

CAP 207 PLANT (IMPORTATION AND PEST CONTROL) ORDINANCE

Long title

To provide for the control of the importation of plants, plant pests and soil, for the prevention of the spread of plant pests and for matters incidental to and connected therewith.

[1 May 1976] L.N. 98 of 1976

(Originally 6 of 1976)

1 Short title

PART I

PRELIMINARY

This Ordinance may be cited as the Plant (Importation and Pest Control) Ordinance.

2 Interpretation

In this Ordinance, unless the context otherwise requires-

"authorized officer" (獲授權人員) means a public officer authorized by the Director under section 3;

"Director" (署長) means the Director of Agriculture, Fisheries and Conservation; (Amended L.N. 331 of 1999)

"import" (進口), in relation to a plant, plant pest or soil, means to bring, or cause to be brought, into Hong Kong any plant, plant pest or soil by land, air or water or through the post;

"in transit" (過境), in relation to a plant, plant pest or soil, means a plant, plant pest or soil which is brought into Hong Kong solely for the purpose of taking it or causing it to be taken out of Hong Kong;

"phytosanitary certificate" (植物檢疫證明書) means a phytosanitary certificate

referred to in section 6(2);

"plant" (植物) includes-

- (a) timber, trees and shrubs; and
- (b) leaves, roots, flowers, fruit, tubers, bulbs, corms, stocks, cuttings, layers, slips, suckers, seeds, and any part of a plant, whether or not intended for growing, planting or propagation or from which further plants may be grown, planted or propagated;

"plant import licence" (植物進口證) means a licence referred to in section 6(1);

"plant pest" (植物病蟲害) means any bacterium, fungus, virus, mycoplasma, alga or other plant or any invertebrate animal which is capable of being injurious or destructive to plants;

"premises" (處所) includes any vehicle, vessel or aircraft;

"prohibited"(受禁制), in relation to a plant, plant pest or soil, means any plant, plant pest or soil the importation of which is not permitted except in accordance with and subject to the terms and conditions of a plant import licence or a written authorization of the Director;

"quarantine area" (檢疫區) means an area declared under section 14 to be a quarantine area;

"soil" (泥土) includes earth, sand, clay and peat.

3 Appointment of authorized officers

The Director may authorize in writing any public officer to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance.

4 Prohibition of importation of certain plant

PART II

CONTROL OF IMPORTATION OF PLANTS

- (1) No person shall import any plant specified in the first column of Part I of the First Schedule from any country specified opposite thereto in the second column of that Part, unless-
- (a) it is imported subject to the conditions (if any) of a plant import licence issued in respect thereof;
 - (b) it has been fumigated or disinfected in the country of its origin;
 - (c) it is accompanied by a valid phytosanitary certificate which certifies that the plant is free from the plant pest specified in relation to such plant in the last part of the second column of the relevant item

in Part I of the First Schedule; and

(d) it is imported subject to the condition that every such plant shall be grown in quarantine until the Director is satisfied either that it is free from plant pests or that it is diseased and must be destroyed.

(2) No person shall import any plant specified in the first column of Part II of the First Schedule from any country specified opposite thereto in the second column of that Part, unless-

(a) it is imported subject to the conditions (if any) of a plant import licence issued in respect thereof;

(b) it is accompanied by a valid phytosanitary certificate; and

(c) it is imported subject to the conditions specified opposite thereto in the third column of that Part and such conditions relating to quarantine as may be specified by the Director.

(3) Subject to section 5, no person shall import any plant other than a plant specified in the First Schedule unless-

(a) it is imported subject to the conditions of a plant import licence issued in respect thereof; and

(b) it is accompanied by a valid phytosanitary certificate.

5 Exempted plants

Section 4(3) shall not apply to-

(a) any plant specified in Part I of the Second Schedule; and

(b) any plant specified in Part II of the Second Schedule if it is accompanied by a valid phytosanitary certificate.

6 Plant import licences and certificates, etc.

(1) A plant import licence shall be in Form 1 set out in the Third Schedule and may be issued by the Director upon application made to him and subject to such conditions as he thinks fit.

(2) A phytosanitary certificate accompanying any plant to be imported shall not be valid for the purposes of this Ordinance unless it is-

(a) similar in substance to Form 2 set out in the Third Schedule;

(b) completed in English or in Chinese characters, or accompanied by a translation in English or in Chinese characters; and

(c) signed, not more than 14 days prior to the date of the export of the plant from the country in which it was grown, by or on behalf of an authorized officer of the Plant Protection Service of that country.

