance in respect of which a warranty might be pleaded under section 31, gives to the purchaser a false warranty in writing shall be guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained therein were accurate.

33. Sale, etc., by servants or agents

For the purpose of this Act, every person shall be deemed to sell, offer, expose or advertise for sale, or have in his possession for sale, any food for human consumption, who sells, offers, exposes or advertises for sale, or has in his possession for sale, such food either on his own account or as the servant or agent of some other person, and, where such person is the servant or agent of some other person, such other person shall, subject to the provisions of this Act, be under the same liability as if he had himself sold, exposed or advertised for sale, or had in his possession for sale, such food.

34. Offences under section 13

(1) Any person who fails to provide facilities for the examination of imported food in accordance with subsection (1)(g) of section 13, after having been duly directed to do so by an authorized officer shall be guilty of an offence.

(2) If any person sells, offers or exposes for sale, or deposits or consigns to any person for the purposes of sale or preparation for sale, any food contrary to the purport of any mark, seal or other designation affixed thereto under subsection (7) of section 13 or removes, alters or obliterates any such mark, seal or designation with intent to deceive any person, he shall be guilty of an offence.

35. Offences under section 14

Any person who fails to comply with any direction given under section 14, or who in a notification under it knowingly makes any false statement, is guilty of an offence.

36. Offences under section 15

Any person, being a person in charge of a vehicle or vessel which is called upon to stop under subsection (1) of section 15, who fails to stop when so called upon is guilty of an offence.

37. Offences under section 16

Any person who uses or removes any food in contravention of the requirements of a notice given under section 16 is guilty of an offence.

38. Offences by body corporate

(1) If a body corporate contravenes any provision of this Act, every person who at that time of the commission of the offence was a director, general manager, secretary or other similar officer, of such body corporate, or was acting, or purporting to act, in any such capacity, shall also be guilty of such offence unless he proves that such offence was committed without his

consent or knowledge and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in such capacity and in all the circumstances.

(2) A person may be proceeded against and convicted under a provision of this Act in accordance with subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

39. Offences and penalties

(1) Every person who contravenes or fails to comply with any of the provisions of this Act or any regulations made thereunder or fails to comply with any direction given under this Act shall be guilty of an offence and shall be liable on conviction –

(a) where the nature of the offence involves injury to the health of the public, to imprisonment for a term not exceeding 5 years and also to a fine not exceeding VT 3,000,000;

(b) for any other offence –

(i) for the first offence, to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment;

(ii) for a second or subsequent offence, to imprisonment for a term not exceeding 2 years and also to a fine not exceeding VT 1,000,000.

(2) Where a person convicted for an offence under this Act or any regulations made thereunder is convicted for the second or subsequent offence of a like or similar nature under this Act or any regulations made thereunder, the court convicting him for the second or subsequent offence may –

(a) cause the name and the address of the person convicted and the offence and the punishment imposed for that offence to be published in such newspaper or in such other manner as the court may direct and recover the cost of publication from the person convicted as if it were a fine imposed on him;

(b) cancel the licence or permit, if any, issued to the person convicted for the manufacture, importation, preparation, storage, sale and distribution of food under this Act or any other law and inform the relevant licensing authority accordingly.

40. Evidence of analysis

(1) In any proceedings under this Act or any regulations made thereunder, the production by one of the parties of a document purporting to be a certificate of the official analyst in the form in the Schedule, or of a document supplied to him by the other party as being a copy of such a certificate, shall be *prima facie* evidence of the facts stated therein, unless, in the first mentioned case, the other party requires that the official analyst shall be called as a witness.

(2) In any such proceeding, if a defendant intends to produce a certificate of the official analyst, or, under the provisions of subsection (1), to require that the official analyst shall be called as a witness, notice of his intention, together, in the first mentioned case, with a copy of

the certificate, shall be given to the other party not less than 3 clear days before the day on which the summons is returnable, and, if this requirement is not complied with, the court may adjourn the hearing on such terms as it thinks proper.

