

For discussion  
on 9 February 2010

## **Legislative Council Panel on Food Safety and Environmental Hygiene**

### **Food Safety Bill**

#### **PURPOSE**

This paper consults Members on the detailed proposals of the Food Safety Bill. It also briefs Members on the results of the related public consultation and the findings of the Business Impact Assessment (BIA) study.

#### **BACKGROUND**

2. The Administration has been working on a Food Safety Bill to strengthen legislative control on food safety since 2007. The Food Safety 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 for regulations to be made 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. Legislation for food recall (paragraph 2(d) above) was expedited following the detection of melamine in milk 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, 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 Food Safety Bill.

#### **PUBLIC CONSULTATION**

5. The Administration briefed the Legislative Council Panel on Food Safety and Environmental Hygiene on the proposed Food Safety Bill in

December 2007<sup>1</sup>. Thereafter, we have conducted public consultation on the proposals.

6. The consultation included established advisory committees, such as the Business Facilitation Advisory Committee and the Retail 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 Consultation 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.

7. 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 Food Safety Bill will tighten import control on food, we also consulted the Consulates General in Hong Kong.

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

9. The District Councils indicated general support for the direction of 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.

10. Traders generally supported the record-keeping period proposed and requested the Administration to simplify the requirements and provide sufficient support to small and medium enterprises (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.

11. Details of the consultation programme are at Annex A. The outcome of the consultation exercise is at Annex B.

## **BUSINESS IMPACT ASSESSMENT**

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<sup>1</sup> LegCo Panel paper CB(2)516/07-08(01).

12. While we received general support for the Food Safety Bill during the public consultation, some food traders have raised concerns that the proposed new measures may incur compliance costs for the food and related trades. We also noted that different food trades have their specific needs and trade practices to ensure food safety. In order to have a better understanding of the views of the trade, in particular the SMEs, and to review whether changes should be made to the details of the Food Safety Bill having regard to the existing trade practices, we appointed a management consultant to conduct a BIA to study the implications of the proposals on the trade.

13. 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 Food Safety Bill are generally in line with overseas practices.

14. The consultant conducted face-to-face interviews with some 50 food traders or associations<sup>2</sup> playing different roles in the food supply chain to collect their views on the proposals in the Bill. Of these, 35 are SME traders.

15. The proposals in the Food Safety 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. 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.

16. 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.

17. The consultant has estimated the compliance cost associated with the new proposals under the Food Safety Bill. The compliance cost for

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<sup>2</sup> 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.

the registration scheme<sup>3</sup> was estimated at 0.008% of the operating expenses<sup>4</sup> of all food importers and distributors. As for the record-keeping requirement, the estimated compliance cost ranges from 0.04% to 0.14%<sup>5</sup> of the operating expenses of all SME food traders.

18. The Executive Summary of the BIA is at Annex C. A copy of the full report has been placed with the Panel Secretariat.

## **FOOD SAFETY BILL**

19. Taking into account the views received during public consultation and the findings of the BIA, we have refined the food safety control proposals under the Food Safety Bill. In this connection, we have researched overseas legislation and regulatory regimes on food safety, including those of Australia, the European Union, Singapore and UK. The salient proposals of the Bill are summarised in the paragraphs below.

### **(A) AUTHORITY OF THE BILL**

20. DFEH will be the authority of the Food Safety Bill.

### **(B) DEFINITION OF “FOOD”**

21. The definition of “food” in the Food Safety 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 products<sup>6</sup> which we consider should be regulated. Furthermore, it is unclear whether edible ice is regarded as “food” under the law<sup>7</sup>. We therefore propose to expressly provide that live aquatic products<sup>8</sup> and ice intended for human consumption should be regarded as “food” under the new Food Safety Bill so that the new food safety control measures will be applicable to these food types.

22. 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 Food Safety Bill be the same. We will introduce corresponding amendments to the definition of “food” under Cap.132.

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<sup>3</sup> This covers the registration fee and the time cost for completing the registration formalities.

<sup>4</sup> The total operating expense for three years is used as the registration will be for a three-year cycle.

<sup>5</sup> This depends on the number of transactions of a trader per annum.

<sup>6</sup> Except live shellfish which is already included in the current definition of “food” in Cap.132.

