

File Ref: FH CR 1/3231/07

LEGISLATIVE COUNCIL BRIEF

FOOD SAFETY BILL

INTRODUCTION

A At the meeting of the Executive Council on 11 May 2010, the Council ADVISED and the Chief Executive ORDERED that the Food Safety Bill (the Bill), at Annex A, should be introduced into the Legislative Council on 2 June 2010.

JUSTIFICATIONS

Food Safety Bill

2. The Administration has been working on a Food Safety Bill to strengthen legislative control on food safety. The Bill will provide for food safety control measures including –

- (a) a registration scheme for food importers and distributors;
- (b) a requirement for food traders to maintain proper transaction records to enhance food traceability;
- (c) power to make regulations for tightening import control on specific food types based on risk assessment; and
- (d) power for the authorities to make orders to prohibit the import and supply of problem food and order the recall of such food.

3. Following the detection of melamine in milk and dairy products in end 2008, the Public Health and Municipal Services (Amendment)

Ordinance 2009, which empowers the Director of Food and Environmental Hygiene (DFEH) to make orders to prohibit the import and supply of problem food and order a food recall when DFEH has reasonable grounds to believe that public health is at risk, was passed by the Legislative Council on 29 April 2009 and commenced operation on 8 May 2009.

4. Since then, the Administration has continued to work on the remaining proposals in the Bill. In parallel, a consultant, Pricewaterhouse Coopers, was commissioned to conduct a Business Impact Assessment (BIA) on the proposals of the Bill.

Salient Features of the Bill

5. The salient features of the Bill are summarised in the paragraphs below.

(A) Definition of “Food”

6. The definition of “food” in the Bill will be modelled on the definition of “food” in the Public Health and Municipal Services Ordinance (Cap.132). However, the existing definition of “food” in Cap.132 does not include live aquatic products¹ and edible ice² which we consider should be regulated. We therefore expressly provide that live aquatic products³ and ice intended for human consumption should be regarded as “food” under the new Bill so that the new food safety control measures will be applicable to these food types.

7. In order that the food safety measures under the existing Cap.132 are also applicable to these food types and for reasons of consistency, it is important that the definition of “food” under Cap.132 and the Bill be the same. We will introduce corresponding amendments to the definition of

¹ Except live shellfish which is already included in the current definition of “food” in Cap.132.

² Under Cap.132, “food” does not include water, except aerated water, distilled water, water from natural springs and water placed in a sealed container for sale for human consumption.

³ Aquatic products will be defined as fish, shellfish, amphibian or any other form of aquatic life other than a bird, mammal or reptile.

“food” under Cap.132. The Department of Justice has thoroughly examined these amendments and is satisfied that they are consistent.

(B) Registration Scheme for Food Importers and Distributors

8. While most overseas authorities already have some form of arrangement requiring food importers and distributors to register with them or obtain a licence, this measure is of even greater importance in Hong Kong which imports 90% of its food. Accordingly, the Bill will include a mandatory requirement for any person who carries on a food importation or distribution business to register with DFEH. The registration procedure (by paper or electronic means) will be convenient and simple, requiring only the essential information from traders. The information required will include the trader’s particulars, contact details and the food type being imported or distributed. The two-tier food categorisation system (i.e. Main Food Category, e.g. cereals and grains products, and Food Classification, e.g. pasta/noodles – without the need to specify the type of noodles) is set out in Schedule 2 to the Bill. The categorisation system is made with reference to the relevant international standard i.e. General Standard on Food Safety under the Codex Alimentarius.

9. The registration scheme will assist DFEH in identifying and contacting a more defined group of food traders speedily in a food incident.

10. Under the Bill, “food importer” means a person who carries on a business which brings or causes to be brought into Hong Kong any food by air, land or water⁴. “Food distributor” means a person who carries on a business the principal activity of which is the supply of food in Hong Kong by wholesale. Food retailers whose principal business is not the distribution or supply of food to other retailers or catering establishments would not be required to register.

⁴ The registration requirement does not apply if food is imported solely in the course of business of a transport operator. Likewise, it does not apply to bona fide travellers who import food in their personal baggage for non-commercial use.

11. Primary producers like fish farmers, vegetable farmers, etc who distribute their products and produce would fit the definition of “food distributors” and hence be required to register. The same applies to food manufacturers who distribute their products.

12. For food importers or distributors who have already registered or have obtained a licence under other Ordinances (e.g. food business licence holders under the Food Business Regulation (Cap.132X)), as the Administration already possesses their information, they will be exempted from the registration requirement as a trade facilitation measure. We have included a provision in the Bill to empower DFEH to obtain information about these licensees or registered persons under the relevant Ordinance from the licensing authority concerned. The Bill provides that the relevant licensing authority must comply with DFEH’s request. A list of the exempted food importers and distributors and the relevant licensing authorities is in Schedule 1 to the Bill.

13. The registration cycle for food importers and distributors will be for a period of three years, subject to renewal. This will ensure that our database is updated. A registration fee will be charged on the basis of full-cost recovery. The fee level for registration and renewal of registration for a three-year term will be \$195 and \$180 respectively.

14. DFEH may refuse an application for registration/renewal or revoke registration if satisfied that the food importer/distributor has repeatedly contravened the Bill in the past 12 months. This will serve as a strong incentive for traders to comply with the law.

15. DFEH’s decisions in relation to the registration scheme will be subject to appeal. Any person who is aggrieved by DFEH’s decision may, within 28 days after becoming aware of the decision, appeal to the Municipal Services Appeals Board (MSAB) established under the MSAB Ordinance (Cap.220). An appeal does not suspend DFEH’s decision

unless DFEH decides otherwise.

16. The maximum penalty for non-compliance with the registration requirement, without reasonable excuse, will be a fine at level 5 (\$50,000) and imprisonment for six months. This is in line with the penalty for selling food which is unfit for human consumption under section 54 of Cap.132 or carrying on certain food businesses without a licence granted by DFEH under the Food Business Regulation (Cap.132X).

(C) Record-Keeping Requirement

17. The registration scheme alone will not guarantee food traceability, especially for a food supply chain which involves more than one distributor. To trace where the problem food came from and where it went, we also need to require food traders to maintain records of the movement of food.

18. The Bill will require any person who, in the course of business, imports, acquires or supplies by wholesale food in Hong Kong to keep transaction records of the business from which the food was obtained and the business to which it was supplied. DFEH will be empowered to inspect the records maintained by food traders.

19. There is no stipulated format for the records of each transaction to be maintained, but those records must cover –

- (a) the date of the transaction;
- (b) the name and contact details of the supplier;
- (c) the place from which the food was imported (for imported food only);
- (d) the name and contact details of the person to whom the food is supplied (i.e. the buyer); and
- (e) a description of the food, including the total quantity.

Fishermen who distribute their capture will be required to maintain capture records covering the date/period of the capture, the common name of the capture, the total quantity and the catch area. We will provide record templates for traders for their reference.

20. The capture or transaction records must be kept for a period of three months (for live aquatic products and food with a shelf-life of three months or less, e.g. fresh meat) or 24 months (for food with a shelf-life over three months, e.g. canned food). The record-keeping period for different food types will be provided for general reference in a Code of Practice to be issued by DFEH under the Bill.

21. The requirement to keep records of supplies of food will not apply to retail supplies to ultimate consumers as it would be impractical to do so and would impose a huge burden on the trade and consumers.

22. We note that some food retailers may sell food to another food retailer for resale purposes (e.g. restaurants buying food from supermarkets when the food is on sale). Such transactions would be regarded as a supply by wholesale, meaning that supply records would have to be kept under the law. We appreciate the difficulties for food retailers to distinguish between business customers and ultimate consumers. Hence the Bill provides a defence if the food retailer concerned can show that it is the retailer's normal business to supply food by retail and it is reasonable to assume that the particular transaction was not a wholesale supply.

23. The maximum penalty for non-compliance with the record-keeping requirement, without reasonable excuse, will be a fine at level 3 (\$10,000) and imprisonment for three months.

24. To ensure that the record keeping requirement is practicable, the Centre for Food Safety has launched pilot exercises of record keeping in

market stalls, fixed pitch hawker stalls, licensed/permitted food premises and other food shops selling different food categories in Central and Western, Wan Chai, Sham Shui Po, Yau Tsim Mong, Tuen Mun and Yuen Long. Whilst some traders were not familiar with the requirement initially, they had no problem complying gradually with more guidance.

(D) Import Control for Specific Food Types

25. As Hong Kong relies heavily on imported food, import control is very important in ensuring that all food which enters Hong Kong is fit for human consumption. In this regard, the Bill will empower the Secretary for Food and Health (SFH) to make regulations for the import control of specific food types.

26. We propose that there should be two sets of regulations under the Bill, namely (a) Imported Game, Meat, Poultry and Poultry Eggs Regulation and (b) Imported Aquatic Products Regulation, to cover food with a high potential health risk. The proposals are set out in Annex B. We are consulting the trade on the proposals. Following the enactment of the Bill, the Administration will introduce the two regulations.

B

(E) Prohibition of Import and Supply of Problem Food and Mandatory Recall

27. The Public Health and Municipal Services (Amendment) Ordinance 2009 amended Cap.132 by adding a new Part VA to empower DFEH to make orders to prohibit the import and supply of problem food and order a food recall when DFEH has reasonable grounds to believe that public health is at risk. Accordingly, we will transfer this Part of Cap.132 to the new Bill.

(F) Grace Period

28. The Food Safety Ordinance will commence on a day to be appointed by SFH by notice published in the Gazette. To allow sufficient time for traders to adapt to the new requirements, the penalty provisions for failing to register and the record-keeping requirements will

commence after a grace period of six months after the registration scheme starts.

29. With the inclusion of edible ice as “food” under the Bill and Cap.132, ice-making factories will be required to obtain a food business licence under the Food Business Regulation (Cap.132X). We will allow a grace period of six months for these factories to obtain a licence after the Food Safety Ordinance commences.

Business Impact Assessment (BIA)

30. The Administration is aware that the various requirements under the Bill will result in extra administration work and compliance costs for the food and related trades, in particular small and medium enterprise (SME) food traders. In order to have a better understanding of the views of the trade, in particular SMEs, the Administration appointed a management consultant to conduct a BIA to study the implications of the proposals on the trade. The Executive Summary of the BIA is at Annex C.

C

31. The consultant reviewed comparable food safety legislation overseas, such as that of Australia, the European Union, Singapore, UK, and US. It was found that the proposals in the Bill are generally in line with overseas practices.

32. The consultant conducted face-to-face interviews with some 50 food traders or associations⁵ playing different roles in the food supply chain to collect their views on the proposals in the Bill. Of these, 35 are SME traders. The proposals in the Bill were generally supported by the trade in the BIA study. On the registration scheme, the trade found the proposals acceptable in relation to the level of registration fee, the registration process (by paper or electronic means), the two-tier food categorisation system and the exemption arrangement for registration.

⁵ The business types of the 50 or so food traders and associations could be found in the Executive Summary of the BIA report at Annex C.

33. The areas of concern were the requirement for traders to source food only from registered food importers/distributors, the registration for ad-hoc distributors whose principal business is not in food distribution, and the mechanism to refuse or revoke registration. We have addressed these concerns in the Bill by dropping the requirement for traders to source food only from registered food importers/distributors, stipulating that only those traders whose principal business is in food distribution would be required to register, and setting out the criteria for refusal and revocation of registration in the Bill.

34. On the food traceability requirement, the trade generally accepted the proposed record-keeping requirements, including the retention period which is based on the shelf-life of the food products. For most of the traders interviewed, record-keeping is already an established practice for tax filing purposes. Some retailers expressed concern in differentiating business and ultimate customers in a transaction. We have also addressed these concerns in the Bill by linking the retention period of records with shelf-life of the food, and including a statutory defence for food retailers who unintentionally sell food to another trader without maintaining proper transaction records.

35. The consultant has estimated the compliance cost associated with the new proposals under the Bill. The compliance cost for the registration scheme⁶ was estimated at 0.008% of the operating expenses⁷ of all food importers and distributors. As for the record-keeping requirement, the estimated compliance cost ranges from 0.04% to 0.14%⁸ of the operating expenses of all SME food retailers. We consider that the implications of the Bill on operating cost of the food trade, and hence food price, would be minimal.

⁶ This covers the registration fee and the time cost for completing the registration formalities.

⁷ The total operating expense for three years is used as the registration will be for a three-year cycle.

⁸ This depends on the number of transactions of a trader per annum.

THE BILL

36. The main provisions of the Bill are –

- (a) Clause 2 defines certain terms used in the Bill and clause 3 states that the Bill does not apply to food that is not intended for human consumption;
- (b) Part 2 provides for the registration of food importers and food distributors. Clause 4 requires a person carrying on a food importation business to be registered as a food importer and clause 5 requires a person carrying on a food distribution business to be registered as a food distributor;
- (c) Clauses 7 to 14 set out the requirements and procedures for an application for registration as food importers and food distributors;
- (d) Clause 16 provides for appeals against decisions of DFEH under Part 2 to be made to the MSAB;
- (e) Part 3 requires records to be kept of the acquisition and supply of food, and of the capture of local aquatic products;
- (f) Clause 25 provides a defence to a charge of failing to make a record under clause 24 of the supply of food for a person to show that the person's normal business is the supply of food by retail and it was reasonable to assume that the supply was not a wholesale supply;
- (g) Clause 26 sets out the required period for retention of records;
- (h) Part 4 provides for the making and enforcement of food safety orders. The Part substantially re-enacts Part VA of Cap.132, which was inserted into that Ordinance by the Public Health and Municipal Services (Amendment) Ordinance 2009;
- (i) Part 5 contains provisions for the administration and enforcement of the Bill;
- (j) Part 6 contains general provisions. Clause 59 empowers SFH to make regulations, including regulations for import controls over specified classes of food. Clause 63 gives factories that manufacture or prepare ice a grace period of six months to obtain

a licence under section 31(1) of the Food Business Regulation (Cap.132X);

- (k) Part 7 contains consequential and related amendments to other Ordinances;
- (l) Schedule 1 specifies categories of persons who are not required to be registered as food importers or food distributors;
- (m) Schedule 2 sets out the main food categories and the food classifications that need to be identified in an application for registration as a food importer or food distributor; and
- (n) Schedule 3 sets out fees for registration or renewal of registration as a food importer or food distributor and for copies of or extracts from the register of food importers and food distributors.

LEGISLATIVE TIMETABLE

37. The legislative timetable will be -

Publication in the Gazette	20 May 2010
First reading and commencement of second reading debate	2 June 2010
Resumption of second reading debate, committee stage and third reading	To be notified

IMPLICATONS OF THE PROPOSAL

D 38. The implications of the proposal are set out in Annex D.

PUBLIC CONSULTATION

E 39. The Administration has conducted an extensive public consultation on the proposals of the Bill. Details of the consultation programme are at Annex E.

40. The consultation covered established advisory committees, such as the Business Facilitation Advisory Committee (including its Retail Task Force and Food Business Task Force), Advisory Council on Food and Environmental Hygiene, Expert Committee on Food Safety, Advisory Committee on Agriculture and Fisheries, Small and Medium Enterprises Committee and the Market Management Consultative Committees of public markets and cooked food markets. In addition, we consulted the trade and the relevant stakeholders through meetings with the trade associations representing different sectors of the food trade and individual food traders.

41. Public forums and trade consultation forums were held for the public and relevant stakeholders to express their views on the proposals. We also briefed all the 18 District Councils or their committees on the proposals. As the Bill will tighten import control on food, we also consulted the Consulates General in Hong Kong.

42. The proposals under the Bill were generally supported by both the public and the trade. They considered the Bill a right move to enhance food safety and public health.

43. The District Councils have either shown support or indicated no objection to the proposals. Some District Council members were concerned that the compliance costs arising from the proposed measures might result in increased food prices. They requested the Administration to carefully formulate the details of the Bill. They also urged the Administration to continue with the other food safety-related work such as regular inspections and surveillance.

44. Traders generally supported the record-keeping period proposed and requested the Administration to simplify the requirements and provide sufficient support to SMEs in complying with the requirements. Most sectors agreed that the duration of record-keeping should be shorter

for perishable food items such as fresh food. Some considered that the duration for other food should be no more than 12 or 24 months.

45. The Administration had earlier proposed to make it an offence in the Bill for any person to knowingly sell food obtained from unregistered food importers or distributors (unless they are exempted) in the course of business. Food traders however had strong objections to the proposal during the consultation. They considered that it is not practicable for food businesses to check the registration status of different food suppliers before every transaction. They also considered that the responsibility of registration should fall on the individual food importers or distributors, and not on others. Taking into account the views obtained and that the proposed record-keeping requirement would already help to enhance food traceability, this proposal was dropped.

46. The Legislative Council Panel on Food Safety and Environmental Hygiene was also consulted on the preliminary proposals of the Bill in December 2007, and thereafter on the results of public consultation, the findings of the BIA study, and the detailed proposals of the Bill in February 2010. The proposals in the Bill were generally supported by the Panel.

PUBLICITY

47. A press release will be issued on 19 May 2010 and a spokesman will be available to take press questions.

ENQUIRIES

48. Any enquiries on this brief may be addressed to Mrs Angelina Cheung, Principal Assistant Secretary (Food) at 2973 8297.

