

**FOOD SAFETY ORDINANCE****CONTENTS**

Section	Page
---------	------

**PART 1****PRELIMINARY**

- |    |   |      |
|----|---|------|
| 1. | Short title and commencement .....            | A261 |
| 2. | Interpretation .....                          | A261 |
| 3. | Food not intended for human consumption ..... | A265 |

**PART 2****REGISTRATION OF FOOD IMPORTERS AND DISTRIBUTORS****Division 1—Requirement to be Registered**

- |    |  |      |
|----|--|------|
| 4. | Requirement for food importers to be registered .....    | A267 |
| 5. | Requirement for food distributors to be registered ..... | A269 |
| 6. | Exemptions by Director .....                             | A269 |

**Division 2—Registration**

- |     |   |      |
|-----|---|------|
| 7.  | Application for registration .....                  | A269 |
| 8.  | Determination of application for registration ..... | A271 |
| 9.  | Registration .....                                  | A271 |
| 10. | Conditions of registration .....                    | A273 |
| 11. | Application for renewal of registration .....       | A273 |
| 12. | Determination of application for renewal .....      | A273 |
| 13. | Renewal of registration .....                       | A275 |
| 14. | Revocation of registration .....                    | A275 |

Section	Page
<b>Division 3—The Register</b>	
15. The register .....	A277
<b>Division 4—Appeals in relation to Registration</b>	
16. Appeals to Municipal Services Appeals Board .....	A277
<b>Division 5—General</b>	
17. Updating of information .....	A279
18. Obtaining information from certain Authorities .....	A279
19. Obtaining information from persons who are not registered	A281
20. Providing false information in relation to registration or renewal .....	A281
<b>PART 3</b>	
<b>KEEPING RECORDS RELATING TO FOOD</b>	
<b>Division 1—Acquisition and Capture Records</b>	
21. Record of local acquisition of food .....	A283
22. Record of acquisition of imported food .....	A283
23. Capture of local aquatic products .....	A285
<b>Division 2—Supply Records</b>	
24. Record of wholesale supply of food .....	A287
25. Defence for retailers .....	A287
<b>Division 3—Duration of Keeping Records and their Inspection</b>	
26. Duration of keeping records .....	A289
27. Inspection of records .....	A289

Section	Page
28. Use and disclosure of records by Director .....	A291

#### **Division 4—Exemptions**

29. Exemptions by Director .....	A291
----------------------------------	------

### PART 4

#### FOOD SAFETY ORDERS

30. Food safety orders .....	A291
31. Manner of making food safety orders, service and publication	A295
32. Contravention of food safety orders .....	A295
33. Actions taken in relation to food safety orders and provision of samples .....	A297
34. Power to obtain information or copies of documents .....	A297
35. Appeals to Municipal Services Appeals Board .....	A299
36. Compensation .....	A299
37. Seizure, marking or destruction of food .....	A301
38. Offence to tamper with mark, seal or other designation .....	A303

### PART 5

#### ADMINISTRATION AND ENFORCEMENT

#### **Division 1—Administration**

39. Authorization of public officers .....	A303
40. Delegation by Director .....	A303
41. Confidentiality .....	A305
42. Protection of public officers .....	A305

Section	Page
<b>Division 2—Codes of Practice</b>	
43. Codes of practice .....	A307
44. Use of codes of practice in legal proceedings .....	A307
<b>Division 3—Enforcement</b>	
45. Power to obtain information .....	A309
46. General power of entry .....	A311
47. Entry under warrant .....	A311
48. Assistance for authorized officers on entry .....	A311
49. Power of arrest in certain cases .....	A313
50. Disposal of certain property .....	A313
<b>Division 4—Offences</b>	
51. Offences committed by bodies corporate .....	A313
52. Liability of employers and principals .....	A315
53. Defence for employees .....	A315
54. Obstruction of persons performing official functions etc. ....	A315
55. Proceedings against several persons .....	A317
56. Time limit for prosecutions .....	A317
<b>PART 6</b>	
<b>GENERAL</b>	
57. Method of giving or serving notice .....	A317
58. Amendment of Schedules .....	A317
59. Regulations .....	A319
60. Transitional provision—registration before commencement of Division 1 of Part 2 .....	A321

Section		Page
61.	Transitional provision—orders under section 78B of the Public Health and Municipal Services Ordinance .....	A321
62.	Transitional provision—record keeping requirements .....	A321
63.	Transitional provision—ice-making factories .....	A321