<sup>7</sup> 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.

<sup>8</sup> Aquatic products will be defined as fish, shellfish, amphibian or any other form of aquatic life other than a bird, mammal or reptile.

## (C) REGISTRATION SCHEME FOR FOOD IMPORTERS AND DISTRIBUTORS

23. The food trade bears the primary legal responsibility for ensuring food safety and is best placed to devise a system for the safe supply of food. The Food Safety Bill will include a new requirement for any person who carries on a food importation or distribution business to register with DFEH. The registration scheme will assist DFEH in establishing better communication with food traders and contacting them quickly in the event of a food incident. “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<sup>9</sup>. “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.

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

25. 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 are not required to register with DFEH again under the Food Safety Bill. As a trade facilitation measure, we will exempt these food importers and distributors from the registration requirement under the Food Safety Bill. We will include a provision to empower DFEH to obtain information about these licensees or registered persons under the respective Ordinance from the relevant licensing authority. A list of the exempted food importers and distributors and the relevant licensing authorities is at Annex D.

26. 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 applicant’s particulars, contact details and the food type being imported or distributed. The food categories adopted under the registration scheme (Annex E) have been drawn up with reference to those adopted in the General Standard on Food Safety under the Codex Alimentarius and the current Food Categorisation

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<sup>9</sup> The registration requirement does not apply if the only food imported by the business is imported in the course of business of a transport operator.

and Coding System of the Centre for Food Safety (CFS). Requiring applicants to provide information on food types would be useful for speedy tracing and identification of a more defined group of food traders as and when necessary, especially during food incidents. 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) was generally supported by food traders during the BIA study.

27. The registration cycle for food importers and distributors will be for a period of three years, subject to renewal. Registration fee will be charged under the scheme on the basis of full-cost recovery. The current estimate is that the fee level for registration and renewal of registration for a three-year term will be \$195 and \$180 respectively.

28. DFEH may refuse an application for registration or revoke a registration if he is satisfied that the applicant has repeatedly contravened the Food Safety Bill in the past 12 months.

29. DFEH's decisions in relation to the registration scheme will be subject to appeal. Any person who feels 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 he decides otherwise.

30. We had earlier proposed to make it an offence in the Food Safety Bill for any person to knowingly sell food obtained from unregistered food importers or distributors (unless they are exempted) in the course of a trade or business. We noted during public consultation and the BIA study that food traders had strong objections to the proposal. 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 below would help to enhance food traceability, we have decided to drop this proposal.

31. 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).

## **(D) RECORD-KEEPING REQUIREMENT**

32. Notwithstanding the requirement for all food importers and distributors to register with DFEH, 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 need to further require food traders to maintain records of the movement of food.

33. The Food Safety 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<sup>10</sup>. DFEH will be empowered to inspect the records maintained by food traders.

34. There is no stipulated format for the records of each transaction to be maintained, but those records should 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 it, the common name of the capture, the total quantity and the catch area. We will provide record templates for the traders for their reference.

35. The transaction or capture records should 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 as general reference in the Code of Practice to be issued by DFEH under the Food Safety Bill. The proposal was generally supported by food traders during public consultation and the

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<sup>10</sup> This is known as the “one-step-backward, one-step-forward” approach in the European Union.

BIA study.

36. 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 the consumers. 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 customers. Hence the Bill will provide 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.

37. 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.

#### **(E) IMPORT CONTROL FOR SPECIFIC FOOD TYPES**

38. 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. Import requirements will be set out in the regulations under the Food Safety Bill. In this regard, the Food Safety Bill will empower the Secretary for Food and Health (SFH) to make regulations on the import control of specific food types.

39. We will expand our import control to cover food with a high potential health risk. 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. The proposals are set out in Annex F. We are consulting the trade on the proposals. Following the enactment of the Food Safety Bill, the Administration will introduce the two regulations.

#### **(F) PROHIBITION OF IMPORT AND SUPPLY OF PROBLEM FOOD AND MANDATORY RECALL**

40. 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 he has reasonable grounds to believe that public health is at risk. Accordingly, we will transfer this Part of Cap.132 to the new Food Safety Bill.