(3) The Director may, upon application made to him in such form as he may determine and upon payment of such fee as may be prescribed, examine any plant and may issue in respect of such plant a phytosanitary certificate in the form set out in Form 2 in the Third Schedule.

(4) Phytosanitary examination of plants may be made at the premises of the applicant subject to payment of such fee as may be prescribed.

7 Prohibition on importing plant pests Back to Individual Section Format

No person shall import any plant pest or any plant infected by or infested with a plant pest, save in accordance with the terms of an authorization in writing issued to him by the Director.

8 Prohibition on importing soil

(1) No person shall import any soil save in accordance with the terms of an authorization in writing issued to him by the Director.

(2) Subsection (1) shall not apply to soil imported from any place in China outside Hong Kong. (Amended 65 of 1999 s. 3)

9 Exemptions for plants, plant pests and soil in transit

(1) This Ordinance shall not apply to any plant, plant pest or soil which is in transit, if the conditions set out in subsection (2) are complied with in respect of the plant, plant pest or soil.

(2) The conditions referred to in subsection (1) are-

(a) that the plant, plant pest or soil is packed, and remains packed, in a container which is sealed, closed or wrapped in such a manner that no plant pest may escape from the container; and

(b) that the container in which the plant, plant pest or soil is contained and the cargo or baggage in which the container is included-

(i) remain at all times on the vehicle, vessel or aircraft in which they were brought into Hong Kong; or

(ii) if taken from such vehicle, vessel or aircraft are not removed from the place where they are brought into Hong Kong other than for the purpose of being taken out of Hong Kong.

(3) If any condition set out in subsection (2) is not complied with, the Director may, unless the plant, plant pest or soil which is in transit is exported immediately or otherwise disposed of in such manner as the Director may determine, cause it to be destroyed.

(4) The Director may recover the cost of any action taken under subsection (3) as a debt due to the Government from the person who brought or caused to be brought the plant, plant pest or soil into Hong Kong.

(Amended 65 of 1999 s. 3)

10 Declarations concerning examination of prohibited plants etc.

- (1) The Director may require-
 - (a) any person importing anything into Hong Kong; or
 - (b) any person arriving in Hong Kong,to declare to an authorized officer any prohibited plant, or any soil or anything which may be infected by or infested with a plant pest which that person is importing or has in his possession or under his charge.
- (2) The importer or the person in possession or in charge of any plant or any soil, or anything which may be infected by or infested with a plant pest referred to in subsection (1) shall, if required by the Director or an authorized officer, produce it for inspection to the Director or to an authorized officer.
- (3) An authorized officer may detain any container, package or other article, not being personal luggage, accompanying any person arriving in Hong Kong, which he has reason to believe contains any prohibited plant, a plant pest or any soil.
- (4) For the purposes of examining any container, package or other article detained under subsection (3) an authorized officer may-
 - (a) require the person in possession or in charge to open it; or
 - (b) open it if such person refuses to do so.
- (5) If the container, package or other article is unclaimed, or if there is no person apparently in possession or in charge thereof, it may be opened on the authority of the Director.
- (6) Where a container, package or other article is opened in accordance with subsection (5) it shall-
 - (a) if it contains no plant, plant pest or soil or if it contains plant, plant pest or soil which has been imported in accordance with this Ordinance, be returned to the custody of the airline company or shipping company which brought it into Hong Kong; and
 - (b) if it contains any plant, plant pest or soil which has been imported in contravention of any provision of this Ordinance, be dealt with in accordance with section 20.

11 Search for plant pests

PART III

CONTROL OF PLANT PESTS

- (1) If it is made to appear by information on oath before a magistrate that there is reasonable cause to believe that any person has in his possession or charge or on his land or premises any plant pest, the magistrate may grant a warrant to the Director or an authorized officer to

enter and search for and seize any plant pest or any plant or soil believed to be infected by or infested with a plant pest.

(2) Where under subsection (1) a person is authorized to search land or premises for any plant pest, he may-

(a) enter at any reasonable time and search the land or premises accordingly; and

(b) without further notice treat or destroy any plant pest or any plant or soil he believes to be infected by or infested with a plant pest in such manner as the Director may direct.