Food and Health Bureau

19 May 2010

FOOD SAFETY BILL

ANNEXES

Annex A - Food Safety Bill

Annex B - Regulations on Import Control

Annex C - Executive Summary of the Business Impact Assessment

Annex D - Implications of the Proposal

Annex E - Consultation Programme on the Food Safety Bill

FOOD SAFETY BILL**CONTENTS**

Clause		Page
PART 1		
PRELIMINARY		
1.	Short title and commencement	1
2.	Interpretation	1
3.	Food not intended for human consumption	4
PART 2		
REGISTRATION OF FOOD IMPORTERS AND DISTRIBUTORS		
Division 1 – Requirement to be Registered		
4.	Requirement for food importers to be registered	5
5.	Requirement for food distributors to be registered	6
6.	Exemptions by Director	6
Division 2 – Registration		
7.	Application for registration	6
8.	Determination of application for registration	7
9.	Registration	8
10.	Conditions of registration	8
11.	Application for renewal of registration	8
12.	Determination of application for renewal	9
13.	Renewal of registration	10
14.	Revocation of registration	10

Division 3 – The Register

- | | | |
|-----|--------------|----|
| 15. | The register | 11 |
|-----|--------------|----|

Division 4 – Appeals in relation to Registration

- | | | |
|-----|---|----|
| 16. | Appeals to Municipal Services Appeals Board | 12 |
|-----|---|----|

Division 5 – General

- | | | |
|-----|--|----|
| 17. | Updating of information | 12 |
| 18. | Obtaining information from certain Authorities | 13 |
| 19. | Obtaining information from persons who are not registered | 13 |
| 20. | Providing false information in relation to registration or renewal | 14 |

PART 3

KEEPING RECORDS RELATING TO FOOD

Division 1 – Acquisition and Capture Records

- | | | |
|-----|--|----|
| 21. | Record of local acquisition of food | 14 |
| 22. | Record of acquisition of imported food | 15 |
| 23. | Capture of local aquatic products | 16 |

Division 2 – Supply Records

- | | | |
|-----|------------------------------------|----|
| 24. | Record of wholesale supply of food | 17 |
| 25. | Defence for retailers | 18 |

Division 3 – Duration of Keeping Records and their Inspection

- | | | |
|-----|-----------------------------|----|
| 26. | Duration of keeping records | 18 |
| 27. | Inspection of records | 19 |

28.	Use and disclosure of records by Director	19
-----	---	----

Division 4 – Exemptions

29.	Exemptions by Director	20
-----	------------------------	----

PART 4

FOOD SAFETY ORDERS

30.	Food safety orders	20
31.	Manner of making food safety orders, service and publication	22
32.	Contravention of food safety orders	23
33.	Actions taken in relation to food safety orders and provision of samples	23
34.	Power to obtain information or copies of documents	24
35.	Appeals to Municipal Services Appeals Board	25
36.	Compensation	25
37.	Seizure, marking or destruction of food	27
38.	Offence to tamper with mark, seal or other designation	28

PART 5

ADMINISTRATION AND ENFORCEMENT

Division 1 – Administration

39.	Authorization of public officers	28
40.	Delegation by Director	28
41.	Confidentiality	28
42.	Protection of public officers	29

Division 2 – Codes of Practice

43.	Codes of practice	30
-----	-------------------	----

44.	Use of codes of practice in legal proceedings	30
-----	---	----

Division 3 – Enforcement

45.	Power to obtain information	31
46.	General power of entry	33
47.	Entry under warrant	33
48.	Assistance for authorized officers on entry	33
49.	Power of arrest in certain cases	33
50.	Disposal of certain property	34

Division 4 – Offences

51.	Offences committed by bodies corporate	34
52.	Liability of employers and principals	35
53.	Defence for employees	35
54.	Obstruction of persons performing official functions etc.	36
55.	Proceedings against several persons	36
56.	Time limit for prosecutions	36

PART 6

GENERAL

57.	Method of giving or serving notice	37
58.	Amendment of Schedules	37
59.	Regulations	37
60.	Transitional provision – registration before commencement of Division 1 of Part 2	39
61.	Transitional provision – orders under section 78B of the Public Health and Municipal Services Ordinance	39
62.	Transitional provision – record keeping requirements	39
63.	Transitional provision – ice-making factories	39

PART 7

CONSEQUENTIAL AND RELATED AMENDMENTS

Division 1 – Public Health and Municipal Services Ordinance

64.	Section 2 amended (Interpretation)	40
65.	Section 56 amended (Regulations as to food and drugs hygiene)	41
66.	Section 57 amended (Live poultry, live reptiles and live fish deemed food for purposes of regulations)	41
67.	Section 67 amended (Presumptions)	41
68.	Part VA repealed (Additional powers in relation to food)	41
69.	Section 124I amended (Authority may prescribe fees and charges)	42
70.	Third Schedule amended (Designated Authorities)	42
71.	Sixth Schedule amended (Names in which proceedings for offences may be brought under section 131(1))	42
72.	Ninth Schedule amended (Penalties)	42

Division 2 – Customs and Excise Service Ordinance

73.	Schedule 2 amended (Ordinances referred to in sections 17 and 17A)	42
Schedule 1	Persons not required to be registered under Part 2	43
Schedule 2	Main food categories and food classifications	44
Schedule 3	Fees	47
Schedule 4	Form of warrant	48
Schedule 5	Arrestable offences	49

A BILL

To

Establish a registration scheme for food importers and food distributors; to require the keeping of records by persons who acquire, capture, import or supply food; to enable food import controls to be imposed; to re-enact Part VA of the Public Health and Municipal Services Ordinance; to make consequential and related amendments to that Ordinance and another Ordinance and to provide for incidental and connected matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Food Safety Ordinance.

(2) This Ordinance (except Part 3 and Division 1 of Part 2) comes into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette.

(3) Part 3 and Division 1 of Part 2 come into operation 6 months after the day on which section 7 comes into operation.

2. Interpretation

(1) In this Ordinance –

“air transshipment cargo” (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

“animal” (動物) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

“aquatic product” (水產) means fish, shellfish, amphibian or any other form of aquatic life other than a bird, mammal or reptile;

“authorized officer” (獲授權人員), in relation to a provision of this Ordinance, means –

- (a) a public officer authorized under section 39 in relation to that provision; or
- (b) a public officer authorized under section 39 in relation to this Ordinance generally;

“Director” (署長) means the Director of Food and Environmental Hygiene;

“drink” (飲品) does not include water other than –

- (a) aerated water;
- (b) distilled water;
- (c) water from natural springs, either in its natural state or with added mineral substances; and
- (d) water that is placed in a sealed container and is intended for human consumption;

“drug” (藥物) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

“export” (出口) means to take out or cause to be taken out of Hong Kong by air, land or water;

“food” (食物) includes –

- (a) drink;
- (b) ice;
- (c) chewing gum and other products of a similar nature and use;
- (d) smokeless tobacco products; and
- (e) articles and substances used as ingredients in the preparation of food,

but does not include –

- (f) live animals or live birds, other than live aquatic products;

(g) fodder or feeding stuffs for animals, birds or aquatic products; or

(h) articles or substances used only as drugs;

“food distribution business” (食物分銷業務) means a business the principal activity of which is the supply of food in Hong Kong by wholesale;

Note: See also subsection (2).

“food distributor” (食物分銷商) means a person who carries on a food distribution business;

“food importation business” (食物進口業務) means a business that imports food (whether or not that is the principal activity of the business);

“food importer” (食物進口商) means a person who carries on a food importation business;

“food safety order” (食物安全命令) means an order made under section 30 as varied from time to time under section 30(5);

“food transport operator” (食物運輸商) means a person who transports food under a contract of carriage but at no time has any proprietary interest in the food;

“function” (職能) includes duty;

“import” (進口) means to bring or cause to be brought into Hong Kong by air, land or water;

“local aquatic product” (本地水產) means an aquatic product captured from a local fishing vessel, whether in Hong Kong waters or in other waters;

“local fishing vessel” (本地漁船) means a Class III vessel (within the meaning of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D)) that is licensed under that Regulation;

“premises” (處所) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

“registered food distributor” (登記食物分銷商) means a person who is registered under Part 2 as a food distributor;

“registered food importer” (登記食物進口商) means a person who is registered under Part 2 as a food importer;

“Secretary” (局長) means the Secretary for Food and Health;

“smokeless tobacco product” (無煙煙草產品) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

“supply” (供應), in relation to food, means –

- (a) to sell the food;
- (b) to offer, keep or exhibit the food for sale;
- (c) to exchange or dispose of the food for consideration; or
- (d) for commercial purposes, to give the food as a prize or to make a gift of the food;

“wholesale” (批發) means the supply of food to a person who obtains the food for the purpose of supplying or causing to supply it to a third party in the course of business carried on by that person.

(2) In determining, for the purposes of the definition of “food distribution business” in subsection (1), whether the principal activity of a business is the supply of food in Hong Kong by wholesale, regard must be had only to those activities of the business that are related to the supply of food.

3. Food not intended for human consumption

(1) This Ordinance does not apply in relation to any food that is not intended for human consumption.

(2) For the purposes of this Ordinance –

- (a) any food commonly used for human consumption is presumed, unless there is evidence to the contrary, to be intended for human consumption;
- (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.

(3) Without limiting subsection (1) or (2), this Ordinance does not apply in relation to the propagation or promotion of growth of live aquatic products in captivity.

PART 2

REGISTRATION OF FOOD IMPORTERS AND DISTRIBUTORS

Division 1 – Requirement to be Registered

4. Requirement for food importers to be registered

(1) A person must not carry on a food importation business unless the person is registered under this Part as a food importer in respect of that business.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

(3) Subsection (1) does not apply if –

- (a) the person is specified in column 4 of Schedule 1;
- (b) the person is exempted, or is in a class of persons that is exempted, under section 6 in respect of the business;
- (c) food is imported solely for the purpose of export, and –
 - (i) the food is air transshipment cargo; or
 - (ii) during the period between import and export, the food remains in the vessel, vehicle or aircraft in which it was imported; or
- (d) food is imported solely in the course of business of a food transport operator.

5. Requirement for food distributors to be registered

(1) A person must not carry on a food distribution business unless the person is registered under this Part as a food distributor in respect of that business.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

(3) Subsection (1) does not apply if –

- (a) the person is specified in column 4 of Schedule 1;
- (b) the person is exempted, or is in a class of persons that is exempted, under section 6 in respect of the business; or
- (c) the person is registered under this Part as a food importer in respect of the business.

6. Exemptions by Director

(1) The Director may in writing exempt a person from the requirement to be registered under this Part in respect of a business.

(2) An exemption under subsection (1) may be granted subject to any conditions the Director considers appropriate.

(3) The Director may withdraw an exemption granted under subsection (1) on the ground that the conditions of the exemption have not been complied with.

(4) The Director may, by notice published in the Gazette, exempt a class of persons from the requirement to be registered under this Part in respect of a class of businesses.

Division 2 – Registration

7. Application for registration

(1) A person may apply to the Director to be registered under this Part in respect of a business –

- (a) as a food importer; or
 - (b) as a food distributor.
- (2) 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.
- (3) An application for registration –
 - (a) must be in the form specified by the Director;
 - (b) must identify the main food categories and food classifications, as set out in Schedule 2, of all food to be imported by the business (for a food importer) or supplied by wholesale by the business (for a food distributor);
 - (c) must include or be accompanied by any documents or information reasonably required by the Director for the purpose of considering the application; and
 - (d) must be made in the manner specified by the Director.
- (4) The Director may refuse to consider an application that does not comply with subsection (3).

8. Determination of application for registration

- (1) The Director must decide whether to grant or refuse an application for registration under this Part.
- (2) The Director may refuse an application if –
 - (a) the Director is satisfied that the applicant has repeatedly contravened this Ordinance in the period of 12 months immediately preceding the day on which the application was made;
 - (b) the applicant was previously registered under this Part in respect of the business and that registration was revoked in the period of 12 months immediately preceding the day on which the application was made; or

- (c) in the case of an application on behalf of a partnership, the registration under this Part of any partner on behalf of the partnership in respect of the business was revoked in the period of 12 months immediately preceding the day on which the application was made.

(3) The Director must give written notice to the applicant of the Director's decision on the application.

(4) If the Director refuses an application, the notice must include the reasons for refusal.

9. Registration

(1) If the Director grants an application for registration under this Part, the Director must register the applicant on payment of the registration fee specified in Schedule 3.

(2) On registration, the Director must assign a registration number and inform the applicant of that number.

(3) Unless revoked earlier, registration has effect for a period of 3 years, and may be renewed in accordance with this Part.

(4) Registration under this Part is non-transferable.

10. Conditions of registration

(1) The Director may impose any conditions on a person's registration under this Part that the Director considers appropriate.

(2) Conditions may be imposed under subsection (1) only at the time of registration or renewal of registration.

(3) A person who, without reasonable excuse, contravenes a condition of registration commits an offence and is liable to a fine at level 3 and to imprisonment for 3 months.

11. Application for renewal of registration

(1) A registered food importer or registered food distributor may apply for renewal of registration under this Part.

- (2) An application for renewal of registration –
 - (a) must be in the form specified by the Director;
 - (b) must include or be accompanied by any documents or information reasonably required by the Director for the purpose of considering the application; and
 - (c) must be made –
 - (i) no earlier than 4 months before the day on which the registration is due to expire; and
 - (ii) in the manner specified by the Director.

(3) The Director may refuse to consider an application that does not comply with subsection (2).

(4) If an application is made in accordance with this section but the Director has not made a decision on the application before the day on which the registration is due to expire, the registration continues in effect until it is renewed under section 13 or the Director gives notice to the applicant of the Director's decision to refuse the application.

12. Determination of application for renewal

(1) The Director must decide whether to grant or refuse an application for renewal of registration under this Part.

(2) The Director may refuse an application if the Director is satisfied that the applicant has repeatedly contravened this Ordinance in the period of 12 months immediately preceding the day on which the application was made.

(3) The Director must give written notice to the applicant of the Director's decision on the application.

(4) If the Director refuses an application, the notice must include the reasons for refusal.

13. Renewal of registration

(1) If the Director grants an application for renewal of registration under this Part, the Director must renew the registration on payment of the renewal fee specified in Schedule 3.

(2) Renewal of registration –

(a) takes effect on the expiry of the current registration or at the time of renewal, whichever is later; and

(b) unless revoked earlier, has effect for a period of 3 years.

(3) Registration under this Part may be renewed more than once.

14. Revocation of registration

(1) The Director may revoke a person's registration under this Part in respect of a business at the person's request.

(2) The Director may also revoke a person's registration under this Part in respect of a business if the Director is satisfied that –

(a) the person has repeatedly contravened this Ordinance in respect of that business in the previous 12 month period;

(b) in the case of a natural person, the person has died; or

(c) in the case of a business carried on by a corporation or partnership, the corporation has been wound up or the partnership has been dissolved.

(3) The Director must not revoke a person's registration under subsection (2)(a) unless the Director –

(a) gives written notice to the person of –

(i) the Director's intention to revoke the registration;
and

(ii) the grounds for revocation;

(b) permits the person to make written representations to the Director within the period specified in the notice; and

(c) considers any representations made within that period by the person.

(4) If the Director revokes a person's registration under subsection (2)(a), the Director must give written notice to the person as soon as practicable, specifying –

- (a) the reasons for the revocation; and
- (b) the day on which the revocation takes effect.

(5) Revocation of registration takes effect –

- (a) for revocation under subsection (1), on the day determined by the Director;
- (b) for revocation under subsection (2), on the expiry of 30 days after the day on which the decision to revoke the registration is made.

Division 3 – The Register

15. The register

(1) The Director must keep a register of registered food importers and registered food distributors.

(2) The register must contain, in relation to each registered food importer and registered food distributor –

- (a) the name of the food importation business or food distribution business;
- (b) the registration number;
- (c) any change in the information referred to in paragraphs (a) and (b); and
- (d) any other information the Director considers appropriate for the implementation of this Ordinance and any change in that information.

(3) The register may be kept in a form the Director considers appropriate, including in a form other than a documentary form as long as the information recorded under subsection (2) is capable of being reproduced in a legible form.

(4) For the purpose of enabling members of the public to ascertain whether a person is registered under this Part, the Director must make the register available for public inspection.

- (5) At all reasonable times, a member of the public may –
- (a) inspect the register without charge; and
 - (b) obtain a copy of an entry in or extract from the register on payment of the fee specified in Schedule 3.

Division 4 – Appeals in relation to Registration

16. Appeals to Municipal Services Appeals Board

(1) A person who is aggrieved by a decision of the Director under this Part may, within 28 days after becoming aware of the decision, appeal to the Municipal Services Appeals Board against the decision.

(2) An appeal under this section does not suspend the decision unless the Director decides otherwise.

Division 5 – General

17. Updating of information

(1) A person who is a registered food importer or registered food distributor must give written notice to the Director of any change in the information provided to the Director in, or in relation to, the person's application for registration or renewal of registration, within 30 days after the change occurs.

- (2) A person commits an offence if the person –
- (a) without reasonable excuse, fails to give notice to the Director under subsection (1);
 - (b) includes in a notice information that the person knows is false in a material particular; or
 - (c) recklessly includes in a notice information that is false in a material particular.

(3) A person who commits an offence under subsection (2) is liable to a fine at level 3 and to imprisonment for 3 months.

18. Obtaining information from certain Authorities

(1) The Director may request a specified Authority to provide any specified information held by the specified Authority in relation to a specified authorization issued or granted by the specified Authority.

(2) A request under subsection (1) must be made in writing.

(3) A specified Authority must comply with a request of the Director under subsection (1).

(4) In this section –

“specified Authority” (指明當局), in relation to a specified authorization, means

the person specified in column 3 of Schedule 1 opposite that authorization;

“specified authorization” (指明授權) means a licence, permit, permission or registration specified in column 2 of Schedule 1;

“specified information” (指明資料) means information that a person to whom a specified authorization is issued or granted would be required to provide to the Director in, or in relation to, an application for registration or renewal of registration under this Part if the person were required to be so registered.

19. Obtaining information from persons who are not registered

(1) The Director may require a person who carries on a food importation business or a business that supplies food in Hong Kong by wholesale but who is not registered under this Part in respect of that business to provide any information that the person would be required to provide to the Director in, or in relation to, an application for registration or renewal of registration under this Part if the person were required to be so registered.

(2) A requirement under subsection (1) must be made in writing.

- (3) A person commits an offence if the person –
- (a) without reasonable excuse, fails to comply with a requirement made under subsection (1); or
 - (b) in purported compliance with a requirement made under subsection (1) –
 - (i) provides information that the person knows is false in a material particular; or
 - (ii) recklessly provides information that is false in a material particular.

(4) A person who commits an offence under subsection (3) is liable to a fine at level 3 and to imprisonment for 3 months.

20. Providing false information in relation to registration or renewal

- (1) A person commits an offence if in, or in relation to, an application for registration or renewal of registration under this Part, the person –
- (a) provides information or a document that the person knows is false in a material particular; or
 - (b) recklessly provides information or a document that is false in a material particular.
- (2) A person who commits an offence under subsection (1) is liable to a fine at level 3 and to imprisonment for 3 months.

PART 3

KEEPING RECORDS RELATING TO FOOD

Division 1 – Acquisition and Capture Records

21. Record of local acquisition of food

- (1) A person who, in the course of business, acquires food in Hong Kong must record the following information about the acquisition of the food –
- (a) the date the food was acquired;

- (b) the name and contact details of the person from whom the food was acquired;
 - (c) the total quantity of the food;
 - (d) a description of the food.
- (2) A record must be made under this section within 72 hours after the time the food was acquired.
- (3) For the purposes of this section, food is acquired when the person acquiring it takes possession or control of the food.
- (4) This section does not apply to a person who is exempted, or is in a class of persons that is exempted, under section 29.
- (5) A person commits an offence if the person –
 - (a) without reasonable excuse, fails to make a record in accordance with this section;
 - (b) includes in a record information that the person knows is false in a material particular; or
 - (c) recklessly includes in a record information that is false in a material particular.
- (6) A person who commits an offence under subsection (5) is liable to a fine at level 3 and to imprisonment for 3 months.