**(G) GRACE PERIOD**

41. The Food Safety Ordinance will commence on the date when it is published in the Gazette. To allow sufficient time for traders to adapt to the new requirements, we propose that the penalty provision in relation to the registration scheme, and the record-keeping requirements should commence after a grace period of six months.

**LEGISLATIVE TIMETABLE**

42. We plan to introduce the Food Safety Bill into the Legislative Council in June 2010.

**ADVICE SOUGHT**

43. Members are invited to comment on the above proposals.

**Food and Health Bureau  
February 2010**

**Consultation Programme on Food Safety Bill****(A) Advisory Committees**

<b>Meetings</b>	<b>Date</b>
Advisory Council on Food and Environmental Hygiene	6 December 2007
LegCo Panel on Food Safety and Environmental Hygiene	11 December 2007
Retail Task Force under Business Facilitation Advisory Committee	23 January 2008
Advisory Committee on Agriculture and Fisheries	4 February 2008
Business Facilitation Advisory Committee	25 February 2008
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 Consultation Committees (MMCC)	January – July 2008

**(B) Meetings with trade associations**

<b>Sector</b>	<b>Date</b>
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

<b>Sector</b>	<b>Date</b>
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**

<b>Type of Business</b>	<b>Date</b>
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 andcooked 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

<b>Type of Business</b>	<b>Date</b>
Café	12 March 2009
Food bank	15 May 2009
Food exhibition organiser	10 June 2009
Wet market (stalls selling fresh meat, vegetable 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**

<b>District</b>	<b>Council/ Committee</b>	<b>Date</b>
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
Island	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 –

<b>Organisations</b>
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



## **Results of the Public Consultation on the Food Safety Bill**

### General Views

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

2. The public at large welcomed the proposal. The District Councils indicated general support to the direction of the proposal. Some District Council members, however, 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.

### Views of the Trade

#### (i) Registration Scheme for Food Importers and Distributors

3. The trade requested the Administration to simplify the procedures for the proposed registration scheme for food importers and distributors and keep the registration fee to a minimum or even waive it. They also asked for facilitation measures in registration e.g. those who are already licensed under other legislation or registered with other Government departments should be exempted from the proposed registration requirement.

#### (ii) Record-Keeping Requirement

4. While some trade members considered that it was already an established trade practice to maintain transaction records for the purpose of book-keeping and auditing (as it was already a legal requirement to maintain transaction records for seven years under the Inland Revenue

Ordinance), some traders expressed difficulties in complying with the proposed record-keeping requirements and raised doubts on the effectiveness of record-keeping in source tracing. Most sectors agreed that the duration for 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. Traders generally supported our proposed record-keeping period and requested the Administration to simplify the requirements and provide sufficient support to the small and medium enterprises in complying with the requirements.

### (iii) Tightened Import Control

5. Regarding the import control measures, some traders welcomed the tightened control on import of aquatic products and considered that it would ensure the quality and food safety of imported seafood. The seafood sector requested the Administration to liaise with the Mainland and overseas authorities to ensure that the proposed health certificate requirements for imported aquatic products could be met by the exporting countries. They were also concerned about the food smuggling problem and urged the Authority to step up enforcement action.

6. While the chilled marine fish traders requested the Administration to minimize the control on the sector as they believed that the risk of chilled fisheries products was low, the fruit and vegetables trade requested more stringent control measures such as centralizing the wholesaling activities of imported fruits and vegetables at designated markets.

### Views of the Consulates General

7. Overseas authorities or Consulates General were mainly concerned about the import control on food and the application of the orders to prohibit the import of problem food, which might have implications for their exporting sectors.



Medical sector, academics and the Consumer Council

8. The medical sectors, academics and the Consumer Council welcomed the proposal and indicated clear support for the Bill.