41. Defences available in proceedings under section 2

(1) In any proceedings under section 2 for an offence consisting of the sale of food to which any substance has been added, or in the preparation of which any substance has been used as an ingredient, or from which any constituent has been abstracted, or which has been subjected to any other process or treatment, other than food thereby rendered injurious to health, it shall be a defence for the person charged to prove that the operation in question was not carried out fraudulently, and that the article was sold having attached thereto a notice of adequate size, distinctly and legibly printed and conspicuously visible, stating explicitly the nature of the operation, or was sold in a wrapper or container displaying such a notice.

(2) In proceedings under section 2 in respect of any food containing some extraneous matter, it shall be a defence for the defendant to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation.

42. Appeal

(1) Any person aggrieved by an order for closure issued under section 19 may appeal to the Magistrates' Court within 3 days after the date of service of such order.

(2) Where an appeal under this section is brought against an improvement notice, the bringing of appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or abandoned, but the Court may decide otherwise.

(3) Where an appeal under this section is brought against a prohibition notice, the Court, upon request, may direct that the operation of the notice is to be suspended.

(4) On such appeal, the Court may either cancel or affirm the notice either in its original form or with such modifications as the Court may, in the circumstances, think fit.

(5) The Judicial Committee may provide summary court procedure for appeal under this section.

43. Compensation

If any person considers himself aggrieved by the seizure and removal, or by the marking, sealing or otherwise designating, or by the destruction or other disposal, of any food under the provisions of subsections (1) or (5) of section 13 he may, within 72 hours after the doing of such act, complain to the Magistrates' Court and the court may confirm or disallow the act, either wholly or in part, and shall, in the case of any act disallowed, or disallowed in part, order the removal of such mark, seal or other designation or the restoration of the food seized and removed, either as to the whole or as to such part in respect of which the act was disallowed, or, if the food in question, or any part thereof, has been destroyed or otherwise disposed of, or is no longer fit for human consumption or is depreciated in value at the time of making such order by reason of such act, order the Food Authority to pay by way of compensation such sum of money, not exceeding the market value of such food at the time of the doing of such act, as the court may, having regard to the circumstances of the case,

consider just.

44. Presumptions

(1) For the purposes of this Part –

- (a) any article commonly used for human consumption, shall, if sold or offered, exposed or kept for sale, 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;
- (b) any article commonly used for human consumption which is found on any premises or in any vessel, vehicle or aircraft used for the preparation, storage, transport or sale of that article and any article commonly used in the manufacture of products for human consumption which is found on any premises or in any vessel, vehicle or aircraft used for the preparation, storage, transport or sale of those products shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale for human consumption;
- (c) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on any premises or in any vessel where that article is prepared shall, until the contrary is proved, be presumed to be intended for such use.

(2) Where any food for human consumption is sold, or deposited with or consigned to any person for the purpose of sale for human consumption contained in an unopened package, any person who appears from any statement thereon or attached thereto to have imported, manufactured or prepared such food to have enclosed it in such package shall, until the contrary is proved, be deemed to have so imported, manufactured, prepared or enclosed the same.

45. Compounding of offences

- (1) The Food Authority upon consideration of the report sent to him by an authorized officer or if he himself establishes the breach, failure, omission or contravention in respect of any offence referred to in section 39, may issue an offender with a compounding notice giving such offender the option of paying a fine not less than half of the maximum fine provided for such offence or appearing before the court for a trial.
- (2) The agreement for compounding shall be in writing and signed by the authorized officer and the person who admits committing the offence.
- (3) Where an offence has been compounded in accordance with this section, it shall be extinguished in relation to the person who enters into the agreement for compounding upon the payment of the fine referred to in subsection (1).

PART 6 – FINANCIAL

46. Vanuatu National Nutritional Health and Food Safety Fund

(1) There is hereby established a fund to be called the Vanuatu Nutritional Health and Food Safety Fund.

(2) The Fund shall be administered by the Chief Food Authority.