22. Record of acquisition of imported food

- (1) A person who, in the course of business, imports food must record the following information about the acquisition of the food –
 - (a) the date the food was acquired;
 - (b) the name and contact details of the person from whom the food was acquired;
 - (c) the place from where the food was imported;
 - (d) the total quantity of the food;
 - (e) a description of the food.
- (2) A record must be made under this section at or before the time the food is imported.

(3) For the purposes of this section, food is acquired when the person acquiring it takes possession or control of the food.

(4) This section does not apply –

(a) to a person who is exempted, or is in a class of persons that is exempted, under section 29;

(b) to an acquisition of food that is imported solely for the purpose of exporting it, if –

(i) the food is air transshipment cargo; or

(ii) during the period between import and export, the food remains in the vessel, vehicle or aircraft in which it was imported; or

(c) to an acquisition of food that is imported solely in the course of business of a food transport operator.

(5) A person commits an offence if the person –

(a) without reasonable excuse, fails to make a record in accordance with this section;

(b) includes in a record information that the person knows is false in a material particular; or

(c) recklessly includes in a record information that is false in a material particular.

(6) A person who commits an offence under subsection (5) is liable to a fine at level 3 and to imprisonment for 3 months.

23. Capture of local aquatic products

(1) A person who captures local aquatic products and who, in the course of business, supplies them in Hong Kong must record the following information about the capture –

(a) the date or period of the capture;

(b) the common name of the local aquatic products;

(c) the total quantity of the local aquatic products;

(d) the area of the capture.

(2) A record must be made under this section at or before the time the supply takes place.

(3) This section does not apply to a person who is exempted, or is in a class of persons that is exempted, under section 29.

(4) A person commits an offence if the person –

(a) without reasonable excuse, fails to make a record in accordance with this section;

(b) includes in a record information that the person knows is false in a material particular; or

(c) recklessly includes in a record information that is false in a material particular.

(5) A person who commits an offence under subsection (4) is liable to a fine at level 3 and to imprisonment for 3 months.

Division 2 – Supply Records

24. Record of wholesale supply of food

(1) A person who, in the course of business, supplies food in Hong Kong by wholesale must record the following information about the supply –

(a) the date the food was supplied;

(b) the name and contact details of the person to whom the food was supplied;

(c) the total quantity of the food;

(d) a description of the food.

(2) A record must be made under this section within 72 hours after the time the supply took place.

(3) This section does not apply to a person who is exempted, or is in a class of persons that is exempted, under section 29.

(4) A person commits an offence if the person –

(a) without reasonable excuse, fails to make a record in accordance with this section;

- (b) includes in a record information that the person knows is false in a material particular; or
- (c) recklessly includes in a record information that is false in a material particular.

(5) A person who commits an offence under subsection (4) is liable to a fine at level 3 and to imprisonment for 3 months.

25. Defence for retailers

(1) It is a defence for a person charged with an offence under section 24(4)(a) in relation to a supply of food to show that –

- (a) the person’s normal business is the supply of food by retail; and
- (b) it was reasonable for the person to assume that the supply was not a wholesale supply.

(2) In this section –
“retail” (零售) means the supply of food to a person who obtains it other than for the purpose of wholesale.

Division 3 – Duration of Keeping Records and their Inspection

26. Duration of keeping records

(1) A person must keep a record made under this Part (other than a record relating to live aquatic products) for the period specified in the following table –

Column 1	Column 2
Shelf-life of food	Period for which record must be kept
3 months or less	3 months after the date the food was acquired, captured or supplied
Greater than 3 months	24 months after the date the food was acquired, captured or supplied

(2) A person must keep a record made under this Part relating to live aquatic products for a period of 3 months after the date the products were acquired, captured or supplied.

(3) A person who, without reasonable excuse, fails to keep a record for the period specified in subsection (1) or (2) commits an offence and is liable to a fine at level 3 and to imprisonment for 3 months.

(4) In this section –
“shelf-life” (保質期), in relation to food, means the period during which the food maintains its microbiological safety and sensory qualities at a specific storage temperature as determined by the supplier of the food.

27. Inspection of records

(1) A person must produce for inspection any record required to be kept by the person under this Part when required to do so by the Director or an authorized officer.

(2) The Director or authorized officer may make a copy of or take an extract from a record produced by the person.

(3) The person must provide any assistance reasonably required by the Director or authorized officer to understand or interpret a record produced by the person.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable to a fine at level 3 and to imprisonment for 3 months.

28. Use and disclosure of records by Director

(1) The Director may use a record produced under section 27, or any information contained in the record, for the purpose of exercising powers or performing functions under this Ordinance.

(2) The Director may disclose to the public any information contained in a record produced under section 27 if the Director is satisfied that public disclosure of the information is necessary for the protection of public health.

Division 4 – Exemptions

29. Exemptions by Director

(1) The Director may in writing exempt a person from the requirement to keep a record under this Part.

(2) An exemption under subsection (1) may be granted subject to any conditions the Director considers appropriate.

(3) The Director may withdraw an exemption granted under subsection (1) on the ground that the conditions of the exemption have not been complied with.

(4) The Director may, by notice published in the Gazette, exempt a class of persons from the requirement to keep a record under this Part.

PART 4

FOOD SAFETY ORDERS

30. Food safety orders

(1) The Director may make an order to do any one or more of the following –

- (a) prohibit the import of any food for the period specified in the order;
- (b) prohibit the supply of any food for the period specified in the order;
- (c) direct that any food supplied be recalled and specify the manner in which, and the period within which, the recall is to be conducted;
- (d) direct that any food be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which, and the period within which, the impounding, isolation, destruction or disposal is to be conducted;
- (e) prohibit the carrying on of an activity in relation to any food, or permit the carrying on of any such activity in

accordance with conditions specified in the order, for the period specified in the order.

(2) The Director may only make a food safety order if the Director has reasonable grounds at the time of making the order to believe that the making of the order is necessary –

- (a) to prevent or reduce a possibility of danger to public health; or
- (b) to mitigate any adverse consequence of a danger to public health.

(3) In determining whether there are reasonable grounds under subsection (2), the Director may, in so far as is practicable and reasonable, take into account all factors relevant to the circumstances of the case that the Director considers appropriate, including but not limited to the following –

- (a) information obtained from any importer or supplier of the food;
- (b) information, reports or testing results obtained from a public analyst;
- (c) information (including reports, alerts, warnings and advisories) obtained from any international food or health authority or the food or health authority of any place;
- (d) the time required for obtaining reports or testing results from a public analyst;
- (e) characteristics of any hazard in the food, the level of the hazard in the food, consumption pattern of the food and the exposure of the general public and vulnerable groups to the food;
- (f) any statutory requirement relating to the food;
- (g) information on the source and extent of the hazard, in particular on whether the hazard exists throughout or in

any part of the manufacture or supply chain or is limited to a particular batch of food.

- (4) A food safety order must specify –
- (a) the person, persons or class of persons intended to be bound by the order;
 - (b) particulars of the food that is the subject of the order;
 - (c) the reason for making the order and the principal factors that led to the making of the order;
 - (d) the prohibition or action required, as the case may be, and conditions (if any) under the order;
 - (e) the period referred to in subsection (1)(a), (b), (c), (d) or (e), as the case may be; and
 - (f) the provision under which the order is made and the consequences of a contravention of any term of the order.

(5) The Director may, in the same manner as a food safety order was made, vary or revoke the order, and section 31 applies, with the necessary modifications, in relation to the variation or revocation of a food safety order under this subsection as it applies in relation to a food safety order.

(6) A food safety order is not subsidiary legislation.

(7) In this section –

“hazard” (危害) means a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect;

“public analyst” (政府分析員) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132).

31. Manner of making food safety orders, service and publication

- (1) A food safety order must be in writing and may be addressed to –
- (a) a particular person or particular persons;
 - (b) a class of persons; or
 - (c) all persons.

- (2) A food safety order addressed to a particular person or particular persons –
- (a) must be served on that person, or each of those persons; and
 - (b) takes effect in relation to a person when it is served on that person.
- (3) A food safety order addressed to a class of persons or all persons –
- (a) must be published in the Gazette; and
 - (b) takes effect at the time specified in the order.
- (4) A food safety order is binding on the person or persons to whom it is addressed.

32. Contravention of food safety orders

(1) A person bound by a food safety order who contravenes a term of the order commits an offence and is liable to a fine at level 6 and to imprisonment for 12 months.

(2) It is not a defence for the person to show that the food concerned is the subject of a licence, permit or any other form of authorization issued or granted under this or any other Ordinance.

33. Actions taken in relation to food safety orders and provision of samples

(1) The Director may serve on a person bound by a food safety order a notice requiring the person (at the time or times, or within the period, specified in the notice) to –

- (a) inform the Director of the actions taken by the person in relation to the order; or
- (b) provide to the Director samples of the food that is the subject of the order, in the quantity specified in the notice, for analysis, or for bacteriological or other examination.

(2) If a sample of food is provided to the Director in compliance with a notice under subsection (1)(b), the Director must pay to the person appearing

to have the lawful custody of the food the market price of the sample or, if the market price is unknown or not readily ascertainable, a reasonable price.

(3) A person on whom a notice has been served under subsection (1) commits an offence if the person –

- (a) fails to comply with the notice; or
- (b) in purported compliance with the notice –
 - (i) provides information that the person knows is false in a material particular; or
 - (ii) recklessly provides information that is false in a material particular.

(4) A person who commits an offence under subsection (3) is liable to a fine at level 3 and to imprisonment for 3 months.

34. Power to obtain information or copies of documents

(1) If the Director has reasonable grounds to believe that a person possesses any information or document that may assist the Director in deciding whether to make, vary or revoke a food safety order, the Director may serve on the person a notice requiring the person to –

- (a) provide the information specified in the notice within the period specified in the notice; or
- (b) produce the document specified in the notice at the time and place specified in the notice and permit an authorized officer to make copies of the document at that time and place.

(2) A person on whom a notice has been served under subsection (1) commits an offence if the person –

- (a) fails to comply with the notice; or
- (b) in purported compliance with the notice –

- (i) provides information or produces a document that the person knows is false in a material particular;
or
- (ii) recklessly provides information or produces a document that is false in a material particular.

(3) A person who commits an offence under subsection (2) is liable to a fine at level 3 and to imprisonment for 3 months.

35. Appeals to Municipal Services Appeals Board

(1) A person bound by a food safety order who is aggrieved by the order may, within 28 days after becoming bound by the order, appeal to the Municipal Services Appeals Board against the order as originally made.

(2) A person bound by a food safety order who is aggrieved by a variation of the order under section 30(5) may, within 28 days after becoming bound by the variation, appeal to the Municipal Services Appeals Board against the order as so varied.

(3) In the case of an appeal against a food safety order addressed as referred to in section 31(1)(b) or (c), if the Municipal Services Appeals Board Ordinance (Cap. 220) authorizes or requires any document to be served or any notice to be given to the persons bound by the order, the document may be served or the notice may be given by –

- (a) publication in the Gazette; or
- (b) any other means specified by the Chairman of the Municipal Services Appeals Board by notice in writing signed by the Chairman.

(4) An appeal under this section does not suspend the food safety order unless the Director decides otherwise.

36. Compensation

(1) A person bound by a food safety order may apply for an amount of compensation, recoverable as a civil debt due from the Government, that is just

and equitable in all the circumstances of the case, for any loss of a kind set out in subsection (3).

(2) The person is entitled to compensation only if the person proves that –

- (a) the Director did not have reasonable grounds to make the order at the time of making the order or to vary the order at the time of a variation of the order; and
- (b) the person has suffered the relevant loss.

(3) The losses referred to in subsection (1) are the following losses arising as a direct result of compliance with the food safety order or as a direct result of the exercise of a power under section 37(1) in relation to the food safety order –

- (a) total or partial loss of the food that is the subject of the order and that –
 - (i) has been destroyed or otherwise disposed of;
 - (ii) is no longer fit for human consumption; or
 - (iii) is depreciated in value;
- (b) costs or expenditure actually and directly incurred.

(4) The amount of compensation recoverable –

- (a) in relation to a loss of a kind set out in subsection (3)(a), must not exceed the market value of the food immediately before the time of making the food safety order or immediately before the time of the variation, as the case may be; and
- (b) in relation to a loss of a kind set out in subsection (3)(b), must not exceed the actual amount of the costs or expenditure incurred.

(5) An application under subsection (1) may be made –

- (a) to the Small Claims Tribunal, for claims up to the maximum jurisdiction of the Tribunal; or

(b) to the District Court, irrespective of the amount claimed.

37. Seizure, marking or destruction of food

(1) If it appears to an authorized officer that a term of a food safety order has been contravened by a person bound by the order in respect of any food, the officer may –

- (a) seize and remove from the person any of the food or any package in which it is contained;
- (b) affix to any of the food that is in the person's possession a mark, seal or other designation; or
- (c) destroy or otherwise dispose of any of the food that is in the person's possession or cause it to be destroyed or otherwise disposed of.

(2) The Director may, in a court of competent jurisdiction, recover from a person referred to in subsection (1) any reasonable costs incurred under subsection (1)(a), (b) or (c) as if those costs were a debt due to the Director from that person.

(3) Before an authorized officer destroys or otherwise disposes of any food or causes any food to be destroyed or otherwise disposed of under subsection (1)(c), the authorized officer must record a description and other details that are sufficient to identify the food.

(4) The Director must keep a record made under subsection (3) for a period of not less than 12 months.

(5) If a court convicts a person of an offence under this Part, the court may order that any one or more of the following is forfeited –

- (a) any food to which the conviction relates;
- (b) any similar food found on the person's premises or in the person's possession at the time of the commission of the offence or of the seizure of the food to which the conviction relates;

(c) any package in which food referred to in paragraph (a) or (b) is contained.

(6) Any food or package forfeited under subsection (5) may be disposed of in the manner specified by the Director.

38. Offence to tamper with mark, seal or other designation

(1) A person commits an offence if the person, with intent to deceive another person, removes, alters or obliterates a mark, seal or other designation affixed under section 37(1)(b).

(2) A person who commits an offence under subsection (1) is liable to a fine at level 5 and to imprisonment for 6 months.

PART 5

ADMINISTRATION AND ENFORCEMENT

Division 1 – Administration

39. Authorization of public officers

(1) The Director may authorize a public officer to be an authorized officer for the purposes of this Ordinance.

(2) An authorization –

(a) must be in writing; and

(b) may be given in relation to specified provisions of this Ordinance or in relation to this Ordinance generally.

40. Delegation by Director

The Director may in writing delegate any function or power of the Director under this Ordinance to a public officer or class of public officers.

41. Confidentiality

(1) Except as provided by subsection (2), a public officer must not disclose or give to another person any information concerning a trade, business or manufacturing secret that has come to the knowledge of, or into the

possession of, the public officer in the course of the public officer's exercise of powers or performance of functions under this Ordinance.

(2) A public officer may disclose or give to another person information referred to in subsection (1) –

- (a) in the public officer's exercise of powers or performance of functions under this Ordinance;
- (b) under an order of a court under subsection (3); or
- (c) with the consent in writing of all persons who appear to the public officer, after reasonable inquiry, to be interested in the confidentiality of the information.

(3) If in any proceedings a court considers that the justice of the case so requires, the court may order the disclosure of information referred to in subsection (1).

(4) A public officer who contravenes subsection (1) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

(5) It is a defence for a public officer charged with an offence under this section to show that at the time of the alleged offence the defendant –

- (a) believed that there was lawful authority for the defendant to disclose or give the information to the other person and the defendant had no reasonable cause to believe otherwise; or
- (b) did not know and had no reasonable cause to believe that the information disclosed or given was information referred to in subsection (1).

42. Protection of public officers

(1) A public officer is not personally liable for anything done or omitted to be done by the public officer in good faith in the exercise of a power or performance of a function or purported exercise of a power or purported performance of a function under this Ordinance.

(2) The protection conferred by subsection (1) does not affect any liability of the Government for the act or omission.

Division 2 – Codes of Practice

43. Codes of practice

(1) The Director may issue any code of practice that in the Director's opinion is suitable for providing practical guidance in respect of this Ordinance.

(2) If a code of practice is issued under subsection (1), the Director must, by notice published in the Gazette –

- (a) identify the code;
- (b) specify the date on which the code is to take effect; and
- (c) specify for which of the provisions of this Ordinance the code is issued.

(3) The Director may from time to time revise the whole or any part of a code of practice issued under subsection (1).

(4) Subsection (2) applies, with the necessary modifications, in relation to any revision made under subsection (3) as it applies in relation to the issue of a code of practice.

(5) The Director may at any time revoke a code of practice issued under subsection (1).

(6) If a code of practice is revoked under subsection (5), the Director must, by notice published in the Gazette –

- (a) identify the code; and
- (b) specify the date on which the revocation is to take effect.

44. Use of codes of practice in legal proceedings

(1) A failure by a person to observe a provision of a code of practice does not of itself render the person liable to any civil or criminal proceedings.

(2) However, if in any legal proceedings the court is satisfied that a provision of a code of practice is relevant to determining a matter that is in issue in the proceedings –

- (a) the code of practice is admissible in evidence in the proceedings; and
- (b) proof that the person contravened, or did not contravene, the provision may be relied on by any party to the proceedings as tending to establish or negate that matter.

(3) In any legal proceedings, a code of practice that appears to the court to be the subject of a notice under section 43 is to be taken to be the subject of that notice in the absence of evidence to the contrary.

(4) In this section –

“code of practice” (實務守則) means a code of practice issued under section 43 as revised from time to time under section 43(3);

“court” (法院) means –

- (a) a court as defined by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);
- (b) a magistrate; or
- (c) the Municipal Services Appeals Board;

“legal proceedings” (法律程序) includes proceedings of the Municipal Services Appeals Board on an appeal under this Ordinance.

Division 3 – Enforcement

45. Power to obtain information

(1) This section applies if the Director –

- (a) has reasonable grounds to suspect that a provision of this Ordinance has been contravened; and
- (b) has reasonable grounds to believe that a person has information or a document relating to the contravention.

(2) The Director may serve on the person a notice requiring the person –

- (a) to provide, within the period specified in the notice, information of a kind specified in the notice; or

(b) to produce, at the time and place specified in the notice, any document in the person's possession or control of a kind specified in the notice.

(3) Without limiting subsection (2), the kinds of information or documents that may be specified in a notice under that subsection include –

(a) information or documents indicating whether or not a person is a food importer or food distributor;

(b) information or documents relating to any transaction relating to food;

(c) information or documents relating to –

(i) any information contained, or required to be contained, in an application for registration or renewal of registration under Part 2;

(ii) any documents accompanying, or required to accompany, such an application; or

(iii) any other information or documents provided, or required to be provided, in relation to such an application.