# **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

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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 Assessment Environment	Phase 3: Stakeholder Consultation	Phase 4: Business Impact Assessment	Phase 5: Recommendations and Reporting
<b>Key Activities:</b>				
<ul style="list-style-type: none"> <li>Confirm study objectives, plan for and agree next steps</li> <li>Review FHB's groundwork on public consultation and overseas practice</li> <li>Collect information regarding existing trade contacts that FHB and EABFU have established</li> </ul>	<ul style="list-style-type: none"> <li>Review general market conditions</li> <li>Identify key affected business segments and major business stakeholder groups</li> <li>Confirm the approach to consultation</li> </ul>	<ul style="list-style-type: none"> <li>Develop stakeholder interview questions covering the scope and coverage of the legislation, enforcement and compliance issues</li> <li>Consult key business stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>Identify key challenges of the food trade to comply with the mandatory registration scheme and keeping of transaction records</li> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>Consolidate analysis and recommendations</li> <li>Prepare and circulate Draft Final Report for comments</li> <li>Prepare Final Report and Executive Summary, incorporating as appropriate, comments of the Steering Committee</li> </ul>
<b>Deliverables:</b>				
<ul style="list-style-type: none"> <li>Inception Report (in English) outlining the study approach (e.g. timeline, roles and responsibilities) and initial observations on public consultation findings</li> </ul>	<ul style="list-style-type: none"> <li>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</li> <li>An agreed approach to consultation</li> </ul>	<ul style="list-style-type: none"> <li>Agreed stakeholder questions</li> <li>Summary and analysis of findings of stakeholder consultation (to be incorporated in the Business Impact Assessment Report)</li> </ul>	<ul style="list-style-type: none"> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> <li>Final Report (in English) and Executive Summary (in English and Chinese)</li> </ul>

### 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><b>Overseas experience:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <p><b>Proposed legislation in Hong Kong:</b></p> <ul style="list-style-type: none"> <li>• 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"> <li>○ Food retailers in Hong Kong are largely composed of restaurants and caterers. These operators are required to apply to the FEHD for restaurant licences.</li> <li>○ 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.</li> </ul> </li> <li>• We also noted that there is no significant difference between Hong Kong’s proposed legislation and that of other comparable overseas jurisdictions.</li> </ul>
<p>Information Requirements</p>	<p><b>Overseas experience:</b></p> <ul style="list-style-type: none"> <li>• All jurisdictions have similar information requirements for registration purposes. Typical requirements include: <ul style="list-style-type: none"> <li>○ Contact details for the food business;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Details about the nature of the food business (e.g. manufacturer, importer, distributor or retailer);</li> <li>○ 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</li> <li>○ The location of all food premises of the food business.</li> </ul> <ul style="list-style-type: none"> <li>• The US has the most comprehensive list of food types in its registration form for selection (roughly 37 items).</li> <li>• 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).</li> </ul> <p><b>Proposed legislation in Hong Kong:</b></p> <ul style="list-style-type: none"> <li>• The proposed legislation has requirements similar to those adopted by other overseas jurisdictions.</li> <li>• 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.</li> </ul>
Registration Formalities	<p><b>Overseas experience:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Singapore’s arrangement is slightly different from the others: <ul style="list-style-type: none"> <li>○ Registration (or licence as the case maybe) has to be renewed on an annual basis; and</li> <li>○ Applications for registration (or licence) have to be made via an online portal as no paper form is accepted.</li> </ul> </li> <li>• 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.</li> <li>• 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).</li> <li>• 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.</li> </ul>

	<p><b>Proposed legislation in Hong Kong:</b></p> <ul style="list-style-type: none"> <li>• Most jurisdictions adopt a similar arrangement, though some jurisdictions charge for submitting applications (e.g. Singapore) and some do not (e.g. the US).</li> <li>• 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.</li> <li>• 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.</li> </ul>
<p>Coverage of Record-Keeping</p>	<p><b>Overseas experience:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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"> <li>○ 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.</li> <li>○ 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.</li> <li>○ In addition, the US has specified record-keeping requirements for food transporters.</li> </ul> </li> <li>• 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.</li> </ul> <p><b>Proposed legislation in Hong Kong:</b></p> <ul style="list-style-type: none"> <li>• The proposed Food Safety Bill adopts a similar approach to those of other jurisdictions we reviewed.</li> <li>• 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.</li> </ul>



