

立法會

Legislative Council

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Paper for the House Committee Meeting on 4 June 2010

Legal Service Division Report on Food Safety Bill

I. SUMMARY

1. **Objects of the Bill** The main object of the 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) (PHMSO) relating to the powers to make orders for recall of problem food.
2. **Comments**
 - (a) The definition of "food" is modelled on the definition of "food" in PHMSO and extended to include live aquatic products and edible ice ;
 - (b) Failure to comply with the registration and record-keeping requirement is an offence;
 - (c) The Secretary for Food and Health is empowered to make regulations for tightening import control on specific food types; and
 - (d) The Bill also makes consequential and related amendments to PHMSO and other legislation.
3. **Public Consultation** The Food and Health Bureau appointed a consultant to conduct a Business Impact Assessment to assess the implications of the Bill on the trade, in particular the small and medium enterprise food traders.
4. **Consultation with LegCo Panel** The Administration consulted the Panel on Food Safety and Environmental Hygiene (the Panel) on the proposals of the Bill on 9 February 2010. In general, members were supportive of the Bill and urged its early implementation. But some members raised questions on the detailed implementation of the Bill.
5. **Conclusion** In light of the concerns raised by some members of the Panel, Members may wish to study the proposals of the Bill in detail. Meanwhile, the Legal Service Division will continue with the scrutiny of the legal and drafting aspects of the Bill.

II. REPORT

Objects of the Bill

The main object of the 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) (PHMSO) relating to the powers to make orders for recall of problem food.

LegCo Brief

2. Members may refer to the LegCo Brief issued by the Food and Health Bureau dated 19 May 2010 (File Ref: FH CR 1/3231/07) for further information.

Date of First Reading

3. 2 June 2010.

Comments

Definition of "food"

4. The definition of "food" in the Bill is modelled on the definition of "food" in the PHMSO. However, the existing definition of "food" in PHMSO does not include live aquatic products¹ and edible ice². The Bill extends the definition of "food" to include live aquatic products³ and ice intended for human consumption.

Registration scheme for food importers and distributors

5. Part 2 of the Bill provides for the registration scheme for food importers and distributors. Under the proposed scheme, any person who carries on a food importation or distribution business is required to register with the Director of Food and Environmental Hygiene (DFEH). 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 water (whether or not that is the principal activity of the business)⁴. "Food distributor" means a person who carries on a business the

¹ Except live shellfish which is already included in the current definition of "food" in PHMSO.

² Under PHMSO, "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 Under the Bill, aquatic product is defined as fish, shellfish, amphibian or any other form of aquatic life other than a bird, mammal or reptile.

⁴ The registration requirement does not apply if food is imported solely in the course of business of a transport operator.

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. Food importers or distributors who have already registered or have obtained a licence under other Ordinances will be exempted from the registration requirement. A list of the exempted food importers and distributors and the relevant licensing authorities is in Schedule 1 to the Bill.

6. The registration cycle for food importers and distributors will be for a period of three years, subject to renewal. The fees for registration and renewal of registration for a three-year term are proposed to be \$195 and \$180 respectively.

7. DFEH may refuse an application for registration or renewal or revoke registration on specified grounds. DFEH's decisions in relation to the registration scheme will be subject to appeal to the Municipal Services Appeals Board (MSAB) established under the MSAB Ordinance (Cap.220).

8. It will be an offence punishable by a fine at level 5 (\$50,000) and to imprisonment for six months for a person, who without reasonable excuse, carries on a food importation or distribution business without registration.

Requirement to keep transaction records

9. To enhance the mechanism of food traceability, Part 3 of the Bill requires a person who, in the course of business, acquires food in Hong Kong, imports food or supplies by wholesale of food in Hong Kong or a person who captures local aquatic products and who, in the course of business, supplies them in Hong Kong to make and keep transaction records within and for a specified period respectively.

10. It will be an offence punishable by a fine at level 3 (\$10,000) and to imprisonment for three months for a person, who without reasonable excuse, fails to comply with the record-keeping requirement.

Power to make regulations for tightening import control on specific food types

11. The Bill empowers SFH to make regulations for the import control of specific food types. According to paragraph 26 of the LegCo Brief, the Administration proposes to make two sets of regulations, namely, the Imported Game, Meat, Poultry and Poultry Eggs Regulation and Imported Aquatic Products Regulation.

Power for the authorities to make orders to prohibit the import and supply of problem food and order the recall of such food

12. The PHMS (Amendment) Ordinance 2009 (3 of 2009) amended PHMSO by adding the 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. Part 4 of the Bill, which provides for the making and enforcement of food safety orders, substantially re-enacts the provisions in the new Part VA of PHMSO.

Consequential and related amendments

13. The Bill makes consequential amendments to PHMSO and related amendments to the Customs and Excise Service Ordinance (Cap. 342).

Commencement

14. Upon enactment, the Food Safety Ordinance (except Part 3 (which relates to record-keeping requirement) and Division 1 of Part 2 (which relates to registration requirement)) will come into operation on a day to be appointed by SFH by notice published in the Gazette.

15. Part 3 and Division 1 of Part 2 will come into operation 6 months after the day on which section 7 (which relates to application for registration) comes into operation.

Public Consultation

16. According to paragraphs 30 to 35 of the LegCo Brief, the Food and Health Bureau appointed a consultant to conduct a Business Impact Assessment to assess the implications of the Bill on the trade, in particular the small and medium enterprise food traders. The consultant considered that the legislative proposals are generally in line with overseas practices. Having regard to the consultant's estimate of the compliance cost associated with the new proposals under the Bill, the Administration considers that the implications of the Bill on the operating costs of the trade would be minimal.

Consultation with LegCo Panel

17. The Administration consulted the Panel on Food Safety and Environmental Hygiene (the Panel) on the proposals of the Bill on 9 February 2010. While the Panel was generally supportive of the Bill and urged for its early implementation, some members urged the Administration to expedite the transfer of Part V (which relates to food and drugs) of PHMSO and the related subsidiary legislation to the Bill. In order not to delay the implementation of the Bill, the Administration agreed to transfer Part V of PHMSO and the related subsidiary legislation to the Food Safety Ordinance at an appropriate time after the implementation of the Ordinance. Concerns were also raised as to the enforcement

of the registration scheme, including whether the Administration could easily determine whether a food trader was a food retailer. The Administration advised that a code of practice on enforcement of the Bill would be formulated for training health inspectors who would be primarily responsible for carrying out the enforcement work. The food trade would be consulted on the code of practice before implementation.

Conclusion

18. In light of the concerns raised by some members of the Panel, Members may wish to study the proposals of the Bill in detail. Meanwhile, the Legal Service Division will continue with the scrutiny of the legal and drafting aspects of the Bill.

Prepared by

LAM Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
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