## PART 7

### CONSEQUENTIAL AND RELATED AMENDMENTS

#### **Division 1—Public Health and Municipal Services Ordinance**

64.	Section 2 amended (Interpretation) .....	A323
65.	Section 56 amended (Regulations as to food and drugs hygiene) .....	A325
66.	Section 57 amended (Live poultry, live reptiles and live fish deemed food for purposes of regulations) .....	A325
67.	Section 67 amended (Presumptions) .....	A325
68.	Part VA repealed (Additional powers in relation to food).....	A327
69.	Section 124I amended (Authority may prescribe fees and charges) .....	A327
70.	Section 139 amended (Obstruction of officers in the exercise of their duty) .....	A327
71.	Third Schedule amended (Designated Authorities) .....	A327
72.	Sixth Schedule amended (Names in which proceedings for offences may be brought under section 131(1)) .....	A327
73.	Ninth Schedule amended (Penalties) .....	A327

#### **Division 2—Customs and Excise Service Ordinance**

74.	Schedule 2 amended (Ordinances referred to in sections 17 and 17A).....	A329
Schedule 1	Persons not required to be registered under Part 2 .....	A329
Schedule 2	Main food categories and food classifications .....	A333
Schedule 3	Fees .....	A339

Section	Page
Schedule 4 Form of warrant .....	A341
Schedule 5 Arrestable offences .....	A341

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

---

**ORDINANCE NO. 5 OF 2011**L.S.

Donald TSANG  
Chief Executive  
7 April 2011

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

[ ]

Enacted by the Legislative Council.

**PART 1****PRELIMINARY****1. Short title and commencement**

- (1) This Ordinance may be cited as the Food Safety Ordinance.
- (2) This Ordinance (except Part 3 and Division 1 of Part 2) comes into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette.
- (3) Part 3 and Division 1 of Part 2 come into operation 6 months after the day on which section 7 comes into operation.

**2. Interpretation**

- (1) In this Ordinance—  
“air transhipment cargo” (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

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

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

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

(a) a public officer authorized under section 39 in relation to that provision; or

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

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

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

(a) aerated water;

(b) distilled water;

(c) water from natural springs, either in its natural state or with added mineral substances; and

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

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

“food” (食物) includes—

(a) drink;

(b) ice;

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

(d) smokeless tobacco products; and

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

but does not include—

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

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

(h) medicine as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138) or Chinese herbal medicine or proprietary Chinese medicine as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549);

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

Note: See also subsection (2).

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

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



- “food importer” (食物進口商) means a person who carries on a food importation business;
- “food safety order” (食物安全命令) means an order made under section 30 as varied from time to time under section 30(5);
- “food transport operator” (食物運輸商) means a person who transports food under a contract of carriage but at no time has any proprietary interest in the food;
- “function” (職能) includes duty;
- “import” (進口) means to bring or cause to be brought into Hong Kong by air, land or water;
- “local aquatic product” (本地水產) means an aquatic product captured from a local fishing vessel, whether in Hong Kong waters or in other waters;
- “local fishing vessel” (本地漁船) means a Class III vessel (within the meaning of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D)) that is licensed under that Regulation;
- “premises” (處所) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);
- “registered food distributor” (登記食物分銷商) means a person who is registered under Part 2 as a food distributor;
- “registered food importer” (登記食物進口商) means a person who is registered under Part 2 as a food importer;
- “Secretary” (局長) means the Secretary for Food and Health;
- “smokeless tobacco product” (無煙煙草產品) has the meaning given by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);
- “supply” (供應), in relation to food, means—
- (a) to sell the food;
  - (b) to offer, keep or exhibit the food for sale;
  - (c) to exchange or dispose of the food for consideration; or
  - (d) for commercial purposes, to give the food as a prize or to make a gift of the food;
- “wholesale” (批發) means the supply of food to a person who obtains the food for the purpose of supplying or causing to supply it to a third party in the course of business carried on by that person.
- (2) In determining, for the purposes of the definition of “food distribution business” in subsection (1), whether the principal activity of a business is the supply of food in Hong Kong by wholesale, regard must be had only to those activities of the business that are related to the supply of food.

### **3. Food not intended for human consumption**

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

- (2) For the purposes of this Ordinance—
- (a) any food commonly used for human consumption is presumed, unless there is evidence to the contrary, to be intended for human consumption;
  - (b) any substance capable of being used in the composition or preparation of any food commonly used for human consumption that is found on any premises or in any vessel where that food is prepared is presumed, unless there is evidence to the contrary, to be intended for human consumption.
- (3) Without limiting subsection (1) or (2), this Ordinance does not apply in relation to the propagation or promotion of growth of live aquatic products in captivity.