Record-keeping Requirements	<p><b>Overseas experience:</b></p> <ul style="list-style-type: none"> <li>• 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"> <li>○ The address of the supplier or customer;</li> <li>○ Details about the transporter who transported the food to and from the operator (in the US only);</li> <li>○ Nature and quantity of products; and</li> <li>○ The date of the transaction and delivery.</li> </ul> </li> <li>• 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.</li> <li>• The US regulation stipulates a specific set of record keeping requirements for food transporters, including: <ul style="list-style-type: none"> <li>○ Origin and destination points (i.e., following the physical flow of the food); and</li> <li>○ Route taken while transporting the food.</li> </ul> </li> </ul> <p><b>Proposed legislation in Hong Kong:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
Duration of Record-Keeping	<p><b>Overseas experience:</b></p> <ul style="list-style-type: none"> <li>• 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).</li> <li>• In the table below we summarise the maximum retention period requirements for different jurisdictions by type of food products:</li> </ul>

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

- 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%)
<b>Approximate Total:</b>	<b>3,828</b>	<b>(100%)</b>

### **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%)
<b>Approximate Total:</b>	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%)
<b>Approximate Total:</b>	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)**

<b>Approximate Number of Employees</b>	<b>Indicative Number of Establishments</b>	
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%)
<b>Approximate Total:</b>	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%)
<b>Approximate Total:</b>	<b>11,116</b>	<b>(100%)</b>

### ***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.

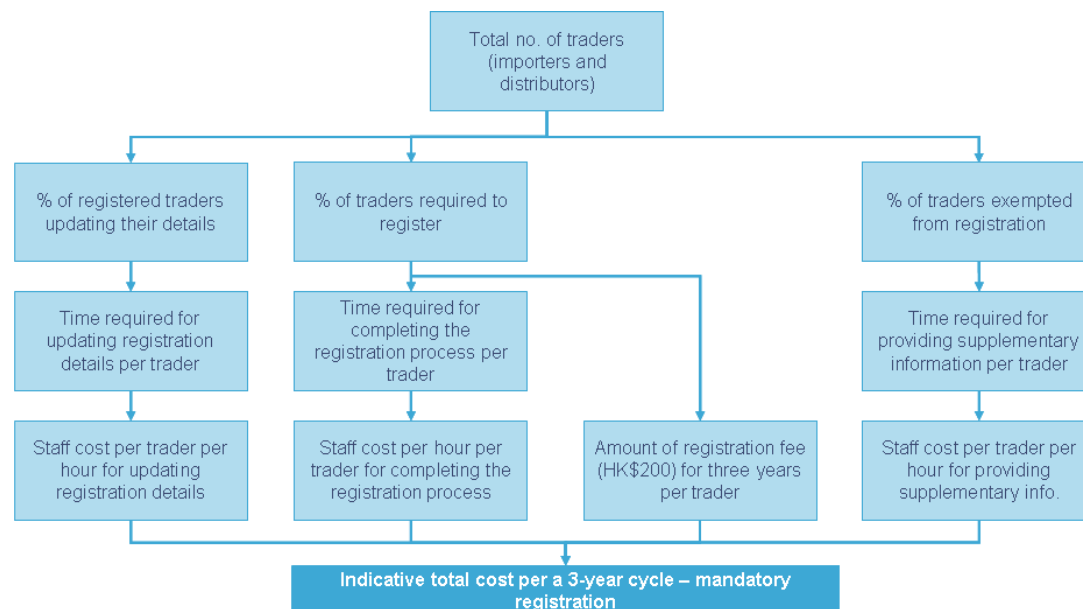
33. The number of importers and distributors traders who are required to register, provide supplementary information (in order to qualify for exemption), or update registration details are first determined. The key compliance cost elements are then estimated.

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.



