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**Paper for the House Committee Meeting  
on 1 April 2011**

**Legal Service Division Report on an  
order made under section 78B of the  
Public Health and Municipal Services Ordinance (Cap. 132)  
(G.N. (E.) 11 of 2011) gazetted on 24 March 2011**

Background

Section 78B of the Public Health and Municipal Services Ordinance (Cap. 132) empowers the Director of Food and Environmental Hygiene (DFEH) to make an order to prohibit the import and the supply of any food for the period specified in the order. Such an order may only be made if DFEH has reasonable grounds to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health. Under section 78C(3), if a section 78B order is addressed to a class of persons or all persons, the order must be published in the Gazette.

2. Section 78B(6) specifies that a section 78B order is not subsidiary legislation. Accordingly, such order is not required to be tabled before the Legislative Council and is not subject to amendment by the Legislative Council. According to LegCo Brief on the Public Health and Municipal Services (Amendment) Bill 2008 (Ref.: FH CR 1/3231/07), the Administration stated that section 78B of Cap. 132 was enacted to enable DFEH making orders administratively to deal with food incidents in a timely and effective manner for the protection of public health before the introduction of the Food Safety Bill.

3. Members may wish to note that the Food Safety Bill (enacted as the Food Safety Ordinance) was passed by the Legislative Council on 30 March 2011. The Food Safety Ordinance (FSO), which will come into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette, repeals Part VA of Cap. 132 (sections 78A to 78L of Cap. 132) and re-enacts that part in Part 4 of FSO. Section 61 of FSO provides that an order in force under section 78B of Cap. 132 immediately before the repeal of Part VA

of Cap. 132 remains in force in accordance with its terms as if it were a food safety order and may be varied or revoked accordingly.

Section 78B order gazetted on 24 March 2011

4. Pursuant to section 78B of Cap. 132, DFEH issued a section 78B order to all persons (the Order) which was published as a General Notice in the Gazette on 24 March 2011. Under the Order-

- (a) all persons are prohibited from importing into Hong Kong the food specified in Annex A to the Order, that is intended for human consumption, for the period from 12:00 noon on 24 March 2011 until further notice; and
- (b) all persons are prohibited from supplying<sup>1</sup> within Hong Kong the food specified in Annex A to the Order, that is imported into Hong Kong after 12:00 noon on 24 March 2011, and is intended for human consumption, for the period from 12:00 noon on 24 March 2011 until further notice.

5. The food specified in Annex A, which relates to food products originated from five prefectures in Japan, namely, Fukushima, Ibaraki, Tochigi, Gunma and Chiba and harvested, manufactured, processed or packed on or after 11 March 2011, includes the following:

- (a) all fruits and vegetables;
- (b) all milk, milk beverages and dried milk; and
- (c) all chilled or frozen games, meat and poultry, poultry eggs, and all live, chilled or frozen aquatic products, unless accompanied by a certificate issued by the competent authority of Japan certifying that the radiation levels do not exceed the standards laid down by the Codex Alimentarius Commission in the Guideline Levels for Radionuclides in Foods Contaminated following a Nuclear or Radiological Emergency.

6. Annex B to the Order sets out the reasons for making the Order and the principal factors that led to making of the Order. These include (a) the

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<sup>1</sup> According to section 78A of Cap. 132, "supplying" means (a) selling the food; (b) offering, keeping or exhibiting the food for trade, (c) exchanging or disposing of the food for consideration; (d) transmitting, conveying or delivering the food in pursuance of (i) a sale; or (ii) an exchange or disposal for consideration; or (e) for commercial purposes, giving the food as a prize or making a gift of the food.

release of radioactive substances into the environment from the Daiichi nuclear power plant in Fukushima prefecture which was damaged owing to the massive earthquake and the subsequent tsunami in Japan on 11 March 2011, (b) tests conducted by the Japan authorities demonstrating that the release of radioactive substances had contaminated certain foods in prefectures in the vicinity of the Daiichi nuclear power plant, and (c) tests conducted by the Hong Kong Centre for Food Safety on 23 March 2011 indicating that certain vegetable samples imported from Chiba prefecture of Japan had been contaminated with radioactive substances at such a level hazardous to human health. According to paragraph 6 of the LegCo Brief issued by Food and Health Bureau on 24 March 2011 (Ref.: FHB/F/5/1/37), DFEH has considered that it was necessary to make a section 78B order to prevent or reduce a possibility of danger to public health brought about by the import of the radiation-contaminated food.

7. Under section 78D of Cap. 132, a person bound by the Order who contravenes a term of the Order commits an offence and is liable to a fine at level 6 and to imprisonment for 12 months. Section 78D(2) provides that it is not a defence for the person charged with the offence to show that the food concerned is the subject of a licence, permit or any other form of authorization issued or granted under Cap. 132 or any other Ordinance.

8. Under section 78G of Cap. 132, a person bound by the Order who is aggrieved by the Order may, within 28 days from becoming bound by the Order, appeal to the Municipal Services Appeals Board against the Order. Under section 78H, a person bound by the Order may apply for an amount of compensation that is just and equitable in all the circumstances of the case, for losses arising as a direct result of compliance with the Order. These losses include total or partial loss of the food that is the subject of the Order and costs or expenditure actually and directly incurred.

9. The Order took effect at 12:00 noon on 24 March 2011

10. The Panel on Food Safety and Environmental Hygiene has not been consulted on the Order.

11. No difficulties have been identified in the legal or drafting aspects of the Order.

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