

Plant Protection Act, 2064 (2007)

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An Act Made to Provide for Protection of Plants

Preamble: Whereas, it is expedient to make legal provisions for preventing the introduction, establishment, prevalence and spread of pests while importing and exporting plants and plant products, promoting trade in plants and plant products by adopting appropriate measures for their effective control;

Now, therefore, be it enacted by the Legislature-Parliament.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be called as the "Plant Protection Act, 2064 (2007)".
(2) This Act shall commence immediately.
2. **Definitions:** Unless the subject or the context otherwise requires in this Act,
 - (a) "Plant" means every kind of plant, whether alive or dead, or any part thereof; and this term also includes stem, branch, scum, layering and budding (*Kalami*), bark, root, leave, fruit, seed and germ plasma;

- (b) "Plant product" means any plant product not yet manufactured for use (including feeds) or any manufactured product that may, by the reason of nature of their processing or otherwise, create a risk for the introduction, establishment and spread of infectious pests;
- (c) "Other article" means any storage, packaging, container, conveyance of any plant or plant product or means of growing plant such as soil, moss, pit and similar other article capable of harboring or spreading disease or pest;
- (d) "Pest" means a rat, bird, micro-plasma, nematode virus, weed, pathogenic agent injurious to plants or plant products; and this term also includes any species or subspecies thereof;
- (e) "Controlled pest" means any quarantine pest; and this term includes any controlled pest causing economic loss and damage to any plant product;
- (f) "Quarantine pest" means any pest so prescribed by the Ministry upon Notification in the Nepal Gazette as to cause economic loss, as well, to any plant or plant product;
- (g) "Beneficial insect" means any insect such as bee, silk and lac insect;
- (h) "biological control agent" means any agent such as parasite, counter parasite, predator which may be used to control pests through biological method; and this term includes mushroom, bacteria, fungus and virus;
- (i) "Conveyance" means any means such as an aircraft, rail, truck, cart, horse, donkey and similar other means used to transport plants, plant products or other articles;
- (j) "Container" means a container, box, bag or similar other goods (articles) used to transport plants, plant products or other articles;

- (k) "Quarantine" means the holding of any plants, plant products or other articles in the specified place or in such place as prescribed by the Inspector for the purpose of observing, testing, investigating, inspecting and examining whether such plants, plant products or other articles are healthy or not and treating them if they are found not to be healthy;
- (l) "Quarantine area" means the area set aside for completing plant quarantine procedures;
- (m) "Pest area" means any area with the entry of pests in such manner as to maintain stability there;
- (n) "Infection" means the presence or spread of pests in a manner to cause damage to any plants or plant products;
- (o) "Inspector" means any person designated by the Ministry pursuant to Section 14;
- (p) "Ministry" means the Ministry of Agriculture and Cooperatives of the Government of Nepal;
- (q) "Committee" means the plant quarantine committee formed pursuant to Section 3;
- (r) "Organization" means the national plant protection organization prescribed by the Government of Nepal pursuant to Section 6;
- (s) "Entry permit" means a permit issued pursuant to Section 7;
- (t) "Phyto-sanitary certificate" means the phyto-sanitary certificate issued pursuant to Section 12;
- (u) "Body" means any firm or corporate body registered under the laws in force;

- (v) "Pest risk analysis" means the process of determining regulated pests for the purposes of importation of plants or plant products as per Section 17;
- (w) "Endangered area" means any area where ecological factors favour the establishment of pests whose presence in the area results in economic loss to plants or plant products;
- (x) "Office" means the office established pursuant to Section 33;
- (y) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter-2

Provisions relating to Committee and Organization

3. **Establishment of Committee:** (1) There shall be a Plant Quarantine Committee to make advice and suggestions to the Government of Nepal on policies on the quarantine of plants or plant products.

(2) The Committee referred to in Sub-section (1) shall consist of the following members:

- (a) Secretary, Ministry of Agriculture and Cooperatives Chairperson
- (b) Joint Secretary, Ministry of Industries, Commerce and Supplies (Responsible for World Trade Organization) Member
- (c) Joint Secretary, Ministry of Forests and Soil Conservation (Responsible for environment) Member

- (d) Director General, Department of Customs Member
- (e) Executive Director, Nepal Agriculture Research Council Member
- (f) Representative, Federation of Nepal Chamber of Commerce and Industries Member
- (g) Two experts including one woman nominated by the Government of Nepal Member
- (h) Three persons including at least one woman nominated by the Government of Nepal from amongst the farmers who have experience in the subject Member
- (i) Chief, National Plants Protection Organization Member
- (j) Chief, National Plant Quarantine Programme Member
Secretary

(3) The tenure of the members referred to in clauses (g) and (h) of Sub-section (2) shall be Three years.