(4) A person on whom a notice has been served under subsection (2) commits an offence if the person –

(a) without reasonable excuse, fails to comply with the notice;
or

(b) in purported compliance with the notice –

(i) provides information or produces a document that the person knows is false in a material particular;
or

(ii) recklessly provides information or produces a document that is false in a material particular.

(5) A person who commits an offence under subsection (4) is liable to a fine at level 3 and to imprisonment for 3 months.

46. General power of entry

(1) An authorized officer may enter any premises or vessel used for business purposes at any time during which business is carried on, for the purpose of –

- (a) the enforcement of this Ordinance; or
- (b) the exercise of any power or the performance of any function of the authorized officer or the Director under this Ordinance.

(2) On entry, the authorized officer must produce evidence of his or her written authorization under section 39, if so required.

47. Entry under warrant

(1) A magistrate may, by warrant, authorize an authorized officer to enter, by force if necessary, any premises or vessel referred to in section 46(1) for a purpose referred to in that section if the magistrate is satisfied on sworn information in writing that –

- (a) admission to the premises or vessel has been refused or refusal is apprehended; and
- (b) there is reasonable ground for entry to the premises or vessel for a purpose referred to in section 46(1).

(2) A warrant must be in the form specified in Schedule 4.

(3) A warrant continues in force until the purpose for which the entry is necessary has been satisfied.

48. Assistance for authorized officers on entry

An authorized officer entering premises or a vessel under section 46 or 47 may be accompanied by any persons the authorized officer considers necessary.

49. Power of arrest in certain cases

(1) If an authorized officer reasonably suspects that a person has committed or is committing an offence under an enactment specified in Schedule 5, the authorized officer may arrest the person without a warrant.

(2) If a person forcibly resists the attempt of an authorized officer to arrest him or her or attempts to evade arrest, the authorized officer may use all reasonable means necessary to make the arrest.

(3) If an authorized officer arrests a person under this section, the authorized officer must immediately take the person to the nearest police station or hand the person over to the custody of a police officer, to be dealt with in accordance with the Police Force Ordinance (Cap. 232).

50. Disposal of certain property

(1) If the Director or an authorized officer comes into possession of any property under this Ordinance, section 102 of the Criminal Procedure Ordinance (Cap. 221) applies as if –

- (a) the Director or authorized officer were the police within the meaning of that section; and
- (b) the property were property that had come into the possession of the police in connection with an offence.

(2) Subsection (1) does not apply if the manner of disposal of the property is provided for by another provision of this Ordinance.

Division 4 – Offences

51. Offences committed by bodies corporate

(1) If an offence under this Ordinance by a body corporate is proved to have been committed with the consent or connivance of an officer of the body corporate, the officer also commits the offence and is liable to be proceeded against and punished accordingly.

(2) In this section –
“officer” (人員), of a body corporate, means –

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) a person purporting to act in the capacity of a person referred to in paragraph (a); or

- (c) if the affairs of the body corporate are managed by its members, a member of the body corporate who is concerned in the management of the body corporate.

52. Liability of employers and principals

(1) An act done or omission made by an employee in the course of employment is to be treated for the purposes of this Ordinance as done or made by the employer, as well as by the employee.

(2) An act done or omission made by an agent of another person with the authority (whether express or implied and whether precedent or subsequent) of that other person is to be treated for the purposes of this Ordinance as done or made by that other person, as well as by the agent.

(3) In a proceeding for an offence under section 4, 5, 21(5)(a), 22(5)(a), 23(4)(a), 24(4)(a), 26(3) or 32(1) brought against a person in respect of an act or omission alleged to have been done or made by an employee or agent of the person, the person is liable to be convicted of and be punished for that offence unless the person establishes the defence described in subsection (4).

(4) If a proceeding is brought against a person by virtue of subsection (3), it is a defence for the person to show that the person exercised all due diligence to prevent the employee or agent from –

- (a) doing the act or making the omission; or
- (b) doing an act or making an omission of that description in the course of the employee's employment or the agent's authority.

53. Defence for employees

It is a defence for an employee charged with an offence under this Ordinance to show that –

- (a) the act or omission of the employee was done or made in the course of the employee's employment and under

instructions given by the employer in the course of that employment; and

- (b) the employee was not, at the relevant time, in a position to make or influence a decision regarding that act or omission.

54. Obstruction of persons performing official functions etc.

(1) A person who wilfully obstructs, resists or uses abusive language to a person who is performing functions under this Ordinance, or under an order made or warrant issued under this Ordinance, commits an offence and is liable to a fine at level 4 and to imprisonment for 6 months.

(2) Subsection (1) does not apply if the conduct constitutes an offence against another provision of this Ordinance.

55. Proceedings against several persons

(1) If proceedings under this Ordinance are competent against several persons in respect of their joint act or default, any one or more of them may be proceeded against without proceeding against the others.

(2) If an offence consists of a failure to comply with a notice served by a public officer under this Ordinance and a similar notice was served on several persons in respect of the same matter –

- (a) any one or more of the persons may be proceeded against without proceeding against the others; and
- (b) if more than one person is proceeded against, the court may treat them as if they were joint offenders.

56. Time limit for prosecutions

Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under this Ordinance within 6 months after the offence is discovered by, or comes to the notice of, the Director.

PART 6

GENERAL

57. Method of giving or serving notice

The Director may give a notice or other document to a person, or serve a notice or other document on a person, under this Ordinance –

- (a) by delivering it to the person;
- (b) by sending it by registered post addressed to the last known place of business or residence of the person; or
- (c) by leaving it with an adult occupier of that place or posting it in a prominent position at that place.

58. Amendment of Schedules

(1) The Secretary may, by notice published in the Gazette, amend Schedule 1, 3 or 4.

(2) The Director may, by notice published in the Gazette, amend Schedule 2.

(3) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 5.

59. Regulations

(1) The Secretary may make regulations –

- (a) providing for any matters that are necessary for giving full effect to the purposes and provisions of this Ordinance;
- (b) prohibiting, restricting or regulating the importation of food of a specified class; and
- (c) generally for the better carrying out of the purposes and provisions of this Ordinance.

(2) Regulations made under subsection (1) may –

- (a) make different provisions for different circumstances and provide for a particular case or class of cases;

- (b) be made so as to apply only in the circumstances prescribed by the regulations;
- (c) specify forms for the purposes of the regulations; and
- (d) prescribe offences for contraventions of the regulations, punishable by a fine, imprisonment or both.

(3) The maximum fine that may be prescribed for an offence is level 6 and the maximum imprisonment is 6 months. In addition, in the case of a continuing offence, a further fine not exceeding \$1,500 for each day during which the offence continues may be prescribed.

(4) Regulations made under subsection (1) may –

- (a) empower a health officer to –
 - (i) permit the importation of food of a specified class subject to any conditions the health officer may specify;
 - (ii) require imported food of a specified class to be submitted or made available for inspection by a health inspector;
 - (iii) impose any conditions or issue any directions with regard to imported food of a specified class as may appear to the health officer desirable for the purpose of ensuring that the food is sound, wholesome or fit for human consumption; and
- (b) prohibit the contravention of any condition, requirement or direction referred to in paragraph (a).

(5) In this section –

“health inspector” (衛生督察) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

“health officer” (衛生主任) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132).

60. Transitional provision – registration before commencement of Division 1 of Part 2

Despite section 9(3), if a food importer or food distributor is registered under Part 2 before the date on which Division 1 of that Part commences, the registration has effect, unless revoked earlier, for the period ending 3 years after that date.

61. Transitional provision – orders under section 78B of the Public Health and Municipal Services Ordinance

An order in force under section 78B of the Public Health and Municipal Services Ordinance (Cap. 132) immediately before the date on which section 68 of this Ordinance commences remains in force on and after that date in accordance with its terms as if it were a food safety order and may be varied or revoked accordingly.

62. Transitional provision – record keeping requirements

(1) Section 21 applies to food that is acquired on or after the date on which that section commences.

(2) Section 22 applies to food that is imported on or after the date on which that section commences whether the food was acquired before, on or after that date.

(3) Section 23 applies to local aquatic products that are supplied on or after the date on which that section commences whether the local aquatic products were captured before, on or after that date.

(4) Section 24 applies to food that is supplied by wholesale on or after the date on which that section commences.

63. Transitional provision – ice-making factories

During the period of 6 months beginning on the date on which section 64(2) commences, a person does not commit an offence under section 35 of the Food Business Regulation (Cap. 132 sub. leg. X) for a contravention of section 31(1)

of that Regulation only because the person carries on, or causes, permits or suffers to be carried on, a business that manufactures or prepares ice, otherwise than under and in accordance with a licence granted under that Regulation.

PART 7

CONSEQUENTIAL AND RELATED AMENDMENTS

Division 1 – Public Health and Municipal Services Ordinance

64. Section 2 amended (Interpretation)

(1) Section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132) is amended, in the definition of “drink” –

(a) in the Chinese text, by repealing “不屬於” and substituting “不屬”;

(b) in the Chinese text, by repealing paragraph (c) and substituting –

“(c) 不論是處於天然狀態或有加入礦物質的天然泉水；及”;

(c) by repealing paragraph (d) and substituting –

“(d) water that is placed in a sealed container and is intended for human consumption;”.

(2) Section 2(1) is amended by repealing the definition of “food” and substituting –

““food” (食物) includes –

(a) drink;

(b) ice;

(c) chewing gum and other products of a similar nature and use;

(d) smokeless tobacco products; and

(e) articles and substances used as ingredients in the preparation of food,

but does not include –

- (f) live animals or live birds, other than live aquatic products;
 - (g) fodder or feeding stuffs for animals, birds or aquatic products; or
 - (h) articles or substances used only as drugs;”.
- (3) Section 2(1) is amended by adding –
- ““aquatic product” (水産) means fish, shellfish, amphibian or any other form of aquatic life other than a bird, mammal or reptile;”.

65. Section 56 amended (Regulations as to food and drugs hygiene)

Section 56(1)(b) is amended by repealing “and ice,”.

66. Section 57 amended (Live poultry, live reptiles and live fish deemed food for purposes of regulations)

(1) Section 57 is amended, in the heading, by repealing “, **live reptiles and live fish**” and substituting “**and live reptiles**”.

(2) Section 57 is amended by repealing “, live reptiles and live fish” (wherever appearing) and substituting “and live reptiles”.

67. Section 67 amended (Presumptions)

(1) Section 67(1)(a), (b) and (c) is amended by repealing “until the contrary is proved” and substituting “unless there is evidence to the contrary”.

(2) Section 67(2) is amended by repealing “until the contrary is proved” and substituting “unless there is evidence to the contrary”.

68. Part VA repealed (Additional powers in relation to food)

Part VA is repealed.

69. Section 124I amended (Authority may prescribe fees and charges)

(1) Section 124I(1)(e) is amended by repealing “, live reptiles and live fish” and substituting “and live reptiles”.

(2) Section 124I(1)(e)(ii)(B) is repealed.

70. Third Schedule amended (Designated Authorities)

The Third Schedule is amended by repealing the entries relating to sections 78B, 78E, 78F, 78G, 78H, 78I and 78K.

71. Sixth Schedule amended (Names in which proceedings for offences may be brought under section 131(1))

The Sixth Schedule is amended by repealing the entries relating to sections 78D, 78E, 78F and 78I.

72. Ninth Schedule amended (Penalties)

The Ninth Schedule is amended by repealing the entries relating to sections 78D(1), 78E(3), 78F(2) and 78I(3).

Division 2 – Customs and Excise Service Ordinance

73. Schedule 2 amended (Ordinances referred to in sections 17 and 17A)

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding “Food Safety Ordinance (of 2010)”.

SCHEDULE 1

[ss. 4, 5, 18 &
58]PERSONS NOT REQUIRED TO BE REGISTERED
UNDER PART 2

Column 1	Column 2	Column 3	Column 4
Item	Authorization	Authority	Person not required to be registered under Part 2
1.	A permission under section 30 of the Food Business Regulation (Cap. 132 sub. leg. X)	Director of Food and Environmental Hygiene	The holder of the permission
2.	A licence under Part IV of the Food Business Regulation (Cap. 132 sub. leg. X)	Director of Food and Environmental Hygiene	The licensee
3.	A licence under Part III of the Frozen Confections Regulation (Cap. 132 sub. leg. AC)	Director of Food and Environmental Hygiene	The licensee
4.	A licence under Part II of the Hawker Regulation (Cap. 132 sub. leg. AI)	Director of Food and Environmental Hygiene	The licensee
5.	A licence under Part III of the Milk Regulation (Cap. 132 sub. leg. AQ)	Director of Food and Environmental Hygiene	The licensee
6.	A licence under the Offensive Trades Regulation (Cap. 132 sub. leg. AX)	Director of Food and Environmental Hygiene	The licensee
7.	A licence under Part II of the Slaughterhouses Regulation (Cap. 132 sub. leg. BU)	Director of Food and Environmental Hygiene	The licensee
8.	Registration as a stockholder of a reserved commodity under regulation 13 of the Reserved Commodities (Control of Imports, Exports	Director-General of Trade and Industry	The registered stockholder

	and Reserve Stocks) Regulations (Cap. 296 sub. leg. A)		
9.	A licence under section 8 or a permit under section 14 of the Marine Fish Culture Ordinance (Cap. 353)	Director of Agriculture, Fisheries and Conservation	The licensee or permittee
10.	A licence under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D) in respect of a Class III vessel (within the meaning of that Regulation)	Director of Marine	The certificated owner (within the meaning of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D)) of the vessel

SCHEDULE 2

[ss. 7 & 58]

MAIN FOOD CATEGORIES AND FOOD CLASSIFICATIONS

Column 1	Column 2	Column 3
Item	Main food category	Food classification
1.	Cereal and grain products (other than bakery products and snack food)	(a) Cereals, rice, wheat (b) Pasta, noodles (c) Flour, starch, substitute flour (d) Breakfast cereal and other cereal products
2.	Fruit and vegetables (other than snack food, juices and Chinese herbs)	(a) Fruit (b) Fruit products (c) Vegetables, including mushrooms, fungi and seaweed (d) Vegetable products, including mushroom, fungi and seaweed

- products
- (e) Nuts and seeds
 - (f) Nut and seed products
 - (g) Beans
 - (h) Bean products
3. Sashimi, sushi and ready-to-eat raw oysters
- (a) Sashimi
 - (b) Sushi
 - (c) Ready-to-eat raw oysters
4. Aquatic products (other than snack food, sashimi and ready-to-eat raw oysters)
- (a) Wild-caught coral reef fish (live and unprocessed)
 - (b) Other marine fish (live and unprocessed)
 - (c) Freshwater fish (live and unprocessed)
 - (d) Crustaceans, molluscs (live and unprocessed)
 - (e) Puffer fish (processed and unprocessed)
 - (f) Other edible aquatic products (live and unprocessed)
 - (g) Dried seafood
 - (h) Other processed aquatic products
5. Meat and meat products, (other than snack food and sashimi)
- (a) Frozen, chilled, fresh game (unprocessed)
 - (b) Frozen, chilled, fresh meat (unprocessed)
 - (c) Frozen, chilled, fresh poultry (unprocessed)
 - (d) Processed game products
 - (e) Processed meat products

- (f) Processed poultry products
- 6. Eggs and egg products
 - (a) Chicken eggs
 - (b) Duck eggs, goose eggs, quail eggs and other poultry eggs
 - (c) Egg products
- 7. Milk and dairy products (other than infant/follow-up/growing-up formula)
 - (a) Milk and milk beverages
 - (b) Cream, cheese, butter
 - (c) Condensed milk, evaporated milk, filled milk products
 - (d) Dried milk
 - (e) Other dairy products
- 8. Frozen confections
Ice cream, popsicles, frozen yogurt and others
- 9. Fat and oil
 - (a) Animal fat and oil, vegetable fat and oil, other fat and oil
 - (b) Salad dressing
- 10. Beverages (other than milk and dairy products)
 - (a) Soft drink and other carbonated drinks
 - (b) Fresh fruit and vegetable juice, fruit and vegetable juice drink
 - (c) Coffee beans, tea leaves, instant drink mixes
 - (d) Bottled water and edible ice
 - (e) Other non-alcoholic beverages
 - (f) Beer and ales
 - (g) Other alcoholic beverages
- 11. Sugars and sweets
 - (a) Sugars, frostings, toppings, dessert sauces

- | | | |
|-----|---|--|
| | | (b) Sweeteners |
| | | (c) Honey, molasses, syrups |
| | | (d) Jams/preserves, jellies |
| | | (e) Candy, chocolate, chewing gum |
| 12. | Dim sum, Chinese pastry, mixed dishes, desserts, bakery products and snack food (other than candy, chocolate and chewing gum) | (a) Dim sum, Chinese pastry
(b) Mixed dishes
(c) Desserts, bakery products
(d) Snack food (puffer fish products)
(e) Snack food (others) |
| 13. | Salts, condiments and sauces, herbs and spices | (a) Vinegar, gravy, savoury sauces, including soya sauces, oyster sauces
(b) Salts, condiments
(c) Herbs and spices |
| 14. | Chinese herbs and their products | (a) Chinese herbs
(b) Chinese herb products |
| 15. | Infant/follow-up/growing-up formula and baby food | (a) Infant/follow-up/growing-up formula (for babies up to 36 months)
(b) Other baby food |
| 16. | Miscellaneous | Miscellaneous |

SCHEDULE 3

[ss. 9, 13, 15 & 58]

FEES

Column1 Item	Column 2 Section	Column 3 Description	Column 4 Fee
1.	9(1)	Fee for registration under Part 2	\$195
2.	13(1)	Fee for renewal of registration under	\$180

Part 2

3.	15(5)(b)	Fee for copy of entry in or extract from register	\$1 per page (copies made on both sides of a sheet count as 2 pages)
----	----------	---	---

SCHEDULE 4 [ss. 47 & 58]

FORM OF WARRANT

FOOD SAFETY ORDINANCE

(of 2010)

(section 47(2))

Warrant to enter [premises/vessel*]

WHEREAS [insert name of applicant] has applied to me, [insert name of magistrate], a magistrate, to authorize [him/her*] to enter [insert description of premises or vessel], and I am satisfied by information on oath that there is reasonable ground for entry to [those premises/that vessel*] and that [insert ground on which warrant is issued].

Now, therefore, I authorize [insert name of applicant] to enter [those premises/that vessel*], by force if necessary, with any assistants [he/she*] may require, and there execute [his/her*] duties under the Food Safety Ordinance.

Dated:

(Signed)
Magistrate

* Strike out as applicable.

