

4 February 2009

Ms. Mary So  
Clerk to Bills Committee on Public Health and Municipal Services  
(Amendment) Bill 2008  
Legislative Council Secretariat  
3/F Citibank Tower  
3 Garden Road  
Central, Hong Kong

(By fax 2509 0775)

Dear Ms. So,

**Re: Public Health and Municipal Services (Amendment) Bill 2008**

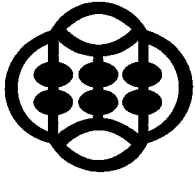
The HKRMA supports the government's initiative for mandatory food recalls in principle, and would like to thank the Chairman for his invitation for our comments on the proposed Code of Practice. It is very important to have an appropriate Code of Practice that can be followed by all members of the trade. Specifically, we would like to mention:

1. The HKRMA or, to our knowledge the trade in general, have not been consulted in anyway as to the principles or content of the proposed Code of Practice. Proper consultation with relevant stakeholders from the outset would help ensure a consensus between government and the trade.
2. Compared to most other Jurisdictions, a very significant proportion of food in Hong Kong is consumed through catering establishments and the government should clarify how this Bill & Code of Practice applies to the food service sector.
3. Below are the HKRMA's specific comments on a 'by paragraph' basis:

**Paragraph**

**2.2 Changes to the Code of Practice**

Proper stakeholder consultations together with adequate notice and/or grace period should be made before changes are introduced as such changes may involve significant alterations to certain operating procedures in place.



6.1 **Making a section 78B order**

A section 78B order should only be made when there is a public health threat and not because of differing regulations between one Jurisdiction and another. For example, a food found to contain a permitted preservative at a level permitted in the Country of origin, but may not comply with Hong Kong regulations should not lead to a section 78B order. Such a situation should be dealt with as a contravention of the relevant Hong Kong regulation (in this case the Preservatives in Foods Regulations).

6.4 **Public Announcements by the Government**

The government should work with the trade in collecting evidence as to whether or not a section 78B order should be made and thereby, the trade should not be caught by “surprise” when government makes public announcements.

6.12 **Monitor the disposal**

We seek assurance that the trade will not get caught between the Food and Environmental Hygiene Department ordering a disposal and the Environmental Protection Department making unreasonable demands, constraints or even refusal to allow for such a disposal.

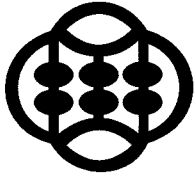
6.13 **Audit the effectiveness of a section 78B order**

This section is too vague and the details of what information should be required and in what format should be specified. Report frequencies should be reasonable and balance the practicalities and the level of public health risk.

7.2 **Role of the food industry**

Responsible retailers often withdraw products on a purely voluntary and precautionary basis pending investigations and testing and before there is any firm evidence that the food may be unsafe. The HKRMA feels strongly that such retailers should be allowed to continue such practice without having to treat this as a “recalled food” and issue a notice to the government and alert consumers.

The use of the term “possibility of the food being unsafe” is an inappropriate term as statistically, all food has a possibility of being unsafe,



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but the possibility is extremely low. In order not to prevent retailers from carrying out such voluntary precautionary recalls, we suggest that the term ‘significant possibility’ and/or ‘evidence’ be used in place of the term ‘possibility’. For example, we may hear that a batch of beef from a supplier in Country A may be contaminated with a certain type of bacteria, but all the facts are not known yet, so the retailer decides to recall all beef from that supplier or even all beef from Country A until the retailer can find out more information. Would “all beef from Country A” be considered “recalled food” and as such, a notification be made to the government?

However, if the same retailer decided only to recall that specific batch of beef as specified by a competent jurisdiction, then “all beef from Country A” would not be regarded as “recalled food”. The Code of Practice should not prevent or provide disincentives for retailers to be extra cautious, rather, it should encourage such practice.

## 8.2 Appeals and Compensation

The criteria for compensation of the “MSAB setting aside the order and that the Authority did not have reasonable grounds to make the order at the time of making it” is an unreasonable requirement making any compensation claims impossible unless the Authority made the order without reasonable grounds. Compensation should be determined solely by the MSAB.

We hope the Bills Committee will give due consideration to our concerns and suggestions above.

Yours faithfully,

Philippe Giard  
Chairman  
Government Regulations Sub-Committee  
Hong Kong Retail Management Association

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