47. Sources of the Fund

There shall be paid into the Fund –

- (a) such sums of money as Parliament may appropriate to the Fund;
- (b) such sums of money as may be granted to the Government of Vanuatu for nutritional and food safety programme;
- (c) such sums of money as may be made by way of grant or donation to the Fund in general or for the particular programmes under the Fund by any person or body of persons, whether corporate or unincorporated and whether national of Vanuatu or not;
- (d) such sums of money generated under this Act, including –
 - (i) fees paid pursuant to this Act;
 - (ii) charges for the services rendered, pursuant to this Act;
 - (iii) administrative penalties collected pursuant to this Act;
 - (iv) all fines imposed by the Court for any offence under this Act or regulations made thereunder, including as substitute for or conversion of imprisonment, and the costs and expenses awarded by the Court.

48. Appropriation from the Fund

The money in the Fund shall be used for carrying out or supporting the programmes –

- (a) to prevent and reduce prevalence of undernutrition and malnutrition in Vanuatu with specific emphasis on improving nutritional status of those most at risk;
- (b) to provide necessary infrastructure for carrying out nutritional and food safety programmes;
- (c) to prevent nutritional disorder and food-borne diseases;
- (d) to improve nutritional status and food safety conditions in general in Vanuatu.

49. Temporary investment of funds

Any money in the Fund not immediately required for the carrying out of its objectives may be invested from time to time either in such manner, or in such securities authorized in writing by the Minister with the approval of the Minister responsible for finance.

PART 7 – MISCELLANEOUS

50. Conflict of interest

(1) An authorized officer who knowingly has, directly or indirectly any trade or business engaged in or connected with the preparation, packing or sale of food is guilty of an offence.

(2) If an authorized officer has a personal interest in a case under investigation, he shall disqualify himself or shall be removed from the case by the Food Authority with a written instrument.

51. Protection for action taken in good faith

No suit, prosecution or other legal proceeding shall be instituted for any act or omission which in good faith is done or is purported to be done by any person under this Act or any regulations made thereunder.

52. Notification of food poisoning

Every medical practitioner carrying on his profession within the administrative area of any local authority shall report all cases of food poisoning in that area within his knowledge to the Chief Food Authority.

53. Regulations

(1) The Minister may make regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorized to be made.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations in respect of all or any of the following matters:

- (a) declaring that any food or class of food is adulterated if any prescribed substance or class of substance is present or has been added to or extracted or omitted from that food;
- (b) the labelling, packaging, offering, exposing and advertising for sale of food;
- (c) the size, dimensions, fill and other specifications of packages of food;
- (d) sale or conditions of sale of any food;
- (e) the use of any substance as an ingredient in any food to prevent the consumer or purchaser from being deceived or misled as to its quantity, character, value, composition or safety or to prevent injury to the health of the consumer or purchaser;
- (f) the standards of composition, purity, quality or other property of food;
- (g) the importation of food in order to ensure compliance with the Act and any regulations made thereunder;
- (h) the method of preparation, manufacture, preservation, packaging, storing and testing of any food in the interest of, or for the prevention of injury to, the health of the consumer or purchaser;

FOOD (CONTROL) [CAP. 228]

- (i) requiring persons who manufacture or sell any food to furnish such information and maintain such books and records as the Minister considers necessary for the proper enforcement and administration of this Act and the regulations made thereunder;
 - (j) the seizure, detention or forfeiture and disposal of articles;
 - (k) the forms to be used for the purposes of this Act and any regulations made thereunder;
 - (l) the analysis or examination of any food;
 - (m) prohibition and restrictions relating to the sale and transport for sale of any adulterated food.
- (3) Regulations made under this section may make different provisions in relation to different classes of business, and, without prejudice to any other provisions of this section, any such regulations imposing requirements in respect of premises may impose on the occupier of the premises to which such regulations apply responsibility for compliance with those regulations.
- (4) The Minister may from time to time take such steps as he may think fit for publishing codes of practice in connection with matters which may be made the subject of regulations under this section, for the purpose of giving advice and guidance to persons responsible for compliance with such regulations.
- (5) A failure on the part of any person to observe any provisions of a code published under subsection (4) shall not of itself render that person liable to criminal proceedings of any kind but any such failure may, in any proceedings whether civil or criminal and including proceedings for an offence under this Act, be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.