SCHEDULE 5

[ss. 49 & 58]

ARRESTABLE OFFENCES

Section 4

Section 5

Section 54

Any regulation made under section 59

Explanatory Memorandum

The main object of this Bill is to establish a registration scheme for food importers and food distributors; to require the keeping of records by persons who acquire, capture, import or supply food; to enable food import controls to be imposed and to re-enact Part VA of the Public Health and Municipal Services Ordinance (Cap. 132) (“Cap. 132”).

2. Clause 1 sets out the short title and provides for commencement. Commencement (except for Part 3 and Division 1 of Part 2) is by commencement notice of the Secretary for Food and Health. Part 3 (the record-keeping requirements) and Division 1 of Part 2 (the requirement for food importers and food distributors to be registered) commence 6 months after clause 7 (application for registration).

3. Clause 2 defines certain terms used in the Bill. A number of terms are defined by reference to definitions contained in Cap. 132.

4. Clause 3 states that the Ordinance does not apply in relation to food that is not intended for human consumption, and creates presumptions in determining whether food is intended for human consumption.

5. Part 2 provides for the registration of food importers and food distributors.

6. Clause 4 requires a person carrying on a food importation business to be registered as a food importer. A food importation business is a business that imports food into Hong Kong. Contravention, without reasonable excuse, of

the requirement is an offence with a maximum penalty of a fine at level 5 (\$50,000) and imprisonment for 6 months. There are a number of exceptions to the requirement to be registered: persons who hold food-related licences or other authorizations specified in Schedule 1, persons who are exempted by the Director of Food and Environmental Hygiene (“the Director”) under clause 6, persons carrying on a business that tranships food through Hong Kong and food transport operators.

7. Clause 5 requires a person carrying on a food distribution business to be registered as a food distributor. A food distribution business is a business the principal activity of which is the supply of food in Hong Kong by wholesale. Contravention, without reasonable excuse, of the requirement is an offence with a maximum penalty of a fine at level 5 (\$50,000) and imprisonment for 6 months. There are a number of exceptions to the requirement to be registered: persons who hold food-related licences or other authorizations specified in Schedule 1, persons who are exempted by the Director under clause 6 and persons who are registered as a food importer. Thus, if a food distribution business also imports food, the person carrying on the business is required to be registered as a food importer rather than as a food distributor.

8. Clause 6 empowers the Director to exempt particular persons or classes of persons from the requirement to register as food importers or food distributors.

9. Clause 7 enables persons to apply for registration and sets out the requirements for an application.

10. Clause 8 provides for the Director to decide an application for registration and sets out the grounds for refusal. Registration may be refused if the Director is satisfied that the applicant has repeatedly contravened the Ordinance in the previous 12 months or the applicant’s former registration was revoked in the previous 12 months. The Director must notify the applicant of the result of the application and give reasons if the application is refused.

11. Clause 9 provides for registration, on payment of the registration fee, if the Director grants the application. The Director must assign a registration number

and inform the applicant. Registration has effect for 3 years and is non-transferable. The registration fee is specified in Schedule 3.

12. Clause 10 empowers the Director to impose conditions on registration. Conditions may be imposed only at the time of registration or renewal of registration. Contravention, without reasonable excuse, of a condition is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months.

13. Clause 11 enables persons to apply for renewal of registration and sets out the requirements for an application. If the Director has not made a decision on a renewal application before the registration expires, the registration continues in effect until the registration is renewed or the Director gives notice of refusal.

14. Clause 12 provides for the Director to decide an application for renewal of registration and sets out the grounds for refusal. Renewal may be refused if the Director is satisfied that the applicant has repeatedly contravened the Ordinance in the previous 12 months. The Director must notify the applicant of the result of the application and give reasons if the application is refused.

15. Clause 13 provides for renewal of registration, on payment of the renewal fee, if the Director grants the application for renewal. Renewal has effect for 3 years and registration may be renewed more than once. The renewal fee is specified in Schedule 3.

16. Clause 14 allows the Director to revoke registration in certain circumstances. Registration may be revoked at the request of the registered person. It may also be revoked if the Director is satisfied that the registered person has repeatedly contravened the Ordinance in the previous 12 months or has died or, in the case of a corporation or partnership, the corporation has been wound up or the partnership has been dissolved.

17. Clause 15 requires the Director to keep a register of registered food importers and registered food distributors and sets out the matters to be included in the register. The clause provides for free public inspection of the register and for copies or extracts to be obtainable for a fee specified in Schedule 3.

18. Clause 16 provides for appeals against decisions of the Director under Part 2 to be made to the Municipal Services Appeals Board. Provisions governing appeals are set out in the Municipal Services Appeals Board Ordinance (Cap. 220).

19. Clause 17 requires a registered food importer or registered food distributor to give written notice to the Director of any change in the information provided to the Director in, or in relation to, an application for registration or renewal of registration. The notice must be given within 30 days after the change occurs. Failure, without reasonable excuse, to give notice, or knowingly or recklessly including false information in a notice, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months.

20. Clause 18 empowers the Director to obtain certain information from other licensing authorities about licences, permits or other authorizations that those authorities have issued. The licensing authorities and the licences, permits or other authorizations are specified in Schedule 1.

21. Clause 19 empowers the Director to require a person who carries on a business that imports food or that supplies food in Hong Kong by wholesale but who is not registered as a food importer or food distributor to provide information that the person would be required to provide to the Director if the person were required to be registered. Failure, without reasonable excuse, to provide the information, or knowingly or recklessly providing false information, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months.

22. Clause 20 creates an offence for a person knowingly or recklessly to provide false information in, or in relation to, an application for registration or renewal of registration. The offence carries a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months.

23. Part 3 requires records to be kept of the acquisition and wholesale supply of food, and of the capture of local aquatic products. The Part introduces what is known as the “one-step-backward, one-step-forward” approach.

24. Clause 21 requires a person who, in the course of business, acquires food in Hong Kong to record certain information about the acquisition. The record must be made within 72 hours after the time of the acquisition, which for the purposes of the clause is the time the person takes possession or control of the food. Failure, without reasonable excuse, to make a record, or knowingly or recklessly including false information in a record, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months. Under clause 29 the Director may exempt persons or classes of persons from the requirement to make a record.

25. Clause 22 requires a person who, in the course of business, imports food to record certain information about the acquisition of the food. The record must be made at or before the time the food is imported. Failure, without reasonable excuse, to make a record, or knowingly or recklessly including false information in a record, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months. There are a number of exceptions to the requirement to make records under the clause: food transport operators, persons who import food for transshipment and persons or classes of persons who are exempted by the Director under clause 29.

26. Clause 23 requires a person who captures local aquatic products and who, in the course of business, supplies them in Hong Kong to record certain information about the capture. The record must be made at or before the time the supply takes place. Failure, without reasonable excuse, to make a record, or knowingly or recklessly including false information in a record, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months. Under clause 29 the Director may exempt persons or classes of persons from the requirement to make a record.

27. Clause 24 requires a person who, in the course of business, supplies food in Hong Kong by wholesale to record certain information about the supply. The record must be made within 72 hours after the time the supply took place. Failure, without reasonable excuse, to make a record, or knowingly or recklessly

including false information in a record, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months. Under clause 29 the Director may exempt persons or classes of persons from the requirement to make a record.

28. Clause 25 provides a defence to a charge of failing to make a record under clause 24 for a person to show that their normal business is the supply of food by retail and it was reasonable to assume that the supply was not a wholesale supply.

29. Clause 26 sets out the required period for retention of records made under clause 21, 22, 23 or 24. Except for live aquatic products, the required period depends on the shelf-life of the food. For food with a shelf-life of 3 months or less, the records must be kept for 3 months after the date of acquisition, capture or supply. For food with a shelf-life greater than 3 months, the records must be kept for 24 months after the date of acquisition, capture or supply. Records relating to live aquatic products must be kept for 3 months after the date of acquisition, capture or supply.

30. Clause 27 allows the Director or an authorized officer to require a person to produce for inspection any record required to be kept under Part 3. The Director or authorized officer may also require the person to provide reasonable assistance to enable the Director or authorized officer to understand or interpret a record. Contravention, without reasonable excuse, of a requirement under the clause is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months.

31. Clause 28 permits the Director to use a record produced under clause 27, or any information contained in it, for the purpose of exercising powers or performing functions under the Ordinance. The Director may also disclose to the public any such information if the Director is satisfied that public disclosure is necessary for the protection of public health.

32. Clause 29 empowers the Director to exempt particular persons or classes of persons from the requirement to keep records under Part 3.

33. Part 4 provides for the making and enforcement of food safety orders. The Part substantially re-enacts Part VA of Cap. 132, which was inserted into that Ordinance by the Public Health and Municipal Services (Amendment) Ordinance 2009 (3 of 2009). A number of the provisions in Part VA of Cap. 132 have been transferred to Part 5 as they will apply more generally.

34. Clause 30 re-enacts section 78B of Cap. 132. The clause empowers the Director to make food safety orders (the equivalent of section 78B orders under Cap. 132). The Director may only make a food safety order if it is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health. The orders may –

- (a) prohibit the import of any food;
- (b) prohibit the supply of any food;
- (c) direct that any food be recalled;
- (d) direct that any food be impounded, isolated, destroyed or otherwise disposed of; and
- (e) prohibit the carrying on of an activity in relation to any food, or permit the carrying on of any such activity in accordance with conditions.

35. Clause 31 re-enacts section 78C of Cap. 132. The clause provides for the service of food safety orders addressed to particular persons and publication of food safety orders addressed to a class of persons or to all persons.

36. Clause 32 re-enacts section 78D of Cap. 132. The clause creates an offence for the contravention of a food safety order with a maximum penalty of a fine at level 6 (\$100,000) and imprisonment for 12 months. The defence in section 78D(3) of Cap. 132 for employees is not included here as it is included in clause 53, which will apply generally to offences under the Ordinance.

37. Clause 33 re-enacts section 78E of Cap. 132. The clause empowers the Director, by notice, to require a person bound by a food safety order to inform the Director of the actions taken in relation to the order or provide samples. Failure to comply with a notice, or knowingly or recklessly providing false

information, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months.

38. Clause 34 re-enacts section 78F of Cap. 132. The clause empowers the Director, by notice, to obtain information or copies of documents before making, varying or revoking food safety orders. Failure to comply with a notice, or knowingly or recklessly providing false information or documents, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months.

39. Clause 35 re-enacts section 78G of Cap. 132. The clause provides for appeals against food safety orders to be made to the Municipal Services Appeals Board. Provisions governing appeals are set out in the Municipal Services Appeals Board Ordinance (Cap. 220).

40. Clause 36 re-enacts section 78H of Cap. 132. The clause provides for compensation to be payable to a person bound by a food safety order in certain circumstances and specifies the maximum amount of compensation recoverable.

41. Clause 37 re-enacts section 78I of Cap. 132 (except section 78I(3), which is contained in clause 38). The clause provides for the seizure, marking or destruction of food that is the subject of a food safety order if a term of the order has been contravened.

42. Clause 38 re-enacts section 78I(3) of Cap. 132. The clause creates an offence for removal, alteration or obliteration of a mark, seal or other designation affixed to food under clause 37. The maximum penalty for the offence is a fine at level 5 (\$50,000) and imprisonment for 6 months.

43. Part 5 contains provisions for administration and enforcement.

44. Clause 39 empowers the Director to authorize public officers to be authorized officers for the purposes of the Ordinance. They may be authorized in relation to specified provisions or in relation to the Ordinance generally.

45. Clause 40 empowers the Director to delegate functions or powers to a public officer or class of public officers.

46. Clause 41 imposes a duty of confidentiality on public officers in relation to certain information that has come to their knowledge or into their possession under the Ordinance. Any such information may be disclosed or given to another person only in the circumstances set out in the clause.
47. Clause 42 protects public officers from liability for things done or omitted in good faith while exercising powers or performing functions under the Ordinance. However, any liability of the Government is not affected.
48. Clause 43 empowers the Director to issue codes of practice for providing practical guidance in respect of the Ordinance. The power is similar to that in section 78K of Cap. 132.
49. Clause 44 provides for the status of codes of practice issued under clause 43 and for their use in legal proceedings. The clause is similar to section 78L of Cap. 132.
50. Clause 45 empowers the Director, by notice, to require the provision of certain information if the Director has reasonable grounds to suspect that a provision has been contravened and reasonable grounds to believe that a person has information or a document relating to the contravention. Failure, without reasonable excuse, to comply with a notice, or knowingly or recklessly providing false information or producing a false document, is an offence with a maximum penalty of a fine at level 3 (\$10,000) and imprisonment for 3 months.
51. Clause 46 gives authorized officers a power of entry to any premises or vessel used for business purposes. The power may be exercised for the purpose of enforcement or the exercise of powers or performance of functions under the Ordinance.
52. Clause 47 empowers a magistrate to issue a warrant for an authorized officer to enter any premises or vessel referred to in clause 46(1) if admission has been refused (or refusal is apprehended) and there is reasonable ground for entry.
53. Clause 48 permits an authorized officer entering premises or a vessel under clause 46 or 47 to be accompanied by assistants if necessary.

54. Clause 49 gives an authorized officer the power to arrest a person reasonably suspected of committing an offence under an enactment specified in Schedule 5.

55. Clause 50 provides for the disposal of property that comes into the possession of the Director or an authorized officer under the Ordinance, by applying section 102 of the Criminal Procedure Ordinance (Cap. 221). That section provides for a court to make an order as to the disposal of the property.

56. Clause 51 provides for the liability of an officer of a body corporate for offences committed by the body corporate with the officer's consent or connivance. In those circumstances, both the officer and the body corporate are liable to be proceeded against.

57. Clause 52 provides for the liability of employers and principals for the acts and omissions of their employees or agents, and imposes criminal liability on employers and principals in respect of specified offences for the acts and omissions of their employees or agents. In those circumstances, employers and principals have a due diligence defence. The clause is modelled on section 78J of Cap. 132.

58. Clause 53 provides a defence for employees charged with an offence if they were acting under the employer's instructions and were not in a position of influence. The clause is modelled on section 78D(3) of Cap. 132, but applies to all offences under the Ordinance.

59. Clause 54 creates an offence for a person to wilfully obstruct, resist or use abusive language to a person who is performing functions under the Ordinance, with a maximum penalty of a fine at level 4 (\$25,000) and imprisonment for 6 months. The clause is modelled on section 139 of Cap. 132.

60. Clause 55 provides for liability in situations where persons have acted jointly or where a notice has been served on several persons in respect of the same matter. The clause is modelled on section 141 of Cap. 132.

61. Clause 56 allows proceedings for an offence to be commenced within 6 months after the offence is discovered by, or comes to the notice of, the Director.

Otherwise, section 26 of the Magistrates Ordinance (Cap. 227) would require proceedings to be commenced within 6 months after the offence was committed.

62. Part 6 contains general provisions.

63. Clause 57 sets out methods the Director may use to give or serve notices under the Ordinance.

64. Clause 58 empowers the Secretary for Food and Health to amend Schedule 1, 3 or 4, the Director to amend Schedule 2 and the Chief Executive in Council to amend Schedule 5.

65. Clause 59 empowers the Secretary for Food and Health to make regulations. Regulations may be made for any matters that are necessary for giving full effect to the purposes and provisions of the Ordinance. In particular, regulations may be made prohibiting, restricting or regulating the importation of food of a specified class. The regulations may prescribe offences punishable by a fine not exceeding level 6 (\$100,000) or imprisonment for a period not exceeding 6 months (or both) and, for a continuing offence, a daily fine not exceeding \$1,500.

66. Clause 60 provides that the registration of a food importer or food distributor registered before the commencement of Division 1 of Part 2 (which is 6 months after the commencement of the provisions allowing for registration) has effect, unless revoked earlier, until 3 years after the commencement of that Division. Otherwise, according to clause 9(3), registration of those food importers and food distributors would have effect for 3 years after the date of registration.

67. Clause 61 provides for the continuation of a section 78B order made under Part VA of Cap. 132 that is in force immediately before the re-enactment of that Part in Part 4. The order remains in force as if it were a food safety order made under Part 4.

68. Clause 62 clarifies the application of the record-keeping requirements in clauses 21, 22, 23 and 24.

69. Clause 63 gives factories that manufacture or prepare ice a grace period of 6 months to obtain a licence under section 31(1) of the Food Business Regulation (Cap. 132 sub. leg. X). As ice will be included as food by the amendment made by clause 64(2), those factories will be food factories and, therefore, will be required to be licensed under that Regulation.

70. Part 7 contains consequential and related amendments to other Ordinances.

71. Clause 64 amends section 2 of Cap. 132, which is an interpretation section. The clause makes a minor amendment to the definition of “drink” to align that definition with the definition of “drink” in clause 2. The clause substitutes the definition of “food” to align it with the definition of “food” in clause 2. This amendment has the effect of including ice and live aquatic products as food for the purposes of Cap. 132. Finally, the clause adds a definition of “aquatic product” which is the same as the definition of that term in clause 2.

72. Clause 65 amends section 56(1)(b) of Cap. 132, which empowers the making of regulations as to food and drugs hygiene. The amendment repeals a reference to ice, which is no longer necessary now that food includes ice (see paragraph 71 above).

73. Clause 66 amends section 57 of Cap. 132, which is a deeming provision for the purposes of regulations under section 55 or 56 of Cap. 132. The effect of the amendments is to remove references to live fish. Since live fish are live aquatic products, which are now included in the definition of “food”, there is no longer a need for section 57 to deem them to be food.

74. Clause 67 amends section 67 of Cap. 132, which contains a number of presumptions for determining whether food is intended for human consumption. The effect of the amendment is to clarify that the evidential burden of proof, rather than the legal burden of proof, rests on a person wishing to rebut the presumptions. This is consistent with clause 3.

75. Clause 68 repeals Part VA of Cap. 132 as a consequence of the re-enactment of that Part in Part 4.

76. Clause 69 amends section 124I of Cap. 132, which empowers the making of regulations providing for fees and charges. The effect of the amendments is to remove references to live fish and ice. Since live fish and ice are now included in the definition of “food”, there is no longer a need to refer to them separately in section 124I.

77. Clauses 70, 71 and 72 amend the Third, Sixth and Ninth Schedules to Cap. 132 to remove references to sections of Cap. 132 that are repealed as a consequence of the re-enactment of Part VA of Cap. 132 in Part 4.

78. Clause 73 amends Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342), which lists a number of Ordinances for the purposes of sections 17 and 17A of Cap. 342. Those sections give customs and excise officers the power to arrest a person reasonably suspected of having committed an offence against Cap. 342 or an Ordinance listed in Schedule 2 to Cap. 342. Section 17B of Cap. 342 empowers the officers to enter and search premises for the purpose of arrest. The amendment adds the Food Safety Ordinance to the list.

79. Schedule 1 specifies categories of persons who are not required to be registered as food importers or food distributors and specifies authorities from whom the Director may obtain information under clause 18.