(3) The Director may recover the cost of any action taken under subsection (2)(b) as a debt due to the Government from the person in possession or in charge of the plant pest, plant or soil. (Amended 65 of 1999 s. 3)

12 Control of plant pests

(1) If the Director is satisfied that a plant pest exists in or has been introduced into Hong Kong, he may by notice direct any person who is the owner or in possession or custody of any plant or soil infected by or infested with such plant pest-

(a) to surrender the plant or soil to him without compensation; or

(b) to destroy the plant pest or take such other action as is necessary to prevent its spread.

(2) A notice under subsection (1) shall be in such form as may be specified by the Director and shall be deemed to be served on any person if it is delivered to him personally or left for him at his last known place of residence or business or sent by post in a letter addressed to him there.

13 Non-compliance with notice

(1) Where a notice served under section 12 is not complied with within 4 days after the day on which it was served the Director may take such steps as he thinks fit to destroy the plant pest or prevent its spread.

(2) The Director may recover the cost of any action taken under subsection (1) as a debt due to the Government from the person served with the notice. (Amended 65 of 1999 s. 3)

14 Declaration of quarantine area

PART IV

QUARANTINE

The Director may, by order published in the Gazette, declare any area to be a quarantine area.

15 Prohibition of entry into quarantine area

- (1) No person shall enter a quarantine area except in accordance with a permit issued by the Director or an authorized officer.
- (2) Subject to section 16(3), no person shall move any plant, plant pest or soil into or away from a quarantine area except in accordance with a permit issued by the Director or an authorized officer.

16 Certain plants to be grown only in quarantine area

- (1) The Director may, by order published in the Gazette, declare that such plants as he may specify shall, after importation, be grown or propagated only in a quarantine area.
- (2) Any plant specified under subsection (1) which is imported shall be kept in a quarantine area until such time as the Director is satisfied that it is free from plant pests.
- (3) Any person who has in his possession or charge or on his land or premises any plant specified under subsection (1), shall within 4 days of the date of the publication of the order referred to in that subsection take the plant to a quarantine area and deliver it to the officer in charge thereof.
- (4) If any person who has in his possession or charge or on his land or premises any plant specified under subsection (1) contravenes subsection (3), the Director or an authorized officer may-
 - (a) at any reasonable time enter, without a warrant, the land or premises; and
 - (b) without further notice, seize the plant and cause it-
 - (i) to be removed and destroyed; or
 - (ii) to be removed and grown or propagated in a quarantine area.
- (5) The Director may recover the cost of any action taken under subsection (4)(b) as a debt due to the Government from the person in possession or in charge of the plant. (Amended 65 of 1999 s. 3)
- (6) The Director may charge such fees as may be prescribed in respect of the maintenance and treatment of plants which are grown or propagated in a quarantine area.

17 Conditions under which a plant or soil may be removed from a quarantine area

- (1) Any plant or soil which has undergone quarantine and treatment and which, after examination by an authorized officer, is certified by him to be free from disease and plant pest may, when all fees and incidental expenses have been duly paid, be removed from the quarantine area on the issue by the Director or an authorized officer of a permit to remove the same.
- (2)
 - (a) Any plant or soil which is in a quarantine area and in respect of which a permit to remove the same has been issued shall be removed by the owner within 7 days from the day on which the permit to remove was issued.
 - (b) If such plant or soil is not removed or remains unclaimed after a period of 7 days from the day on which the permit to remove was issued, the Director or an authorized officer may direct that the plant or soil shall be destroyed or otherwise disposed of in such manner as he thinks fit without liability for compensation.
- (3)
 - (a) Where the Director or an authorized officer is satisfied that a plant or soil is diseased and cannot be successfully treated he shall serve a notice on the owner thereof informing him of his intention to destroy such plant or soil.
 - (b) The Director or an authorized officer may after 7 days of the service of the notice under paragraph (a) direct that the plant or soil shall be destroyed without liability for compensation.
 - (c) A notice under paragraph (a) shall be in such form as may be specified by the Director and shall be deemed to be served on the owner if it is delivered to him personally or left for him at his last known place of residence or business or sent by post in a letter addressed to him there.