4. **Meetings of Committee:** (1) The meetings of the Committee shall be held at such place, time and date as may be specified by the Chairperson.

(2) The meetings of the Committee shall be presided over by the Chairperson and by the person selected by the members present at the meeting from amongst themselves, in the absence of the Chairperson.

(3) The presence of fifty one percent out of the total number of members of the Committee shall be deemed to constitute a quorum for a meeting of the Committee.

(4) A majority opinion shall prevail at the meeting of the Committee. In the event of a tie, the chairperson shall exercise the casting vote.

(5) The decisions of the Committee shall be authenticated by the member secretary.

(6) Other procedures relating to the meeting of the Committee shall be as determined by the Committee itself.

5. **Functions, duties and powers of Committee:** The functions, duties and powers of the Committee shall be as follows:

- (a) To make advice to the Government of Nepal for the formulation of a national policy on plant quarantine,
- (b) To review fees chargeable on the import, export, inspection and examination/test of plants, plant products or other controlled substances pursuant to this Act or the Rules framed hereunder,
- (c) To make coordination between the private sector and the governmental bodies involved in the import and export of plants, plant products or other controlled substances pursuant to this Act or the Rules framed hereunder,
- (d) To prepare a list of controlled pests and alter the list as required;
- (e) To maintain a roster of experts involved in plant quarantine existing in the country,
- (f) To approve standards on sanitation of plants or plant products to be imported or exported,
- (g) To perform such other functions as prescribed.

6. Power to designate National Plant Protection Organization: (1)

The Government of Nepal may, by a Notification in the Nepal Gazette, designate any central level office related with plant protection as the National Plant Protection Organization.

(2) The functions, duties and powers of the National Plant Protection Organization, in addition to those set forth in this Act, shall be as follows:

- (a) To prepare standards on the sanitation of plants or plant products to be imported or exported and submit such standards to the Committee for approval,
- (b) To frame and enforce manuals on the examination, test, inspection and treatment of plants, plant products, biological control agents, beneficial organisms and other articles,
- (c) To identify endangered areas and protect, or cause to be protected, plants and plant products in such areas through quarantine process,
- (d) To identify pest free areas and areas of low pest prevalence and make declaration and surveillance of such areas,
- (e) To prescribe terms and restrictions relating to the trafficking and use of plants and plant products, biological control agents and beneficial organisms,
- (f) To act as a national coordinator for activities relating to plants and plant products, biological control agents and beneficial organisms,

- (g) To enforce, or cause to be enforced, approved standards on the sanitation of plants or plant products to be imported or exported,
- (h) To make coordination with phyto-sanitary bodies of other countries and make understandings on the recognition of each other's permits and phyto-sanitary certificates,
- (i) To perform such other functions as prescribed.

Chapter-3

Provisions relating to entry permit, sanitary certification and re-export certificate

7. **Entry permit to be obtained:** (1) A person or body wishing to import plants, plant products, biological control agents, beneficial organisms or means of growing plants such as soil, moss and pit shall obtain the entry permit pursuant to this Act.
- (2) The terms and restrictions on the importation of plants, plant products, biological control agents, beneficial organisms or means of growing plants such as soil, moss and pit as referred to in Sub-section (1) shall be as prescribed by the Ministry by Notification in the Nepal Gazette.
- (3) Notwithstanding anything contained in Sub-section (2), if any person brings any plants, plant products, biological control agents or beneficial organisms for his or her personal or research purpose, the Office may issue the entry permit to him or her to bring such plants or plant products into Nepal in accordance with the procedures set forth in this Act, by collecting fees as prescribed.

8. Application for entry permit: (1) A person or body interested to import plants, plant products, biological control agents, beneficial organisms or means of growing plants such as soil, moss and pit shall make an application in such form, to such authority and accompanied by such documents and fees as may be prescribed.

(2) If, in examining the application made pursuant to Sub-section (1), it appears appropriate to issue the entry permit to import such plants, plant products, biological control agents, beneficial organisms or means of growing plants such as soil, moss and pit, the prescribed authority shall issue the entry permit in the prescribed form to the applicant.

(3) If it does not appear appropriate to issue the entry permit pursuant to Sub-section (2), information thereof shall be given to the concerned person within Seven days.

9. Term of entry permit: The term of the entry permit shall be Three months.

10. Renewal of entry permit: (1) A person or body interested to get the entry permit renewed shall make an application to the prescribed authority for the renewal of entry permit in advance of Seven days prior to the expiration of the entry permit.