80. Schedule 2 sets out the main food categories and the food classifications that need to be identified in an application for registration as a food importer or food distributor.

81. Schedule 3 sets out fees for registration or renewal of registration as a food importer or food distributor and for copies of or extracts from the register of food importers and food distributors.

82. Schedule 4 sets out the form of a warrant to enter premises or a vessel that may be issued by a magistrate under clause 47.

83. Schedule 5 specifies the enactments creating offences for which an authorized officer may arrest a person under clause 49.

REGULATIONS ON IMPORT CONTROL FOOD SAFETY BILL

1. The Administration proposes to make two sets of regulations on import control under the Food Safety Bill.

Imported Game, Meat, Poultry and Poultry Eggs Regulation

2. The import of game, meat and poultry is currently regulated under the Imported Game, Meat and Poultry Regulation (Cap.132AK) and the Import and Export (General) Regulations (Cap.60A). All consignments of frozen or chilled meat or poultry imported into Hong Kong must be accompanied with an official health certificate which certifies that the meat and poultry concerned is fit for human consumption, and an import licence issued by the Food and Environmental Hygiene Department (FEHD).

3. We will make a new regulation under the Food Safety Bill, modelling on the existing provisions in Cap.132AK, to provide for import control for game, meat and poultry. The opportunity will also be taken to extend the import control to cover poultry eggs. We will then make corresponding amendment to repeal Cap.132AK.

Imported Aquatic Products Regulation

4. We intend to make a new regulation under the Food Safety Bill to provide for import control for aquatic products, which are in general regarded as medium to high risk food products.

5. In addition to requiring all importers of aquatic products to register with DFEH, we propose to require each consignment of import of cultured live or unprocessed aquatic products¹ to be accompanied by a health certificate issued by the health authorities of the place of origin. It would be impractical to require health certificates for wild catch aquatic products. We would instead require these consignments to be accompanied by a self-declaration recording details of the catch.

6. For certain high risk aquatic products, such as puffer fish products, wild-caught coral reef fish likely associated with ciguatera food poisoning, and ready-to-eat raw oysters, we are considering more

¹ “Unprocessed aquatic products” would cover aquatic foodstuffs that have not undergone processing, and includes products that have been divided, parted, severed, sliced, boned, minced, skinned, ground, cut, cleaned, trimmed, milled, chilled, frozen, deep frozen or thawed.

stringent requirements. In addition to the official health certificate or self-declaration, we intend to require importers of these aquatic products to obtain an import permit issued by FEHD, and to notify FEHD before each consignment arrives, so that FEHD can inspect the consignments before they enter the market if necessary. We also propose to prohibit the import of live puffer fish due to the high risk of tetrodotoxin.

7. For processed aquatic products² (except those of puffer fish), we consider that the health risk is relatively lower, and we do not intend to impose specific import control measures at this stage.

8. The Administration is consulting the trade on the above proposed control measures, and will take into account the views of traders in refining the proposal where appropriate.

² “Processed aquatic products” means aquatic foodstuffs resulting from the processing of unprocessed products, and “processing” means any action that substantially alters the initial product, including heating, smoking, curing, maturing, drying, marinating, extraction, extrusion or a combination of those processes.

Food and Health Bureau

The Government of the Hong Kong Special Administrative Region

Business Impact Assessment on The Food Safety Bill

Executive Summary

15 January 2010

Contents

A. Background	1
B. Study Approach	2
C. Overseas Practices	3
D. The Local Food Industry	8
E. Overview of Business Impact and Summary of Recommendations	14
F. Business Types of Interviewees	22

This report has been prepared for and only for the Food and Health Bureau (FHB) of the Government of the Hong Kong Special Administrative Region in accordance with the terms of the FHB contract of 12 February 2009 and for no other purpose. We do not accept or assume any liability or duty of care for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

Executive Summary

A. Background

1. PricewaterhouseCoopers Limited (PwC) has been commissioned by the Food and Health Bureau (FHB) to conduct a study to assess the business impact of the proposed new Food Safety Bill (Bill) on the local food industry with a view to making it as business friendly as possible.
2. Specifically, the objectives of the study are to:
 - Review the groundwork conducted by the FHB, including views and concerns collected during the public consultation and the information collected on overseas practices relating to mandatory registration of food importers / distributors and food traceability
 - Examine the current market situation of the food trade (including the industry structure and value chain), assess the affected business segments and identify relevant stakeholders in the affected segments
 - Design and conduct consultation with relevant stakeholders in the food trade (including food importers, distributors, retailers and catering businesses) covering different food types to collect their views on the likely impacts and the acceptability or otherwise of the proposed legislation, with particular emphasis on small food businesses
 - Analyse stakeholders' views and concerns (in addition to those collected from previous public consultation, if any) in respect of the scope and coverage (e.g. mandatory registration requirement, the level of registration fee, requirements and duration on maintaining proper transaction records), enforcement issues and industry good practice that may be considered
 - Assess the impact of the regulatory proposal on the business stakeholders and identify any unintended consequences in respect of the mandatory registration and maintenance of proper transaction records
 - Propose changes to the regulatory proposal including mitigation measures and a monitoring / evaluation mechanism, and make observations and suggestions on the Government's enforcement strategy.

B. Study Approach

3. To meet the requirements of this study we followed a five-phase approach, which was aligned to the key stages outlined in the consultancy brief. The study started on 18 February 2009, and was completed on 30 November 2009.

Phase 1: Project Initiation	Phase 2: Business Environment Assessment	Phase 3: Stakeholder Consultation	Phase 4: Business Impact Assessment	Phase 5: Recommendations and Reporting
--------------------------------	--	---	---	--

Key Activities:				
<ul style="list-style-type: none"> Confirm study objectives, plan for and agree next steps Review FHB's groundwork on public consultation and overseas practice Collect information regarding existing trade contacts that FHB and EABFU have established 	<ul style="list-style-type: none"> Review general market conditions Identify key affected business segments and major business stakeholder groups Confirm the approach to consultation 	<ul style="list-style-type: none"> Develop stakeholder interview questions covering the scope and coverage of the legislation, enforcement and compliance issues Consult key business stakeholders 	<ul style="list-style-type: none"> Identify key challenges of the food trade to comply with the mandatory registration scheme and keeping of transaction records Assess business impact on the food trade (including benefits to the trade, compliance difficulties, cost of compliance and other relevant regulatory effects), and the interest and ability of key stakeholders in complying with the Bill 	<ul style="list-style-type: none"> Consolidate analysis and recommendations Prepare and circulate Draft Final Report for comments Prepare Final Report and Executive Summary, incorporating as appropriate, comments of the Steering Committee

Deliverables:				
<ul style="list-style-type: none"> Inception Report (in English) outlining the study approach (e.g. timeline, roles and responsibilities) and initial observations on public consultation findings 	<ul style="list-style-type: none"> Assessment of Business Environment Report (in English) setting out a broad overview of the local food trade (including the industry structure and value chain) and key business segments / stakeholders An agreed approach to consultation 	<ul style="list-style-type: none"> Agreed stakeholder questions Summary and analysis of findings of stakeholder consultation (to be incorporated in the Business Impact Assessment Report) 	<ul style="list-style-type: none"> Business Impact Assessment Report (in English) setting out business impact, key issues / challenges and any unintended consequences associated with the mandatory registration and keeping of transaction records 	<ul style="list-style-type: none"> Draft Final Report (in English) outlining (i) recommendations and proposed changes to the legislation including mitigation measures and a monitoring / evaluation mechanism; and (ii) observations and suggestions on the Government's enforcement strategy. Final Report (in English) and Executive Summary (in English and Chinese)

C. Overseas Practices

- 4. As part of the study, we looked at the measures adopted by overseas countries (European Union, United Kingdom, United States, Australia, and Singapore) in the context of food trader registration and food traceability requirements, which was prepared using the information provided by FHB and supplemented by our own research.
- 5. We summarise the key themes emerging from our observations on overseas practices below.

<p>Coverage of Registration</p>	<p>Overseas experience:</p> <ul style="list-style-type: none"> • In essence, all of the jurisdictions reviewed have imposed some form of registration or licensing requirements for food business operators with the aim of protecting public health. The US has even gone further and linked food safety with national security. • The US exempts certain operators from registering their establishments (e.g. food retailers and transport vehicles). However, it is likely that these establishments (or for that matter, operators) are governed by other states’ legislations. • Food brokers acting as “middleman” and food operators conducting business through the internet are also regulated as long as they fall within the definition of “food business operators” (or similar terms) under the respective country’s legislation. <p>Proposed legislation in Hong Kong:</p> <ul style="list-style-type: none"> • The proposed legislation covers food importers and distributors with exemption granted to certain groups of the local food trade (e.g. retailers and food transporters). However, this should not pose a major problem for the FHB because: <ul style="list-style-type: none"> ○ Food retailers in Hong Kong are largely composed of restaurants and caterers. These operators are required to apply to the FEHD for restaurant licences. ○ The FHB should be able to extract (through the FEHD) the necessary basic information about the restaurant operators for the purposes of food safety administration. • We also noted that there is no significant difference between Hong Kong’s proposed legislation and that of other comparable overseas jurisdictions.
<p>Information Requirements</p>	<p>Overseas experience:</p> <ul style="list-style-type: none"> • All jurisdictions have similar information requirements for registration purposes. Typical requirements include: <ul style="list-style-type: none"> ○ Contact details for the food business;

	<ul style="list-style-type: none"> ○ Details about the nature of the food business (e.g. manufacturer, importer, distributor or retailer); ○ The types of food provided, produced or processed on the premise of the food business (e.g. frozen meals, processed meat, raw fruit or vegetables); and ○ The location of all food premises of the food business. <ul style="list-style-type: none"> • The US has the most comprehensive list of food types in its registration form for selection (roughly 37 items). • In the UK, each local authority specifies its own set of registration requirements. In general, local authorities require information on: contact details; operation details; and type of food business. Some require additional information on the types of food handled by the food business operators (e.g., Cambridge City Council) whilst others do not (e.g., Swansea City Council). <p>Proposed legislation in Hong Kong:</p> <ul style="list-style-type: none"> • The proposed legislation has requirements similar to those adopted by other overseas jurisdictions. • In determining the level of detail required for food type information, it is important to balance the needs of the administration with the ease of registration for the food trade.
Registration Formalities	<p>Overseas experience:</p> <ul style="list-style-type: none"> • Most jurisdictions adopt a similar arrangement for registration. Food businesses are required to register with (or notify) the authority only once, unless there is a change to the information supplied. The US has gone one step further by specifying the timeframe in which an update must be submitted to the FDA. • Singapore’s arrangement is slightly different from the others: <ul style="list-style-type: none"> ○ Registration (or licence as the case maybe) has to be renewed on an annual basis; and ○ Applications for registration (or licence) have to be made via an online portal as no paper form is accepted. • Regarding the level of registration fees, some jurisdictions charge for submitting applications (e.g. Singapore) and others do not (e.g. the US). However, no jurisdictions charge for information updates. • Public access to registration details varies by country. For instance, in the UK, certain registration information is open to inspection by the general public, whilst registration information in the US is not available to the public (probably due to the national security considerations). • None of the jurisdictions we examined appear to have any revocation and refusal mechanisms. Currently the US Congress is considering introducing a ‘Suspension of Registration’ mechanism in their ‘Food Safety Modernization Act of 2009’ to suspend the registration of a food establishment or foreign food establishment, including the facility of an importer, for violation of a food safety law.

	<p>Proposed legislation in Hong Kong:</p> <ul style="list-style-type: none"> • Most jurisdictions adopt a similar arrangement, though some jurisdictions charge for submitting applications (e.g. Singapore) and some do not (e.g. the US). • Applications have to be made using a FHB prescribed form, supplemented by supporting documents such as BRCs or HKIDs. A food business operator with multiple trading names is required to make multiple registrations. • A registration fee of HK\$200, per three-year period, is proposed. The proposed fee represents a full cost recovery basis for FEHD. The registration has to be renewed every three years.
<p>Coverage of Record-Keeping</p>	<p>Overseas experience:</p> <ul style="list-style-type: none"> • In general, overseas jurisdictions impose record keeping requirements on food business operators (including producers, importers, wholesalers, distributors and retailers) with the aim of achieving a greater degree of transparency and improved traceability over the food-chain. • The EU, UK and US adopt a “one step back” – “one step forward” approach for food traceability. Food business operators are expected to be able to identify the immediate supplier(s) and immediate customer(s) of their products. <ul style="list-style-type: none"> ○ The EU and UK provide specific exemption in their regulations for food operators who transact with final customers (i.e., non-business consumers). In this situation, food business operators do not have to collect information about their immediate customers. ○ The US regulation explicitly addresses the situation in which retail food establishments may have practical difficulties in distinguishing between final customers and business customers. The requirement of maintaining proper transaction records applies to those transactions only to the extent that customer information is reasonably available. ○ In addition, the US has specified record-keeping requirements for food transporters. • Australian regulations stipulate that a food business must be able to identify food that it has on the premises and where it came from. This suggests that a food retailer would not be required to collect information about its immediate customers, irrespective of whether they are final customers or not. <p>Proposed legislation in Hong Kong:</p> <ul style="list-style-type: none"> • The proposed Food Safety Bill adopts a similar approach to those of other jurisdictions we reviewed. • Food importers, distributors and retailers must keep proper records of the immediate supplier(s) and immediate purchaser(s) of their food products, except in cases where the immediate purchasers are final customers. Food transporters and storage operators are not required to keep transaction records if they do not import or distribute food.

<p>Record-keeping Requirements</p>	<p>Overseas experience:</p> <ul style="list-style-type: none"> • Overseas jurisdictions generally encourage detailed information to be provided by food business operators to improve food traceability. However, as a minimum, traceability records should include: <ul style="list-style-type: none"> ○ The address of the supplier or customer; ○ Details about the transporter who transported the food to and from the operator (in the US only); ○ Nature and quantity of products; and ○ The date of the transaction and delivery. • The guidance notes issued by the EU suggests following the physical flow, rather than the commercial flow, of products and using delivery notes, as opposed to invoices, to enhance traceability. This is because of the broad geographical spread of the EU community, where a single consignment of food products sold to a buyer in a transaction could potentially be delivered to many different locations. Therefore, using delivery notes is considered to be more effective at tracing food products in cases of food safety incidents. • The US regulation stipulates a specific set of record keeping requirements for food transporters, including: <ul style="list-style-type: none"> ○ Origin and destination points (i.e., following the physical flow of the food); and ○ Route taken while transporting the food. <p>Proposed legislation in Hong Kong:</p> <ul style="list-style-type: none"> • Hong Kong has specified a set of relatively simple record keeping requirements (down to the product level, not to the lot level) to be maintained by food traders compared to other overseas jurisdictions. • The proposed legislation allows traders to use a variety of means to fulfil record keeping requirements, as long as the information kept by traders fulfils the minimum standard. Therefore, keeping delivery notes is not compulsory in the proposed legislation. Unlike EU, however, this is less of an issue in Hong Kong where it is a relatively small city and the practice of many local SMEs is that a single consignment of food products is usually destined for one location.
<p>Duration of Record-Keeping</p>	<p>Overseas experience:</p> <ul style="list-style-type: none"> • The EU, US and Australia have all set out explicit guidelines for the retention period in which transaction records should be kept and made available to the authorities for inspection if requested. The length of retention period reflects the nature of the food (and thus its product shelf-life). • In the table below we summarise the maximum retention period requirements for different jurisdictions by type of food products:

Types of Products	Maximum Retention Period (Indicative)
<ul style="list-style-type: none"> Highly perishable food products (e.g. “use-by” date of less than three months). 	EU and US: <ul style="list-style-type: none"> Six months after date of manufacturing or delivery or release of the products.
<ul style="list-style-type: none"> Perishable food products (e.g. “use-by” date between three months and two years). 	Australia: <ul style="list-style-type: none"> At least one year after the shelf-life of the products. US: <ul style="list-style-type: none"> Two years after the dates the business receives and releases the products.
<ul style="list-style-type: none"> Other food products with long shelf-life / “use-by” date or those with no definite “use-by” date (such as wine). 	EU and Australia: <ul style="list-style-type: none"> Generally five years, but may be extended to shelf-life plus six months.

- The UK and Singapore do not have explicit guidelines for the length of retention period.

Proposed legislation in Hong Kong:

- Under the Food Safety Bill, records should be kept for a period of:
 - Three months after the date on which the traders obtain or release the food if the shelf-life of the food is three months or less; and
 - 24 months after the date on which the traders obtain or release the food if the shelf-life of the food is greater than three months.
- Hong Kong’s proposed legislation appears to be less stringent than those of other overseas jurisdictions in that:
 - Shorter retention periods are prescribed for both highly perishable food products and those with a long shelf-life; and
 - The longest retention period of 24 months is significantly less than that required under the Inland Revenue Ordinance for retaining records, which is seven years. This represents one way of minimising the burden on the food trade.

D. The Local Food Industry

6. As part of the study, we also conducted analysis of the local food industry. Below we provide an overview of the local food industry focusing on those aspects which we believe are more relevant to the scope of the study and the proposed legislation:
- The supply chain, and the different trade groups and businesses involved;
 - Common operational characteristics and practices of the industry; and
 - Key trends and industry developments focusing on those that are likely to have a bearing on the proposed requirements for registration and record-keeping.
7. The entire food industry covers all the businesses involved in importing; farming; food production (e.g. manufacturing canned foods) and processing (e.g. cleaning, cutting, deboning); packaging, storage and distribution; and retailing and catering. There are also supporting businesses (e.g. suppliers of food chemicals, manufacturers and suppliers of farm and food manufacturing equipment).
8. Consistent with the definitions used in the proposed Bill, the entire supply chain can be viewed as being made up of three main constituents:
- **Food importer**—refers to any person or entity that brings or causes to be brought into Hong Kong any food in the course of a trade or business. For example, food import and export companies, trading firms, etc.
 - **Food distributor**—refers to any person who carries on a business which supplies food for human consumption to another person who obtains such food for the purpose of supplying again; or for the purpose of supplying or causing to supply such food to a third party in the course of business or activity carried out by that person, but does not include food importer. For example, local farmers, food wholesalers, food processors and manufacturers, etc. The category also includes warehousing and transportation businesses, but these are proposed to be exempted from the registration and record-keeping requirements.
 - **Food retailer**—the most diversified of the three categories, and refers to any person or entity who sells food in the course of a business to the ultimate consumer. For example, restaurants, supermarkets, convenience stores, bakery shops, karaoke bars, pubs, hotels, airline operators, hospitals, schools, etc.
9. We summarise some of the key features of each in turn below.

