

**Bills Committee on Food Safety Bill**

**Follow-up on Matters arising from the Bills Committee Meeting  
on 16 November 2010**

**Purpose**

This paper sets out our response to the following issues raised by Members at the Bills Committee meeting on 16 November 2010 –

- (a) to consider expanding the scope of Clause 3(2)(b) of the Food Safety Bill (the Bill) to cover vehicles and aircraft;
- (b) to consider, in cases where the Director of Food and Environmental Hygiene (the Director) exercises his authority under Clause 6 to exempt a person from the requirement to be registered under Part 2 of the Bill in respect of a business, setting out the reasons for granting the exemption in the Director's written notice to the person;
- (c) to consider fine-tuning the drafting of Clause 7 of the Bill so that the policy intention of refusal for registration regarding partnership and limited company can be better reflected in the Bill; and
- (d) to report the outcome of the meeting with the Federation of Vegetable Marketing Co-operative Societies, Ltd.

2. In addition, as mentioned in LC Paper No. CB(2)138/10-11(01), we would like to report the outcome of the briefing on 22 November 2010 for non-governmental organisations involved in operating food banks about the requirements of the Bill.

**To consider expanding the scope of Clause 3(2)(b) of the Bill to cover vehicles and aircraft**

3. Under Clause 3(2)(b), “any substance capable of being used in the composition or preparation of any food commonly used for human consumption that is found on any premises or in any vessel where that food is prepared is presumed, unless there is evidence to the contrary, to be intended for human consumption.”

4. Members were concerned that as a result of Clause 3(2)(b), certain food items may no longer be regarded as “food” because they are found in vehicles or on aircraft. But such concern is misplaced. Clause 3(2)(a) provides that “any food commonly used for human consumption is presumed, unless there is evidence to the contrary, to be intended for human consumption”. Under Clause 3(2)(a), whether the food is found in vehicles or on aircraft is irrelevant in determining whether it is food intended for human consumption. This catch-all presumption clause should ensure that food commonly used for human consumption will indeed be regarded as food under the Bill.

5. Clause 3(2)(b) is modelled on section 67(1)(c) of the Public Health and Municipal Services Ordinance (Cap.132). It does not deal with the food item per se but substances used in the composition or preparation of food. Clause 3(2)(b) presumes these substances to be intended for human consumption if they are found at places where the food is prepared. Such presumption is required for certain food ingredients which can be for industrial usage as well, such as sodium carbonate (can be used as acidity regulator/ anti-caking agent/ raising agent in food but also a cleansing agent) and gold leaf (a kind of permitted colouring matter in food). The presumption covers only premises and vessels but not vehicles and aircraft, as food business licences under the Food Business Regulation (Cap. 132X) are currently issued to premises (e.g. general restaurant licence, food factory licence) and vessels (i.e. marine restaurant licence) only.

6. In light of the above, we therefore do not see a need to expand the scope to cover vehicles and aircraft.

**To consider, in cases where the Director exercises his authority under Clause 6 to exempt a person from the requirement to be registered under Part 2 of the Bill in respect of a business, setting out the reasons for granting the exemption in the Director's written notice to the person**

7. According to Clause 6(1) of the Bill, the Director may in writing exempt a person from the requirement to be registered under Part 2 in respect of a business. Members commented that like Clause 8(4), the Director should include reasons for exemption from the registration requirement.

8. Clause 8(4) provides that if the Director refuses an application, the notice must include the reasons for refusal. This is essential because the applicant will need this information to consider his further action. Regarding exemptions granted under Clause 6(1), we have already set out the factors that the Director may consider in paragraph 4 of LC Paper No. CB(2)20/10-11(01), which include but not limited to the followings -

- (a) whether the exemption would cause any undue threat to public health;
- (b) past records of the applicant (e.g. previous conviction records under the Bill or Cap. 132, previous revocation of registration as a food importer/ distributor);
- (c) whether the information of the food importer/distributor is readily available from other sources (e.g. in the case of exhibitors in a food exhibition, whether the detailed information of the exhibitors would be available from the organiser);
- (d) whether the food in question would be used for exhibition purpose (including free tasting) or sold for human consumption; and
- (e) the type and quantity of food that would be imported or distributed.

The Director will refer to the above list of factors when considering whether to exempt any person under Clause 6(1) of the Bill.

**To consider fine-tuning the drafting of Clause 7 of the Bill so that the policy intention of refusal for registration regarding partnership and limited company can be better reflected in the Bill**

9. As explained at the Bills Committee meeting on 16 November and set out in Clause 7(2) of the Bill, for a partnership, a partner authorized by the partnership may apply for registration on behalf of the partnership and, if registration is granted, it is to be expressed to be granted to that person on behalf of the partnership. If there is any change to the partners in that partnership (which means the old partnership is dissolved), the new partnership would need to authorize a partner to apply for a new registration according to Clause 7(2) of the Bill.

10. The policy intention is that if a person has different businesses, the person needs to be registered in relation to each business separately. This has been reflected in Clause 7(1) of the Bill which provides that a person may apply to the Director to be registered in respect of a business. Therefore, if a person is registered in relation to a business and the person buys another business, the person is required to be registered again in relation to the second business. However, if a limited company that is a registered food importer/food distributor is sold, the sale itself would not affect the limited company's registration in respect of its food importation/ food distribution business.

11. We therefore consider that the current drafting of Clause 7 is sufficiently clear to reflect our policy intention and do not see a need for fine-tuning. However, the Centre for Food Safety would take into account the comments made by Members when issuing guidelines on the registration scheme, and would elaborate on how different business models should be registered under Part 2 of the Bill and whether a new application is needed if there is change to the business structure.

**To report the outcome of the meeting with the Federation of Vegetable Marketing Co-operative Societies, Ltd**

12. A meeting with the Federation of Vegetable Marketing Co-operative Societies, Ltd is tentatively scheduled for 30 December 2010.

**Briefing for non-governmental organisations (NGOs) involved in operating food banks about the requirements of the Bill**

13. With the assistance of the Hon Cheung Kwok-che, the briefing was held on 22 November 2010, attended by seven representatives from four NGOs involved in operating food banks. We explained the requirements of the Bill and the criteria to be considered by the Director in granting an exemption from the requirement to keep records under Part 3 of the Bill. We have also encouraged the NGOs to approach the Administration if they had any questions.

**Advice Sought**

14. Members are asked to note the Administration's response at paragraphs 4-13 above.

**Food and Health Bureau  
November 2010**