18 The Government etc. not liable for damage etc. to plant in quarantine area

The Government, the Director and public officers shall not be liable-

- (a) for any damage caused to any plant; or
 - (b) for the loss of any plant,
- while the plant is being kept in, or being taken to or from, a quarantine area in accordance with this Part.
(Amended 65 of 1999 s. 3)

19 General powers of authorized officers

PART V

POWERS OF AUTHORIZED OFFICERS

- (1) An authorized officer may, for the purposes of this Ordinance-

- (a) require a plant import licence or any document which relates to the origin of any plant, plant pest or soil to be produced to him;
 - (b) examine and take copies of a plant import licence or any document referred to in paragraph (a);
 - (c) take without payment but subject to the issue of an official receipt, such sample of any plant or soil in respect of which any plant import licence has been issued as may be required by the Director for the purpose of examination and investigation;
 - (d) examine any plant or soil if he considers it necessary to do so to ascertain whether or not the provisions of this Ordinance are being, or have been, complied with by any person in respect of that plant or soil.
- (2) An authorized officer may require-
- (a) any person to whom a plant import licence has been issued; and
 - (b) any servant, employee or agent of any person referred to in paragraph (a),
- to furnish such information or take such action as may be necessary to enable the authorized officer to exercise the powers conferred on him under this Ordinance.
- (3) When a sample of any plant or soil has been taken by an authorized officer under subsection (1)(c), the Director may, after examination and investigation, direct that the sample be returned to the owner or otherwise disposed of in such manner as the Director thinks fit.

20 Seizure and disposal of illegally imported plants etc.

- (1) An authorized officer may seize, remove and cause to be destroyed without liability for compensation, any plant imported in contravention of section 4(1).
- (2) Subject to subsection (3), an authorized officer may seize without liability for compensation and remove any plant, plant pest or soil which is imported in contravention of-
- (a) any provision of this Ordinance other than section 4(1);
 - (b) any condition of a plant import licence; or
 - (c) any authorization issued by the Director under section 7 or 8(1).
- (3) An authorized officer who seizes and removes any plant, plant pest or soil under subsection (2) may either-
- (a) cause it to be treated in such manner as he thinks fit and thereafter, on payment to the Director of the appropriate prescribed fee, return it to the person from whom he seized it; or
 - (b) without liability for compensation, destroy it or otherwise dispose of it in such manner as he thinks fit.

21. Director and authorized officers to be subject to the Chief Executive's directions

PART VI

DECISIONS AND APPEALS

(1) The Chief Executive may give such directions as he thinks fit, either generally or in any particular case, with respect to the exercise or performance by the Director or an authorized officer, of any powers or duties under this Ordinance.

(2) The Director and every authorized officer shall, in the exercise or performance of any powers or duties under this Ordinance, comply with any directions given by the Chief Executive under subsection (1).

(Amended 65 of 1999 s. 3)

22 Appeals to the Chief Executive

(1) Any person aggrieved by a decision, act or omission of the Director or of any authorized officer, taken, done or made in the exercise of any powers or the performance of any duties under this Ordinance may, within 14 days from the date when he was informed of the decision, act or omission or when the decision, act or omission became known to him (whichever is the later) or within such further period as the Chief Executive may allow in any particular case, by notice in writing lodge an objection to the decision, act or omission with the Chief Secretary for Administration. (Amended L.N. 226 of 1976; L.N. 362 of 1997)

(2) On consideration of an objection lodged in accordance with subsection (1), the Chief Executive may confirm, vary or reverse the decision, act or omission of the Director or authorized officer, or substitute therefor such other decision or make such other order as he thinks fit.

(Amended 65 of 1999 s. 3)

23 Offences

PART VII

MISCELLANEOUS

Any person who without reasonable excuse contravenes-

- (a) any provision of section 4, 7, 8(1), 15 or 16(3);
- (b) any requirement made under section 10(1), (2) or (4)(a) or section 19(1)(a) or (2);
- (c) any condition imposed by virtue of section 4(1)(d), (2)(c) or

section 6(1);

(d) any direction given under section 12(1), shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 6 months.

24. Obstruction of authorized officers

Any person who obstructs an authorized officer in the exercise of any power or the performance of any duty conferred or imposed on him by this Ordinance shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 6 months.

25. Amendment of Schedules

The Chief Executive may, by order published in the Gazette, amend the First, Second or Third Schedule.
(Amended 65 of 1999 s. 3)

26. The Chief Executive in Council may make regulations for all or any of the following purposes- (Amended 65 of 1999 s. 3)

- (a) prescribing the fees payable under this Ordinance;
- (b) providing generally for the better carrying out of the provisions and purposes of this Ordinance.

Schedule 1

PROHIBITED PLANTS

[sections 4 & 25]

PART I

Importation prohibited unless all the conditions specified in section 4(1) are complied with.