(2) If an application is made pursuant to Sub-section (1), the prescribed authority may renew such entry permit for a term not exceeding Three months, by collecting the fees as prescribed.

(3) The entry permit shall *ipso facto* be invalid upon the expiration of the term of such permit.

11. Entry permit to be obtained: (1) The entry permit shall be obtained prior to importing into Nepal any plants, plant products, biological control

agents, beneficial organisms or means of growing plants such as soil, moss and pit brought at the entry point for import.

(2) The procedures for obtaining the entry permit pursuant to Sub-section (1) shall be as prescribed.

12. Phyto-sanitary certificate for export or re-export: (1) A person or body wishing to export plants, plant products, biological control agents or beneficial organisms may obtain the phyto-sanitary certificate.

(2) A person or body wishing to re-export to another country any plants, plant products, biological control agents or beneficial organisms imported into Nepal may obtain the re-export phyto-sanitary certificate.

(3) A person or body wishing to obtain the phyto-sanitary certificate pursuant to Sub-section (1) or (2) shall make an application in such form, to such authority and accompanied by such fees as may be prescribed.

(4) If, in examining the application made pursuant to Sub-section (1) or (2), it appears appropriate to issue the phyto-sanitary certificate, the prescribed authority shall issue the phyto-sanitary certificate or re-export phyto-sanitary certificate in the prescribed form to the applicant.

13. Permit to be obtained for carriage of consignments: (1) If any person or body intends to carry to another country via the route of Nepal any consignments of plants and plant products or other articles in -transit, such person or body shall make an application to the Office in such form and accompanied by such fees as prescribed.

(2) If an application is made pursuant to Sub-section (1), the Office shall examine the documents accompanied with the application and such consignments.

(3) If, in making examination pursuant to Sub-section (2), such consignments appears as follows, the Office shall permit to carry such consignments to another country via the route of Nepal:

- (a) where such consignments are so packed that any pests cannot come out or spread;
- (b) where such consignments and the documents pertaining thereto conform to the Rules of the country of destination relating to the import of plants or plant products;
- (c) where such consignments and phyto-sanitary certificate conform to each other;
- (d) where the carriage of consignments do not have any kind of effect in Nepal.

Chapter-4

Provisions relating to inspection, test and treatment

14. **Power to designate inspectors:** For the purpose of making inspection of plants, plant products, biological control agents, beneficial organisms or other articles, the Ministry may designate any employee who possess the qualifications as prescribed, as inspectors.
15. **Functions, duties and powers of inspectors:** (1) The functions, duties and powers of the inspectors shall be as follows:
 - (a) To examine and test whether any plants, plant products, biological control agents, beneficial organisms or other articles which have been imported or are in inspect areas, stored or in transit conform to the approved standards,

- (b) To inspect or test whether any plants, plant products, biological control agents, beneficial organisms or other articles which are intended to be imported or exported are infected by pests,
- (c) To enter, at any time, any area or store or other place and examine such area or store and search the same, as prescribed, if so required,
- (d) To stop, at any place, a container and conveyance containing any plants, plant products, biological control agents, beneficial organisms or other articles and search such container or conveyance;
- (e) If, in carrying out examination or test pursuant to Clause (a) or inspection pursuant to Clause (b) or search pursuant to Clauses (c) and (d), such plants, plant products, biological control agents, beneficial organisms or other articles are found to be infected, to treat them or issue order to the concerned person to treat the same,
- (f) If, in treating or causing to be treated any plants, plant products, biological control agents, beneficial organisms or other articles do not become healthy and such plants, plant products, biological control agents, beneficial organisms or other articles need to be taken into their control or destroyed as prescribed or sent back to the concerned country, to give information to the Organization immediately and do as per the order as received,

- (g) To prohibit the sale, distribution or use of any infected plants, plant products, biological control agents, beneficial organisms or other articles,
- (h) To perform such other functions as prescribed.

(2) Other procedures in relation to the inspection, test and treatment referred to in Sub-section (1) shall be as prescribed.

16. **Inspection, test and treatment fees:** The fees chargeable for inspection, test or examination to be carried out by the inspectors pursuant to this Chapter shall be as prescribed by the Ministry by a Notification in the Nepal Gazette.

Chapter-5

Provisions relating to control of pests

17. **Pest risk analysis:** (1) The Organization shall make pest risk analysis and determine regulated pests.

(2) The Organization shall make recommendation to the Ministry for the publication in the Nepal Gazette of a notice of controlled pests as determined pursuant to Sub-section (1), and the Ministry shall, on receipt thereof, publish such notice in the Nepal Gazette.