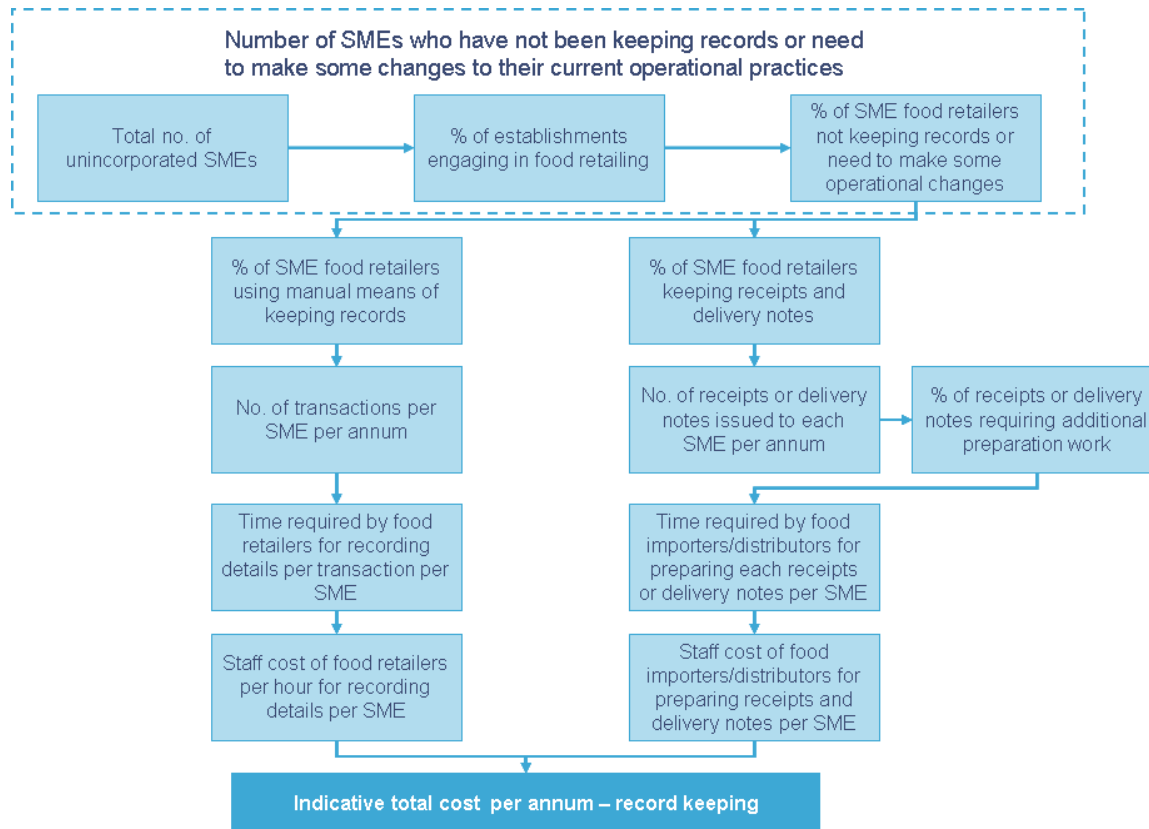
### **Record-keeping Requirements: Estimation of the Cost of Compliance**

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 Compliance<sup>1</sup>

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 <sup>2</sup> )		Compliance Costs associated with Record Keeping Requirements <sup>3</sup>	
	Registration Fees	Completing the Registration Formalities	Manually Recording of Transaction Details	Additional Work for Issuing Receipts or Delivery Notes <sup>4</sup>
<b>Food Importers</b>	0.0066%	0.0014%	– <sup>5</sup>	0.014% – 0.047% <sup>6</sup>
<b>Food Distributors</b>				
<b>Food Retailers</b>	–	–	0.027% – 0.089%	

<sup>1</sup> 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.

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

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

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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

**Exempted Food Importers and Distributors**

<b>Legislation</b>	<b>Authority</b>
A licence under Part IV of the Food Business Regulation (Cap. 132 sub. leg. X)	Director of Food and Environmental Hygiene
A permission under section 30 of the Food Business Regulation (Cap. 132 sub. leg. X)	Director of Food and Environmental Hygiene
A licence under Part III of the Frozen Confections Legislation (Cap. 132 sub. leg. AC).	Director of Food and Environmental Hygiene
A licence under Part II of the Hawker Regulation (Cap. 132 sub. leg. AI)	Director of Food and Environmental Hygiene
A licence under Part III of the Milk Regulation (Cap. 132 sub. leg. AQ).	Director of Food and Environmental Hygiene
A licence under the Offensive Trades Regulation (Cap. 132 sub. leg. AX)	Director of Food and Environmental Hygiene
Registration as a stockholder of a reserved commodity under regulation 13 of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296 sub. leg. A).	Director-General of Trade and Industry
A licence under section 8 or permit under section 14 of the Marine Fish (Culture) Ordinance (Cap. 353).	Director of Agriculture, Fisheries and Conservation
A licence under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D)) in respect of a Class III vessel.	Director of Marine