54. Repeal of Chapter 128

- (1) The Food (Control) Act [Cap. 128] is repealed.
- (2) Notwithstanding the repeal by subsection (1) of the Food (Control) Act [Cap. 128], any proceedings instituted before the commencement of this Act for compensation under the repealed Act may be continued as if this Act had not passed.

55. Application of other written law to food

- (1) The provisions of the Meat Industry Act [Cap. 213] shall apply for the purposes of the enforcement, and prevention and punishment of contraventions or attempted contraventions of the provisions of this Act relating to food hygiene.
- (2) For the purpose of the application of the Meat Industry Act [Cap. 213] to any food hygiene requirements of which is regulated under this Act, such food shall be deemed to be food the hygiene of which is regulated under the Meat Industry Act [Cap. 213].
- (3) The provisions of the –

- (a) Customs Act [Cap. 257];
- (b) Immature Whisky (Prohibition) Act [Cap. 7];
- (c) Alcohol Importation Act [Cap. 8];
- (d) Liquor Licensing Act [Cap. 52];
- (e) Animal Importation and Quarantine Act [Cap. 201];

shall apply for the purposes of the enforcement, prevention and punishment of contraventions or attempted contraventions, of the provisions of this Act relation to the importation of any food.

(4) For the purposes of the application of the Acts referred to in subsection (3) to any food the importation of which is prohibited under this Act, such food shall be deemed to be food the importation of which is prohibited under those Acts.



Commencement: 09/11/2009

REPUBLIC OF VANUATU

**FOOD (CONTROL) (AMENDMENT) ACT
No. 27 Of 2009**

Arrangement of Sections

1. Amendment
2. Commencement

REPUBLIC OF VANUATU

Assent: 19/10/2009

Commencement: 09/11/2009

**FOOD (CONTROL) (AMENDMENT) ACT
NO. 27 OF 2009**

An Act to amend the Food (Control) Act [CAP 228].

Be it enacted by the President and Parliament as follows-

1. Amendment

The Food (Control) Act [CAP 228] is amended as set out in the Schedule.

2. Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF the Food (Control)

Act [CAP 228]

1. Subsection 1(1)

Insert in its correct alphabetical position,

“Director” means the Director of the Department of Public Health;”

2. Sections , 7, 8, 12, 46 and 52

Delete “Chief Food Authority” (wherever occurring in these sections), substitute “Director”

3. After Part

Insert

“PART 3A – food fortification

11A. Definition

For the purpose of this part:

“food fortification” means the addition of micronutrients to food in order to improve the nutritional status of that food.

11B. Food fortification standards

(1). The Minister of Health may from time to time by Order issue standards in respect of the fortification of any food:

- (a). manufactured or prepared for sale or sold in Vanuatu; or
- (b). imported into Vanuatu.

(2). Without limiting the generality of subsection (1), standards may be issued under that subsection for the purposes of, or in relation to any or all of the following:

- (a). the composition of food;
- (b). the production, manufacture, and preparation of food;
- (c). the storage of food;

- (d). the labelling of food;
- (e). the promotion and advertising of food;
- (f). the sampling and testing of food to determine its composition or safety

11C. Preconditions for issuing standards for food fortification

- (1). When issuing any food fortification standard under subsection 11B(1), the Minister must take into account the following:
 - (a). the impact of the measure on the health status of the population of Vanuatu;
 - (b). any Pacific regional standards for food fortification;
 - (c). Vanuatu's obligations under any relevant international treaty, agreement, convention or protocol;
 - (d). such other matters as the Minister considers necessary or appropriate."

4. After section 39

Insert

“39A Penalty notices

- (1). An authorized officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under any provision of this Act or the regulations.
- (2). A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3). A penalty notice may be served personally or by post.
- (4). If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5). Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(6). The regulations may:

(a). prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

(b). prescribe the amount of penalty payable for the offence if dealt with under this section; and

(c). prescribe different amounts of penalties for different offences or classes of offences.

(7). The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8). This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.”

5. Paragraph 53(2)(m)

Delete “.”, substitute “;”

6. After paragraph 53(2)(m)

Insert

“(n) the fees or other charges to be payable with respect to any matter done under this Act.”