18. **Notice of quarantine pests:** Any person may, if he or she knows about the prevalence or spread of quarantine pests in any area, give information thereof to the nearby inspector.

19. **Power to declare quarantine pests affected area:** (1) If there is a spread of, or a possibility of a spread of, quarantine pests in any area of Nepal, the Organization may make recommendation to the Ministry to declare such area as the quarantine pests affected area.

(2) If a recommendation is made pursuant to Sub-section (1), the Ministry may, also having regard to the situation mentioned therein, declare such area as the quarantine pests affected area.

(3) In declaring the quarantine pests affected area pursuant to Sub-section (2), the Ministry shall mention, *inter alia*, the period and area of application of, reason for, such area and activities prohibited therein and terms of quarantine.

20. Control of pests in quarantine pests affected area: (1) The Organization may pursue any or all of the following measures in order to control quarantine pests in the quarantine pests affected area declared pursuant to Section 19.

- (a) To make treatment so as to control such pests,
- (b) To destroy plants, plant products, biological control agents, beneficial organisms or other articles remaining in such area,
- (c) To prevent the taking of plants, plant products, biological control agents or other articles from such area to elsewhere,
- (d) To prevent the plantation of plants or plant products in such area,
- (e) To pursue such other measures as the Organization may consider appropriate.

(2) The Organization may, if it considers necessary, order the owners of the plants remaining in any quarantine pests affected area referred to in Section 19 or any area near such area to carry out any act set forth in Sub-section (1).

(3) The Organization shall write to the inspector of the concerned area to ensure compliance with the order issued pursuant to Sub-section (2).

(4) The inspector shall, on receipt of the order referred to in Sub-section (3), may enter the plants or plant products examination area or the land where such plants or plant products or biological control agents, beneficial organisms or other articles are situated and do, or cause to be done, any act contained in the order issued pursuant to Sub-section (2).

(5) If any healthy plants, plant products, biological control agents or beneficial organisms or other articles are destroyed despite the exercise of due care in the course of carrying out any act or action pursuant to this Section in order to control pests, the Organization or Government of Nepal shall not be bound to bear or pay any liability or compensation of any kind.

21. To cancel declaration of quarantine pests affected area: (1) The Organization shall monitor from time to time as to whether quarantine pests are controlled in any quarantine pests affected area declared pursuant to Section 19.

(2) If, in monitoring pursuant to Sub-section (1), quarantine pests are found controlled, the Ministry may, on recommendation of the Organization cancel the declaration referred to in Section 19 prior to the time set forth in such declaration.

Chapter-6

Offense and Penalties

22. Offense: If any person commits any of the following acts, such person shall be deemed to have committed an offense under this Act:

- (a) To import any plants, plant products, biological control agents, beneficial organisms or soil without obtaining the entry permit except as otherwise mentioned in this Act,
- (b) To import any plants or plant products, biological control agents, beneficial organisms or soil without the phyto-sanitary certificate,
- (c) To violate any order issued or any term prescribed pursuant to this Act or the Rules framed under this Act,
- (d) To bring or import any infected plants or plant products,
- (e) To muddle up, whether knowingly or recklessly, any infected plants, plant products or other articles with any healthy plants, plant products or other articles,
- (f) To sell and distribute any infected plants or plant products,
- (g) To destroy infected plants, plant products or other articles by an importer without fulfilling the prescribed procedures,
- (h) To remove infected plants, plant products or other articles from the quarantine site without approval of the inspector or the office in - charge,
- (i) To import or bring into any plants or plant products, biological control agents, beneficial organisms or soil from any entry point other than the prescribed entry point,
- (j) To obstruct or hinder with the making of search or inspection or collection of samples in accordance with this Act and the Rules framed under this Act,
- (k) To do any act to obstruct the exercise by the inspector of the powers conferred by this Act.

- 23. Penalties:** Any person who commits the offenses set forth in various Clauses of Section 22 shall be liable to the following penalties:
- (a) In the case of the offenses referred to in Clauses (a) and (b), a fine of Five Hundred Rupees to Five Thousand Rupees taking into account of the gravity of offenses.
 - (b) In the case of the offenses referred to in Clauses (c), (i), (j) or (k), a fine of Five Thousand Rupees to Ten Thousand Rupees taking into account of the gravity of offenses.
 - (c) In the case of the offenses referred to in Clauses (d), (e), (f), (g) or (h), a fine of Ten Thousand Rupees to Fifty Thousand Rupees taking into account of the gravity of offenses.
 - (d) The office in-charge may punish any person who violates any order issued by the inspector or the office in-charge in the course of inspection, test or treatment, also in consideration of the effects to be caused therefrom, with a fine of Five Thousand Rupees to Twenty-Five Thousand Rupees.
- 24. To be seized and destroyed:** If any plants or plant products, biological control agents, beneficial organisms or other articles to be imported or transported pursuant to this Act are found infected in the course of inspection or examination, those which can be treated shall be released after treatment, and those which are found still to be infected despite treatment shall be seized and destroyed.
- 25. Expenses to be borne:** The concerned importer or exporter of any plants, plant products, biological control agents, beneficial organisms or other articles or person related with such goods shall bear all expenses incurred in the treatment or destroy of such goods or sending them back to the

concerned country in accordance with this Act or the Rules framed hereunder.