**Food Categorisation System**

<b>Main food category</b>	<b>Food classification</b>
Cereals and grains products (other than bakery products and snack food)	Cereals, rice, wheat
	Pasta, noodles
	Flour, starch, substitute flour
	Breakfast cereals and other cereal products
Fruits and vegetables, including mushrooms, fungi and seaweeds, beans, nuts and seeds (other than snack food, juices and Chinese herbs)	Fruits (unprocessed)
	Processed fruits and fruits products
	Vegetables, including mushrooms, fungi and seaweeds (unprocessed)
	Processed vegetables and vegetables products, including mushrooms, fungi and seaweeds
	Nuts and seeds
	Nuts and seeds products
	Beans
	Beans products
Sashimi , sushi and ready-to-eat raw oyster	Sushi
	Sashimi
	Ready-to-eat raw oyster
Aquatic products, including fish, mollusks, crustaceans, other edible aquatic animals and amphibians (other than snack food, sashimi and ready-to-eat raw oyster)	Wild-caught coral reef fish (live and unprocessed)
	Other marine fish (live and unprocessed)
	Freshwater fish (live and unprocessed)
	Crustaceans, mollusks (live and unprocessed)
	Puffer fish (processed and unprocessed)
	Other edible aquatic animals and amphibians (unprocessed)
	Dried seafood
	Other aquatic products (processed)
Meat and meat products, including poultry and game (other than snack food and sashimi)	Frozen, chilled, fresh game (unprocessed)
	Frozen, chilled, fresh meat (unprocessed)
	Frozen, chilled, fresh poultry (unprocessed)
	Processed game products
	Processed meat products
	Processed poultry products

<b>Main food category</b>	<b>Food classification</b>
Eggs and egg products	Chicken eggs (processed and unprocessed)
	Duck eggs, goose eggs, quail eggs and other poultry eggs (processed and unprocessed)
	Egg products
Milk and dairy products (other than infant/ follow-up/growing up formula)	Milk and milk beverages
	Cream, cheese, butter
	Condensed milk, evaporated milk, filled milk product
	Dried milk
	Others
Frozen confections	Ice cream, popsicle, frozen yoghurt and others
Fat and oil	Animal fat and oil, vegetable fat and oil, other fat and oil
	Salad dressing
Beverages (other than milk and dairy products)	Soft drink and other carbonated drinks
	Fresh fruit and vegetable juice, fruit and vegetable juice drink
	Coffee beans, tea leaves, instant drink mixes
	Bottled water and edible ice
	Other non-alcoholic beverages
	Beer and ales
	Other alcoholic beverages
Sugars and sweets	Sugars, frostings, toppings, dessert sauces
	Sweeteners
	Honey, molasses, syrups
	Jams/preserves, jellies
	Candy, chocolate and chewing gum
Dim sum, Chinese pastry, mixed dishes, desserts, bakery products and snack food (other than candy, chocolate and chewing gum)	Dim sum, Chinese pastry
	Mixed dishes
	Desserts, bakery products
	Snack food
Salts, condiments and sauces, herbs and spices	Vinegar, gravy , savoury sauces, including soya sauce, oyster sauce
	Salts, condiments
	Herbs and spices
Chinese herbs and their products (Excluding those required to be registered under Chinese Medicine	Chinese herbs
	Chinese herbs products

Main food category	Food classification
Ordinance Cap 549 & Pharmacy and Poisons Ordinance Cap.138)	
Infant/ follow-up/growing up formula and baby food	Infant/follow-up/growing-up formula (for baby up to 36 months)
	Other baby food
Miscellaneous - foods that cannot be placed in the above categories	Others

## **Regulations on Import Control under the 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 products<sup>1</sup> to be accompanied with 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 be accompanied by a self-declaration recording details of the catch.

6. For certain high risk aquatic products, such as puffer fish

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<sup>1</sup> “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.

products, wild-caught coral reef fish likely associated with ciguatera food poisoning, and ready-to-eat raw oysters, we are considering more stringent requirement. Other than 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 are also considering to prohibit the import of live puffer fish due to the high risk of tetrodotoxin.

7. For processed aquatic products<sup>2</sup> (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. We are consulting the trade on the above proposed control measures, and will take into account the views of the traders in refining the proposal where appropriate.

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<sup>2</sup> “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.