Food Importers

- Hong Kong has limited natural resources, and most (about 93%) of the food (and raw materials) is imported.
- Only a very small portion of (natural) ‘non-processed’ foods is produced locally (e.g. about 1% of fresh vegetables, 36% of live poultry, 0.2% of eggs, 0.2% of dairy products, and 36% of seafood consumed – see **Table 1**). High costs and shortage of land, in general, prevent farmers from pursuing natural farming (and food manufacturers from producing food) locally on a larger scale.

- Hong Kong is a free market and duty-free port, and most of the food products (except, for example, liquor, tobacco, etc) are not subjected to tariffs or quotas, and can be imported freely. China is the city's main source market for food imports. Other key source markets include Japan, Taiwan, Singapore, US, and some neighbouring countries (e.g. Thailand, Malaysia, Vietnam). Businesses in Hong Kong also source food products (and raw materials) from many other places all over the world, and are increasingly doing so to look for better value and to satisfy increasing demand from consumers for variety. These, however, are often in smaller quantities.
- The current food import market is dominated (in terms of numbers – see **Table 2**) by local smaller importers and agents. The larger companies seldom focus on importing food alone, and are often involved in importing a broad range of products from industrial to consumer goods. Many of them are also involved in food distribution or wholesaling, and often have their own retail outlets (e.g. supermarkets, restaurants, food stalls in wet markets). The medium-size and smaller trading firms mainly focus on importing food products, with some also importing a range of smaller (often consumer) goods (e.g. electrical appliances, glass/ceramic ornaments).
- There are the electronic traders (e-traders), who act like an 'agent' between foreign businesses looking to sell their products in Hong Kong and local distributors, retailers or consumers seeking non-mainstream products that are not as widely available in the local market. The e-traders take orders on-line (through the Internet) and fulfil these by arranging for food products to be shipped directly from the overseas food suppliers to the buyers, or to a local 'distributor', or to some form of consumer 'pick-up' point.
- There are also the organisers (e.g. trade associations) and participants of food fairs and exhibitions. They attract a significant number of local and overseas food traders who import and distribute with the intention of promoting and testing new food products. Consulates and embassies of foreign countries are also known to organise food fairs and 'festivals' from time to time to promote ethnic foods (and cultural artefacts and national products), and in the process of doing so, often play the role of a food importer and distributor.
- The range of food items being imported by both large and small companies can vary considerably from frozen meat (e.g. beef, pork, mutton) to condiments (e.g. sauces, salt and pepper, herbs and spices); to canned foods and bottled drinks; to dried and preserved foods; to fresh foods (e.g. meat, vegetables from the Mainland).

Table 1: Local Production versus Imports (2007 figures from the Hong Kong Annual Digest of Statistics 2008)

Category	Local Production		Imports	
Crops* (Tonnes)	20,717	(0.7%)	2,837,573	(99.3%)
Poultry (Thousand Heads)	7,317	(36.0%)	12,999	(64.0%)
Eggs (Thousands)	3,570	(0.2%)	1,667,000	(99.8%)
Dairy Products (Tonnes)	106	(0.2%)	63,515	(99.8%)
Fish and Related Products (Tonnes)	153,652	(35.5%)	279,067	(64.5%)

* Include cereals, fruits and vegetables.

Table 2: Approximate Size of Food Importers and Exporters in Hong Kong (Report on 2007 Annual Survey of Wholesale, Retail and Import and Export Trades, Restaurants and Hotels by Census and Statistics Department)

Approximate Number of Employees	Indicative Number of Establishments	
Less than 10	3,277	(85.61%)
Between 10 and 49	514	(13.43%)
Between 50 and 99	22	(0.57%)
Between 100 and 199	10	(0.26%)
Between 200 and 499	3	(0.08%)
More than 500	1	(0.03%)
Approximate Total:	3,828	(100%)

Food Distributors

- This category covers three main segments: food trading, food processing/manufacturing, and (local) farming.
- The current wholesaling market is dominated (in terms of numbers – see **Tables 3 and 4**) by the smaller food traders and wholesalers, and medium-size food manufacturers. The larger food traders and wholesalers often have integrated supply chains, and import and distribute food (and other products), and operate their own retail outlets (e.g. supermarkets, restaurants, specialty stores).
- Food trading is a major business segment in Hong Kong. Urbanisation means that food retailing is now ‘removed’ from most aspects of food production. Many food retailers look to food distributors (and wholesalers) to help source the food supplies they need.
- The food processing (or manufacturing) industry is, however, relatively smaller. Most of the production is for local consumption. But with growing western interests in oriental food (e.g. seasonings, condiments, sauces), there are increasing opportunities for exports. In the case of local farmers, high costs and limited supply of (industrial) land in general make setting up manufacturing operations (food or otherwise) in Hong Kong not an attractive option (especially when businesses can do so more cost effectively from just across the border in the Mainland). Many who choose to do so locally have specific business considerations (e.g. to be closer to their primary market, to be able to leverage the ‘Made in Hong Kong’ brand for greater consumer confidence in quality).
- The local farming industry (vegetables and fish alike) is particularly small. As pointed out earlier, only a very small portion of (natural) ‘non-processed’ foods is produced locally because of high costs and shortage of land in Hong Kong.
- Currently, there are approximately 2,700 farms in Hong Kong. These farms are generally small in size, and are used to grow vegetables, pigs or poultry. There are approximately 4,005 fishing vessels, and 1,770 aquaculture farms (oyster, freshwater fish, and marine fish farms) in Hong Kong.

- There are 'individual' agents who act as a conduit linking food suppliers (these could be food importers, manufacturers, or distributors) looking to market/sell their products and food retailers sourcing for food products. These agents often do not have an office and sell door-to-door. They may or may not 'own' or come into 'contact' with the food products they sell. Many seldom focus on distributing (or sourcing) food products alone, and are often involved in distributing a range of goods from industrial to consumer products, and in other businesses (e.g. carpet cleaning).
- There are e-traders who act as agents between local importers and local retailers or consumers. Much like their 'importing' counterparts, they take orders on-line (through the Internet).

Table 3: Approximate Size of Food Distributors/Wholesalers in Hong Kong (Report on 2007 Annual Survey of Wholesale, Retail and Import and Export Trades, Restaurants and Hotels by Census and Statistics Department)

Approximate Number of Employees	Indicative Number of Establishments	
Less than 10	2,416	(89.95%)
Between 10 and 49	254	(9.46%)
Between 50 and 99	8	(0.30%)
Between 100 and 199	6	(0.22%)
Between 200 and 499	1	(0.04%)
More than 500	1	(0.04%)
Approximate Total:	2,686	(100%)

Table 4: Approximate Size of Food Manufacturers in Hong Kong (Report on 2007 Annual Survey of Wholesale, Retail and Import and Export Trades, Restaurants and Hotels by Census and Statistics Department)

Approximate Number of Employees	Indicative Number of Establishments	
Less than 10	278	(36.29%)
Between 10 and 99	426	(55.61%)
More than 100	62	(8.09%)
Approximate Total:	766	(100%)

Food Retailers

- This category covers a very broad range of businesses (e.g. restaurants, hawker stalls, bars and pubs, supermarkets, grocery stores, school canteens, entertainment establishments).
- As in the case of food importers and food distributors/wholesalers, the retail market is dominated by smaller players (in terms of numbers – see **Table 5**). The two largest segments of the food retail sector competing for the retail food dollar are grocery business (e.g. wet markets, supermarkets, grocery stores), and food service or catering (e.g. restaurants, caterers). In the grocery business, wet markets have dominant market share, followed by supermarkets (dominated by two major chains and a few other sizeable players who are also well known brands) and convenience stores (only two major chains in Hong Kong).
- There are more than 12,000 restaurants in the city. These cater to every taste, budget and variety of cuisine types; and range from street vendors and hawker stalls to small, inexpensive noodle shops and casual family-style restaurants to the most luxurious dining establishments. **Table 6** gives an indication of the size of the restaurants in terms of the number of people employed.
- There are a number of other food retail channels, and these come in many formats (e.g. hotels, school canteens, airline operators, not-for-profit organisations).

Table 5: Approximate Size of Food Retailers in Hong Kong (Report on 2007 Annual Survey of Wholesale, Retail and Import and Export Trades, Restaurants and Hotels by Census and Statistics Department)

Approximate Number of Employees	Indicative Number of Establishments	
Less than 10	13,856	(96.87%)
Between 10 and 49	396	(2.77%)
Between 50 and 99	14	(0.10%)
Between 100 and 199	16	(0.11%)
Between 200 and 499	9	(0.06%)
More than 500	12	(0.08%)
Approximate Total:	14,303	(100%)

Table 6: Approximate Size of Restaurants in Hong Kong (Report on 2007 Annual Survey of Wholesale, Retail and Import and Export Trades, Restaurants and Hotels by Census and Statistics Department)

Approximate Number of Employees	Indicative Number of Establishments	
Less than 10	5,582	(50.22%)
Between 10 and 49	4,930	(44.35%)
Between 50 and 99	244	(2.20%)
Between 100 and 199	322	(2.90%)
Between 200 and 499	20	(0.18%)
More than 500	17	(0.15%)
Approximate Total:	11,116	(100%)

Key Trends and Development

10. The trend towards vertical and horizontal integration continues across the local food industry:

- Vertical integration: Increasingly, food retailers (e.g. hotels, upper-end restaurants, specialty stores) are also importing foods from selected overseas suppliers directly to meet their business needs (e.g. to reduce costs, to achieve improved quality control, to source non-mainstream products, to meet consumer demand for variety). Many food distributors are already operating, and will continue to operate, their own retail outlets (e.g. specialty stores focused on certain products such as health foods, organic foods) to sell directly to the end consumer to improve profit margins.
- Horizontal integration: The trend is set to continue with many food operators already involved in importing, distributing and selling a broad range of food and non-food products (from frozen foods to condiments, to canned foods and bottled drinks, to dried and preserved foods, to fresh foods and even small electrical appliances).

11. Electronic channels (made possible by technology such as the Internet, e-Commerce) are emerging. As pointed out earlier, e-traders are already operating in Hong Kong. With the popularity of the Internet, some wholesalers and retailers are also taking orders on-line and then fulfilling those orders through their existing retail outlets (e.g. chain supermarkets and stores). The trend is expected to continue, and attract more foreign businesses looking to test/market/sell their products in Hong Kong, and operators looking to set up smaller scale retail businesses because of low setup costs. This channel is especially attractive to the more price-sensitive group of consumers (the mass market) because food items are often sold at (significantly) lower than market prices because they do not have the added overheads that normal retail outlets carry.

E. Overview of Business Impact and Summary of Recommendations

12. We have conducted interviews with 51 stakeholder organisations (covering trade associations, farmers, food importers, food manufacturers, food distributors, food retailers, food products 'sales agents') from the local food industry. The business types of interviewees are given at Section F of this Executive Summary.
13. These interviews were aimed at collecting views from stakeholders and understanding the key challenges faced by the industry on compliance issues (focusing on the requirements for mandatory registration and record-keeping), and identifying important issues that the Government needs to consider or address when implementing the proposed legislation.
14. Our discussions with stakeholders were positive with many indicating support, in principle, for the requirements for registration and record-keeping under the proposed legislation. Naturally, interviewees also raised some concerns and practical issues.
15. We summarise the overall impact of the proposed new Food Safety Bill (Bill) on the local food industry (focusing on the requirements for registration and record-keeping), and our recommendations below.

Mandatory Registration: Overview of Business Impact

16. The move to regulate food safety by the Government is seen by many as heading in the right direction. Interviewees generally appreciate the need to improve food safety, and support, in principle, the need for registration. This is also in line with practices in those overseas jurisdictions that we looked at (e.g. European Union, UK, US, Australia, and Singapore).
17. As indicated by interviewees, most do not foresee difficulties with the registration process, and find the proposed HK\$200 fee level reasonable. They also do not anticipate incurring much additional costs other than the registration fee.
18. Interviewees agreed with exempting the so called 'ad-hoc' food distributors, whose "principal business" is food retailing, if there is an effective and easy way of identifying (and defining) this.
19. Interviewees indicated that providing food items information at tier 2 level (i.e. *Main Food Category*, e.g. cereals and grains products, and *Food Classification*, e.g. pasta/ noodles) represents a balance between the level of detail provided to the Government and operational considerations of the trade.
20. We agree that charging a HK\$200 registration fee for a 3-year registration appears reasonable, and believe that there will not be much additional costs to the trade other than the registration fee.

21. As indicated by interviewees, the Government should adopt a combination of communication channels (e.g. printed, electronic) to facilitate traders making applications and to publicise information (e.g., registration status).
22. There is also a small cost associated with the effort and time taken to complete and submit a registration form, which we believe to be minimal. On this basis, we have estimated the impact of the proposed registration requirement in terms of approximate total cost to the local food trade for a 3-year registration cycle to be approximately 0.008% of the total operating expenses of all food importers and distributors. These broad estimates are based on a set of key assumptions that have been discussed and agreed with FHB.

Mandatory Registration: Summary of Recommendations

23. We recommend that the Government:
 - implement the proposed food business register as a step towards improving food safety in Hong Kong; and charges the proposed HK\$200 registration fee for a 3-year registration.
 - make it an offence, as proposed, to import/distribute foods without a registration. However, we do not recommend penalising food traders who sell foods which were bought from unregistered sources unintentionally or unknowingly. The Government should consider:
 - adopting a simple mechanism that shows the link between different types of violations (e.g. selling without a registration, not keeping records) and the consequences to be borne by traders, supported by an inspection/audit system and complaints investigation (e.g. filed by traders or the public) system.
 - implementing a range of escalation steps (e.g. using demerit points or number of offences) to encourage traders to comply, and revoking their registrations or refusing their applications only when they have reached a certain threshold (e.g. accrued a specified number of demerit points or number of offences).
 - adopt the proposed definitions for food importers, distributors and retailers; and provides guidelines and examples to the trade on how to define different traders.
 - exempt the following from registration:
 - food traders who are registered under other Government licensing schemes required by law (but not schemes under administrative arrangements).
 - food transporters/carriers.
 - ad-hoc food distributors whose principal business is food retailing but may, from time to time, sell to other businesses. Other 'ad-hoc' food distributors (e.g. those who predominantly distribute non-food products but may occasionally distribute food products; or those who operate a 'seasonal' food distribution business) should be required to register as 'food distributors'.
 - consider a range of factors when defining 'principal business' (e.g. historical sales volume and value, existence of credit facilities between traders and their customers to determine whether they are selling to business customers) as opposed to relying on a single criterion.

- adopt the proposed food categories at tier 2 level for registration, and refines the list continuously over time, as appropriate; and uses (or includes) examples that traders can relate to more easily but without giving an exhaustive list of all possible items under each category.
- put in place measures to discourage traders from selecting 'irrelevant' food categories (at tier 2 level) simply for the sake of convenience or flexibility. This can be achieved by asking an operator to provide information about their business transactions (e.g. the same type of information already required by the Inland Revenue Department for their inspection when needed such as purchasing records, stocktaking records); and conducting regular, and even unannounced, random inspections to verify the actual food products being sold and stocked against the information provided by an operator.
- ask food traders with branches to register once only at the company level (and not at the branch level).
- ask food traders to provide a photocopy of BRC (as opposed to a certified copy) during registration.
- adopt a combination of paper (e.g. paper forms that can be submitted in person, by mail or fax) and electronic means (e.g. electronic forms that can be submitted through the Internet, or electronic mail) to facilitate traders in registering (and providing supplementary information, where needed) and updating their records. The Government should consider providing general guidelines, and more guidance to those who need help (e.g. having staff at FEHD's offices help traders fill out and update their registrations, providing assistance through a hotline).
- issue a 'certificate of registration' to registered traders, and guidelines to the trade to encourage them to check the registration status of potential suppliers before transacting with them. To facilitate this, the Government should consider using a number of channels to publish information about registration status, and regularly publicise relevant information (e.g. revoked registrations).
- ask food traders to notify the Government whenever there are changes to their registration information, including the types of foods (at tier 2 level) they sell. This is also in line with practices in those overseas jurisdictions we looked at (e.g. Singapore, Australia, US, UK).
- adopt a combination of communication channels (e.g. printed, electronic, broadcasting, through trade associations and so on) to publicise information about registered and exempted food importers and distributors in order to reach all of the intended audiences; and discloses only basic information, for example:
 - registration number and status;
 - name of the company (and trade name, if different) and contact information (e.g. address, email, phone, fax; but not names of persons);
 - nature of business (food importer, distributor); and
 - categories of food products sold / registered.

Record-keeping Requirements: Overview of Business Impact

24. For food safety reasons, interviewees generally accept, in principle, the move to improve food traceability through better record-keeping practices, so long as it does not create additional burden on the industry (e.g. by prescribing detailed information requirements and exact

recording formats). Smaller operators, however, are more concerned about the additional costs of (e.g. resources, storage) and work involved in keeping records (and searching for the information when needed).

25. Interviewees generally expressed no difficulties in producing business records they use for filing taxes, but pointed out that some of the records might not have all the information or go down to the level of detail required by the proposed Food Safety Bill (e.g. detailed description of foods, exact catch area for live seafood).
26. Their feedback suggests importers, larger distributors and incorporated small and medium enterprises should be able to meet the requirements; and only a small percentage of unincorporated small and medium enterprises might need to adjust their current record-keeping practices.
27. Every business, large or small, that abides by the laws of Hong Kong in terms of keeping sufficient business records for tax filing purposes, should be in a reasonable position to meet the record-keeping requirements of the proposed food safety legislation, resulting in no (or minimal) additional costs.
28. For traders who are not keeping sufficient records for tax filing purposes (feedback from interviewees suggests importers, larger distributors and incorporated small and medium enterprises should be able to meet the requirements; and only a small percentage of unincorporated small and medium enterprises might need to adjust their current record-keeping practices), there will be some costs involved as indicated by interviewees in terms of the time and manpower needed to maintain and file records (and the space for storing them). For this small percentage of food traders who may need to make some adjustments to the way they keep records in order to meet the proposed record-keeping requirements more fully, we believe the majority of them will start requesting (or keeping) delivery notes, invoices and receipts from their suppliers, in which case there will be some costs (e.g. time and storage cost to file those records) involved. We believe that the Government should try and encourage food suppliers to provide delivery notes, invoices and/or receipts to their buyers. This will help minimise work (and potential errors/inconsistencies) on buyers when preparing records. It will also help food traders with reading or writing difficulties.
29. A small portion of traders may either choose to (or have to, e.g. because they are unable to get the required records from their suppliers) record the information using a transaction log. We have estimated (based on information we collected from traders) that it would take a trader approximately 9 to 30 minutes per day (depending on the size and operation of the trader) to record the required transaction information. Based on the feedback from interviewees, it is anticipated that the food traders should be able to accommodate this level of time commitment as part of their normal operations.
30. We have estimated the cost of compliance associated with the proposed record-keeping requirements to the local food trade to be somewhere between 0.04% to 0.14% of the total operating expenses of all SME food retailers / caterers. These broad estimates are based on a set of key assumptions that have been discussed and agreed with FHB.