Plant Country

- | | |
|--|---------|
| 1. Rubber and any other plant belonging to the genus Hevea | Bolivia |
| Brazil | |
| Columbia | |
| Costa Rica | |
| El Salvador | |
| French Guiana | |

Guatemala
Guyana
Honduras, Republic
Mexico
Nicaragua
Panama
Peru
Surinam, Republic
Trinidad & Tobago
Venezuela
and any other country in which South American Leaf Blight (*Dothidella ulei*) is present.

2. Any plant belonging to the family Sterculiaceae or to the family Bombacaceae Cameroun

Dahomey
Gambia
Ghana
Guinea, Republic
Guinea, Portuguese (Amended L.N. 307 of 1998)
Ivory Coast
Liberia
Mali
Niger
Nigeria
Senegal
Sierra Leone
Togo
Upper Volta
and any other country in which the Swollen Shoot Virus Complex of Cacao is present.

3. Cacao and any other plant belonging to the genus *Theobroma* Bolivia

Brazil
Columbia
Ecuador
French Guiana
Grenada
Guyana
Peru
Surinam, Republic
Trinidad & Tobago
Venezuela
and any other country in which Witches' Broom Disease (*Marasmius perniciosus*) is present.

4. Maize and any other plant belonging to the genus *Zea*-vegetative material, excluding seeds Canada

Italy
Mexico

Peru
Poland
Puerto Rico
Romania
Yugoslavia
U.S.A.
U.S.S.R.

and any other country in which *Xanthomonas stewarti* is present.

5. Tea (*Camellia sinensis*) vegetative material Japan
Sri Lanka
and any other country in which either *Exobasidium reticulatum* or Phloem
Necrosis Virus, is present.

PART II

Importation prohibited unless all the conditions specified in section 4(2)
are complied with.

Plant Country Conditions

1. Any plant of the following genera:

Ananas

Citrus

Ipomoea

Musa Any country, other than China. Every such plant shall be grown in quarantine
until the Director is satisfied that it is free from plant pests and may
be released or that it is diseased and must be destroyed.

2. Cotton, and any other plant of the genus *Gossypium* Any country in North and South
America. Every plant shall be fumigated in the country of origin by a method
accepted by the Director as being effective against Boll Weevils
(*Anthonomus* spp.).

3. Groundnut and any other plant of the genus *Arachis*

Any country, other than China. May only be imported as decorticated seeds.

4. Rice and any other plant of the genus *Oryza* intended for propagation.

Belize

Columbia

Costa Rica

Cuba

Guatamala

India

Japan

Mexico

Panama

Salvador

Sri Lanka

Surinam, Republic

United States of America

Venezuela
and any other country in which White Tip
Nematode
(*Aphelenchoides oryzae*)

or Hoja Blanca disease is present. Every consignment shall on importation be immediately handed to the Director who shall cause the plant to be grown in quarantine for one generation.

Schedule 2

PLANTS REQUIRING NO PLANT IMPORT LICENCE

[sections 5 & 25]

PART I

1. Cut Flowers.
2. Fruit for consumption:
 - (a) fresh, or
 - (b) preserved, dried or canned.
3. Vegetables for consumption (including edible tubers, roots, corms and bulbs).
4. Grains, pulses, seeds and spices for human or animal consumption or for industrial use.
5. Timber and timber products including rattan and bamboo.
6. Dried tobacco and manufactured articles incorporating dried leaves.
7. Plants produced in and imported from any place in China outside Hong Kong. (Amended 65 of 1999 s. 3)

PART II

1. Seeds other than grains, pulses, seeds and spices for human or animal consumption or for industrial use.

Schedule 3

[sections 6 & 25]

FORM 1

PLANT (IMPORTATION AND PEST CONTROL) ORDINANCE
(Chapter 207)

PLANT IMPORT LICENCE

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.....

..... and were found to the best of his knowledge to be substantially free from injurious diseases and pests; and that the consignment is believed to conform with the current phytosanitary regulations of the importing country both as stated in the additional declaration hereon and otherwise.

Identity and Description of Consignment.

Name and address of exporter:

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Name and address of consignee:

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Number and description of packages:

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Distinguishing marks:

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Origin:

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.....

Means of conveyance:

.....
.....

Point of entry:

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.....

Quantity (or weight) and name of produce:

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.....

Botanical name:

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.....

Fumigation or disinfection treatment (if any)

Date: Treatment:

Duration and Temperature: Chemical:

.....
Additional Information: Concentration:

.....
Additional Declaration

..... 19

.....
(Signature)

(Stamp of the Service)
(Rank)

.....