Chapter-7

Miscellaneous

26. Power to order for deposit: (1) If there is a reasonable ground to believe that the owner or importer of any plants, plant products, biological control agents or beneficial organisms may leave such plants, plant products, biological control agents or beneficial organisms, the Office may order such owner or importer to deposit the amount as prescribed with the Office.

(2) If an order is issued by the Office pursuant to Sub-section (1), such owner or importer shall deposit such amount with the Office, and the Office shall give a receipt thereof to the concerned owner or importer.

(3) The Office shall credit the amount received pursuant to Sub-section (2) to its deposit account.

(4) The Office shall refund the amount credited to the deposit account pursuant to Sub-section (3) to the owner of the plants, plant products, biological control agents or beneficial organisms held in the Office pursuant to Sub-section (1) if such goods are not found infected or if the owner or importer thereof removes them or after treating or destroying them under this Act in the case of infection.

(5) Notwithstanding anything contained in Sub-section (4), if the Office itself treats or destroys such plants, plant products, biological control agents or beneficial organisms, only the amount remaining after deducting the expenses incurred in such treatment or destroy shall be refunded.

27. **Investigation, inquiry and filing of cases:** (1) The inspector shall carry out investigation of and inquiry into cases relating to the offenses under this Act.
- (2) The procedures to be followed in carrying out investigation and inquiry pursuant to Sub-section (1) shall be as prescribed.
- (3) After the completion of investigation and inquiry pursuant to Sub-section (1), such inspector shall seek opinion of the government attorney and file cases with the case trying authority.
- (4) Any investigation and inquiry as referred to in Sub-section (1) shall be completed within Twenty Five days after the commencement of such investigation and inquiry.
28. **Adjudicating authority:** The prescribed authority shall proceed and dispose of the cases relating to the offenses under this Act.
29. **Government to be the Plaintiff:** The Government shall be the plaintiff in the cases relating to the offenses under this Act.
30. **Appeal:** (1) A person who is not satisfied with an order issued by the office in-charge or the inspector pursuant to this Act may make an appeal to the in-charge of the office referred to in Section 6 within Thirty Five days after the date of receipt of such order.
- (2) A person who is not satisfied with a decision made by the Adjudicating Authority pursuant to this Act may make an appeal to the concerned Court of Appeal within Thirty Five days after the date of knowledge of that decision.
31. **Saving of acts done in good faith:** No governmental employee shall be personally liable in relation to any act done in good faith under this Act.

Provided that, nothing contained in this Section shall be deemed to affect any consequences resulting from any act done recklessly.

32. **Customs related act:** Notwithstanding anything contained in the law relating to customs, the concerned customs office shall initiate customs related procedures only when the plant quarantine check post or the office gives permission for the entry into Nepal of any plants, plant products, biological control agents, beneficial organisms, other articles and means of growing plants such as soil, moss and pit imported in accordance with this Act.
33. **Power to establish office:** The Government of Nepal may, for the purposes of this Act, establish plant quarantine check posts or quarantine offices, as required, by a Notification in the Nepal Gazette.
34. **To render assistance:** In the course of discharging their duties pursuant to this Act, the inspector and office in-charge may request the customs, airport, air services, post office, police and local administration for necessary assistance; and on such request, the concerned bodies and officials shall render necessary assistance.
35. **Powers to frame Rules:** The Government of Nepal may frame necessary Rules for the attainment of the objectives of this Act.
36. **Repeal and saving:** (1) The Plant Protection Act, 2029 (1973) is, hereby, repealed.

(2) All acts done and actions taken pursuant to the Plant Protection Act, 2029 (1973) shall be deemed to have been done and taken under this Act.

(3) The cases which have been filed with the plant protection officer pursuant to the Plant Protection Act, 2029 (1973) and are being tried or yet

to be settled and petitions pertaining thereto shall be transferred to the Adjudicating Authority under this Act after the commencement of this Act, and such Authority shall try and settle such cases.

NEPAL LAW COMMISSION