Record-keeping Requirements: Summary of Recommendations

31. We recommend that the Government:

- require, as proposed, food traders to maintain proper transaction records as a step towards improving food traceability in Hong Kong, but implements a grace period (supported by promotional and educational activities) to allow time for the small number of food traders who may need to make some adjustments to the way they keep records in order to meet the proposed record-keeping requirements more fully.
- adopt the proposed record-keeping retention periods:
 - 3 months (from the date of the transaction) for foods with a shelf life of 3 months or shorter.
 - 24 months (from the date of the transaction) for foods with a shelf life longer than 3 months.
- suggest to food traders to consider using the proposed templates (but not dictating the exact format of the templates to be adopted by traders) if they have difficulties keeping business documents or are looking for an alternative to keeping business documents.
- continue to work and liaise closely with the trade on food safety incidents in relation to the disclosure of information on the food supply and distribution chain (in order to protect public health and consumers) as it has done in the past. Depending on the urgency and severity of a situation, the Government should try and reach an understanding before publishing any information, and determine the type of information to disclose on a case by case basis.

Mandatory Registration: Estimation of the Cost of Compliance

32. An overview of the approach adopted to estimate the cost of compliance in relation to the mandatory registration is set out below.

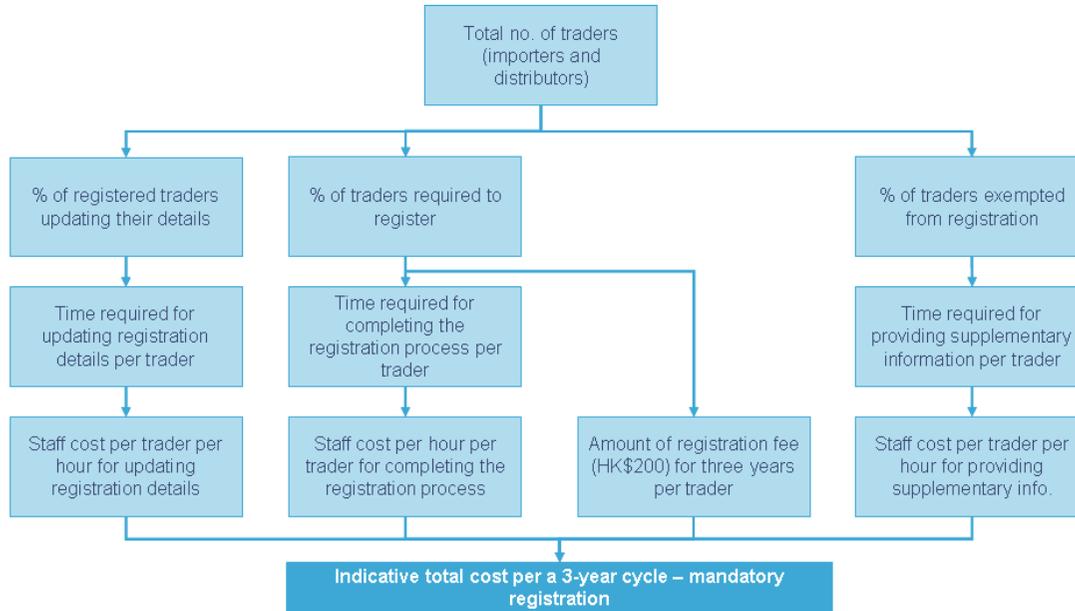
33. The number of importers and distributors traders who are required to register, provide supplementary information (in order to qualify for exemption), or update registration details are first determined. The key compliance cost elements are then estimated.

34. There are four key cost elements:

- The total registration fees chargeable to food importers and distributors – this is estimated by multiplying the number of importers and distributors (who are required to register) by the registration fee (i.e., HK\$200) per 3-year cycle.
- The time costs associated with food importers and distributors:
 - completing the registration process – this is estimated by multiplying the number of importers and distributors (who are required to register) by the staff cost incurred for completing the process.
 - providing supplementary information – this is estimated by multiplying the number of importers and distributors (who are exempted from registration) by the staff cost incurred for providing information.

- o updating their registration details – this is estimated by multiplying the number of importers and distributors (who are required to update their registration details) by the staff cost incurred for updating information.

35. Our approach is summarised in the diagram below.



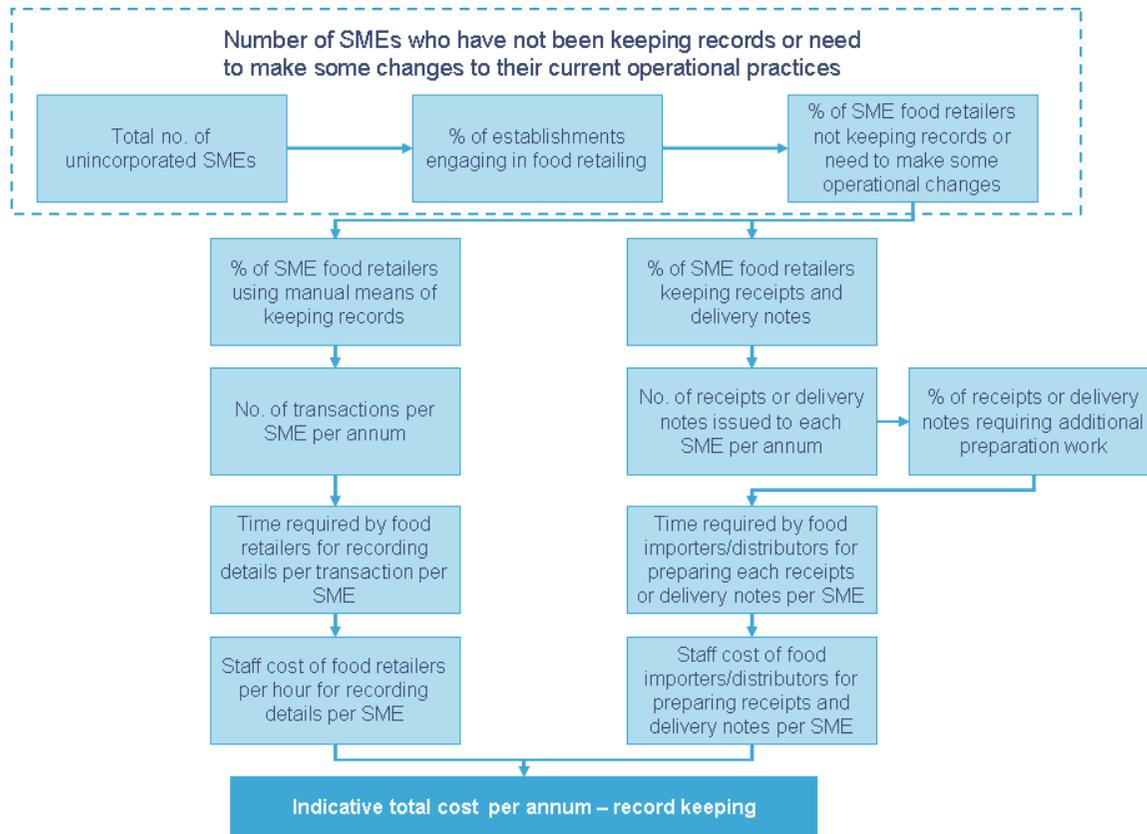
Record-keeping Requirements: Estimation of the Cost of Compliance

36. An overview of the approach adopted to estimate the cost of compliance in relation to the record keeping requirements is set out below.
37. Based on feedback from interviewees, suggests that only a small percentage of unincorporated SMEs might need to adjust their current record-keeping practices. Accordingly when estimating the number of retailers affected by the record keeping requirements, we have assumed that (i) all incorporated SME food retailers keep proper records and (ii) half of the unincorporated SME food retailers either do not keep sufficient records or require adjustment to their current record keeping practices (and therefore may incur additional costs).

38. There are two key cost elements:

- The time costs associated with retailers manually recording transaction details – this is estimated by multiplying the number of transactions (requiring manual recording of details) by the staff cost incurred by retailers for manually recording transaction details.
- The time costs associated with importers or distributors preparing receipts/delivery notes – this is estimated by multiplying the number of receipts/delivery notes (requiring additional work) by the staff cost incurred by importers or distributors for preparing such receipts/delivery notes.

39. Our approach is summarised in the diagram below.



Summary of the Cost of Compliance¹

40. **Table 7** below shows the breakdown of the estimated cost of compliance for food importers, distributors and retailers in relation to the mandatory registration and record keeping requirements of the proposed Food Safety Bill.

Table 7: Breakdown of the Estimated Cost of Compliance for Food Importers, Distributors and Retailers

	Compliance Costs associated with Mandatory Registration (per 3-year cycle ²)		Compliance Costs associated with Record Keeping Requirements ³	
	Registration Fees	Completing the Registration Formalities	Manually Recording of Transaction Details	Additional Work for Issuing Receipts or Delivery Notes ⁴
Food Importers	0.0066%	0.0014%	— ⁵	0.014% – 0.047% ⁶
Food Distributors				
Food Retailers	—	—	0.027% – 0.089%	

¹ We have used information from two main sources (Census and Statistics Department, and Company Registry), and have assumed that the information is accurate. We have also used information collected from the trade. Where possible, we have tried to validate anecdotal information collected from traders to verify its accuracy. However, this may not always be possible, especially when some of the information is specific to individual traders and can vary greatly from trader to trader depending on the nature of their business (e.g. number of transactions per year). In those cases, the information presented only represents an estimate based on the available information.

² Expressed as a percentage of the total operating expenses (for 3 years) of all food importers and distributors.

³ Expressed as a percentage of the total operating expenses per annum of all SME food retailers.

⁴ The allocation (and recovery) of costs will be distributed between food importers, distributors and retailers. However, it is not possible to allocate these costs between these entities (for example, some distributors may wish to pass through costs onto their retailers whilst others don't) and consequently, to identify an appropriate base of total operating expenses on which the percentage figure of the compliance costs may be derived.

⁵ A small number of food importers and distributors (in particular, the fish importers/distributors operating in the FMO markets) may incur additional compliance costs. However, our assessment suggests that these costs are expected to be minimal and therefore not shown on the table.

⁶ In order to allow for comparison amongst different compliance cost elements in relation to record keeping requirements, all cost elements are expressed on the same base, i.e., the total operating expenses of all SME food traders.

F. Business Types of Interviewees

i) Associations

- 9 associations, including food importers/exporters and suppliers, oyster industry, egg merchants, seafood, wholesale vegetable laans, and catering industry.

ii) Medium to large enterprises

- A chain steakhouse which imports meats on its own
- An aquatic product importer and distributor
- A chain supermarket that mainly sells fresh food
- A chain food distributor and retailer
- A seafood restaurant
- A natural food and food chemicals importer and distributor
- A Thai food supplier
- Vegetable Marketing Organization

iii) Small enterprises

- A marine culture farm in an industrial building
- An aquatic product importer and distributor
- An aquatic product culture farm and distributor
- A marine fish culture farm cum distributor
- A seafood distributor in wholesale fish market
- A freshwater fish product distributor
- A freshwater fish meat and frog importer, wholesaler and retailer
- A hairy crab retailer
- Two farmers
- Two seasonal farmers
- Vegetable Cooperative Society
- A fruit distributor
- Four vegetables retailers
- A poultry egg importer, distributor and retailer
- A dried fruit importer, distributor and retailer
- A Japanese food importer and distributor
- A condiment and sauce manufacturer
- A beef ball manufacturer and retailer
- A traditional grocery store

- A pharmacy
- Two e-food traders dealing with Japanese food
- A pre-packaged food agent
- A noodle shop
- A bean curd shop
- A restaurant
- A retired restaurateur
- A small cooked food stall
- A Dai Pai Dong restaurant
- An organic food, specialty food, health food retailer

IMPLICATIONS OF THE PROPOSAL FOOD SAFETY BILL

The implications of the Food Safety Bill are as follows.

Basic Law and Human Rights Implications

2. The Bill is in conformity with the Basic Law, including the provisions concerning human rights.

Binding Effect of the Legislation

3. The Bill does not contain any express binding effect provision and will not affect the current binding effect of the Public Health and Municipal Services Ordinance (Cap.132).

Financial and Civil Service Implications

4. Recurrent resources of \$117 million (involving 161 posts) are available for Food and Environmental Hygiene Department (FEHD) for operating of the Centre for Food Safety (CFS) and implementing various measures to enhance food safety and strengthen support for the implementation of the Food Safety Bill. Resources of \$17 million have also been earmarked for the development of a computer system to tie in with the commencement of the Food Safety Bill. The workload and recurrent cost arising from the implementation of the proposal will be absorbed from within the existing resources of Food and Health Bureau and FEHD.

5. A registration fee of \$195 and renewal fee of \$180 will be charged under the registration scheme for food importers and distributors on a full-cost recovery basis. The registration will be for a three-year term, subject to renewal. On the assumption that some 8 600 food importers and distributors will come to register with CFS, the revenue in the first year of implementation is expected to be around \$1.7 million.

Economic Implications

6. A more comprehensive food safety control regime will help protect public health, enhance public confidence in our food trade and contribute towards making Hong Kong a better place to live and to do business.

7. Being aware that the various requirements under the Food Safety Bill will result in extra compliance costs for the food and related trades, the Administration appointed a management consultant to conduct a

Business Impact Assessment (BIA). The consultant estimated that the compliance cost for the registration scheme¹ would amount to 0.008% of the operating expenses² of all food importers and distributors, and that for the record-keeping requirement in the range from 0.04% to 0.14%³ of the operating expenses of all SME food retailers. Hence, the implications of the Food Safety Bill on operating cost of the food trade, and hence food price, would be minimal. The Executive Summary of the BIA is at Annex C.

Productivity

8. The proposal has no productivity implications.

Environmental Implications

9. The proposal has no environmental implications.

Sustainability Implications

10. In line with the sustainability principle of pursuing policies which promote and protect the physical health of the people of Hong Kong, the proposal would strengthen the Government's capability to ensure food safety, thereby enhancing the protection of public health and consumer interests.

¹ This covers the registration fee and the time cost for completing the registration formalities.

² The total operating expense for three years is used as the registration will be for a three-year cycle.

³ This depends on the number of transactions of a trader per annum.

CONSULTATION PROGRAMME

FOOD SAFETY BILL

(A) Advisory Committees

Meetings	Date
Advisory Council on Food and Environmental Hygiene	6 December 2007
LegCo Panel on Food Safety and Environmental Hygiene	11 December 2007 9 February 2010
Retail Task Force under Business Facilitation Advisory Committee	23 January 2008 19 February 2009
Advisory Committee on Agriculture and Fisheries	4 February 2008
Business Facilitation Advisory Committee	25 February 2008 15 March 2010
Expert Committee on Food Safety	27 February 2008
Small and Medium Enterprises Committee	18 March 2008
Trade Consultation Forum (food safety)	16 January 2008
Trade Consultation Forum (environmental hygiene)	29 February 2008
Public Forums	20 February 2008 13 March 2008
Market Management Consultative Committees	January – July 2008
Food Business Task Force under Business Facilitation Advisory Committee	19 February 2009

(B) Meetings with trade associations

Sector	Date
Fruits	3 March 2008
Vegetables	5 March 2008

Processed food, processed seafood, canned food, edible oil, beverage, direct sale and preserved food	10 March 2008
Rice, flour, bakery, organic products and suppliers associations	14 March 2008
Live marine fish	19 March 2008
Freshwater fish	25 March 2008
Chilled marine fish	26 March 2008

(C) Meetings with individual food traders

Type of Business	Date
Marine fish farm	25 July 2008
Prepackaged food	5 August 2008
Frozen products	13 August 2008
Freshwater fish farm	15 August 2008
Supermarket	19 August 2008
Dried shark's fin	20 August 2008
Wet market (stalls selling dried food, vegetables, fruits, frozen food, fresh meat, etc and cooked food stalls)	28 August 2008
Restaurant (茶餐廳)	29 August 2008
Lunch-box supplier	1 September 2008
Hotel	4 September 2008
Importer of chilled meat	5 September 2008
Importer of seafood	9 September 2008
Importer of Japanese food	9 September 2008
Catering club	11 September 2008
Hotel	11 September 2008
Importer of sashimi	19 September 2008
Hawker stall (candies and snacks)	12 March 2009
Restaurant (茶餐廳)	12 March 2009

Type of Business	Date
Café	12 March 2009
Food bank	15 May 2009
Food exhibition organiser	10 June 2009
Wet market (stalls selling fresh meat, vegetables and chilled fish)	24 August 2009
Grocery	24 August 2009
Food factory (take away lunch boxes)	24 August 2009
Restaurant (noodle shop)	24 August 2009

(D) District Councils

District	Council/ Committee	Date
North	Council	14 February 2008
Sai Kung	Housing and Environmental Hygiene Committee	19 February 2008
Kwai Tsing	Community Affairs Committee	19 February 2008
Wan Chai	Food and Environmental Hygiene Committee	21 February 2008
Kowloon City	Food, Environment and Health Committee	28 February 2008
Kwun Tong	Council	4 March 2008
Sha Tin	Health and Environment Committee	6 March 2008
Islands	Tourism, Agriculture, Fisheries and Environmental Hygiene Committee	10 March 2008
Wong Tai Sin	Council	11 March 2008
Central and Western	Food, Environment, Hygiene and Works Committee	13 March 2008
Sham Shui Po	Environment and Hygiene Committee	20 March 2008
Tuen Mun	Environment, Hygiene and District Development Committee	28 March 2008

Southern	District Development and Environment Committee	2 June 2008
Tsuen Wan	Environmental and Health Affairs Committee	3 July 2008
Yuen Long	Environmental Improvement Committee	14 July 2008
Tai Po	Environment, Housing and Works Committee	16 July 2008
Eastern	Food, Environment and Hygiene Committee	17 July 2008
Yau Tsim Mong	Food and Environmental Hygiene Committee	24 July 2008

(E) Letters

Consultation letters were issued to –

Organisations
Consulates General
Food trade associations
Primary sector associations
Hawker associations
Market Management Consultation Committees
Medical associations and academics
Dietitian associations
Green groups
Mainland authorities
Consumer Council
District Councils

(F) Other channels

- A consultation document was uploaded onto the FHB website.
- We attended the seminar jointly organised by the Hong Kong Food Hygiene Administration Association and Hong Kong Quality Assurance Agency as well as the one by the

Federation of Hong Kong Industries.

- Articles on the proposed Food Safety Bill were published in the food safety publications issued by the Centre for Food Safety e.g. Food Safety Bulletin.
-