## PART 2

### REGISTRATION OF FOOD IMPORTERS AND DISTRIBUTORS

#### **Division 1—Requirement to be Registered**

#### **4. Requirement for food importers to be registered**

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

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

(3) Subsection (1) does not apply if—

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

## **5. Requirement for food distributors to be registered**

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

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

(3) Subsection (1) does not apply if—

(a) the person is specified in column 4 of Schedule 1;

(b) the person is exempted, or is in a class of persons that is exempted, under section 6 in respect of the business; or

(c) the person is registered under this Part as a food importer in respect of the business.

## **6. Exemptions by Director**

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

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

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

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

## **Division 2—Registration**

## **7. Application for registration**

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

(a) as a food importer; or

(b) as a food distributor.

(2) For a partnership, a partner authorized by the partnership may apply for registration on behalf of the partnership and, if registration is granted, it is to be expressed to be granted to that person on behalf of the partnership.

(3) An application for registration—

(a) must be in the form specified by the Director;

- (b) must identify the main food categories and food classifications, as set out in Schedule 2, of all food to be imported by the business (for a food importer) or supplied by wholesale by the business (for a food distributor);
- (c) must include or be accompanied by any documents or information reasonably required by the Director for the purpose of considering the application; and
- (d) must be made in the manner specified by the Director.

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

## **8. Determination of application for registration**

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

(2) The Director may refuse an application if—

- (a) the Director is satisfied that the applicant has repeatedly contravened this Ordinance in the period of 12 months immediately preceding the day on which the application was made;
- (b) the applicant was previously registered under this Part in respect of the business and that registration was revoked in the period of 12 months immediately preceding the day on which the application was made; or
- (c) in the case of an application on behalf of a partnership, the registration under this Part of any partner on behalf of the partnership in respect of the business was revoked in the period of 12 months immediately preceding the day on which the application was made.

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

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

## **9. Registration**

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

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

- (3) Unless revoked earlier, registration has effect for a period of 3 years, and may be renewed in accordance with this Part.
- (4) Registration under this Part is non-transferable.

#### **10. Conditions of registration**

- (1) The Director may impose any conditions on a person's registration under this Part that the Director considers appropriate.
- (2) Conditions may be imposed under subsection (1) only at the time of registration or renewal of registration.
- (3) A person who, without reasonable excuse, contravenes a condition of registration commits an offence and is liable to a fine at level 3 and to imprisonment for 3 months.

#### **11. Application for renewal of registration**

- (1) A registered food importer or registered food distributor may apply for renewal of registration under this Part.
- (2) An application for renewal of registration—
  - (a) must be in the form specified by the Director;
  - (b) must include or be accompanied by any documents or information reasonably required by the Director for the purpose of considering the application; and
  - (c) must be made—
    - (i) no earlier than 4 months before the day on which the registration is due to expire; and
    - (ii) in the manner specified by the Director.
- (3) The Director may refuse to consider an application that does not comply with subsection (2).
- (4) If an application is made in accordance with this section but the Director has not made a decision on the application before the day on which the registration is due to expire, the registration continues in effect until it is renewed under section 13 or the Director gives notice to the applicant of the Director's decision to refuse the application.

#### **12. Determination of application for renewal**

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

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

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

### **13. Renewal of registration**

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

(2) Renewal of registration—

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

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

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

### **14. Revocation of registration**

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

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

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

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

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

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

(a) gives written notice to the person of—

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

(ii) the grounds for revocation;

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

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

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

(a) the reasons for the revocation; and

(b) the day on which the revocation takes effect.

(5) Revocation of registration takes effect—

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

### **Division 3—The Register**

#### **15. The register**

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

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

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

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

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

(5) At all reasonable times, a member of the public may—

- (a) inspect the register without charge; and
- (b) obtain a copy of an entry in or extract from the register on payment of the fee specified in Schedule 3.

### **Division 4—Appeals in relation to Registration**

#### **16. Appeals to Municipal Services Appeals Board**

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

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

### **Division 5—General**

#### **17. Updating of information**

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

(2) A person commits an offence if the person—

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

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

#### **18. Obtaining information from certain Authorities**

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

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

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

(4) In this section—

“specified Authority” (指明當局), in relation to a specified authorization, means the person specified in column 3 of Schedule 1 opposite that authorization;

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

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



**19. Obtaining information from persons who are not registered**

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

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

(3) A person commits an offence if the person—

(a) without reasonable excuse, fails to comply with a requirement made under subsection (1); or

(b) in purported compliance with a requirement made under subsection (1)—

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

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

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

**20. Providing false information in relation to registration or renewal**

(1) A person commits an offence if in, or in relation to, an application for registration or renewal of registration under this Part, the person—

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

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

(2) A person who commits an offence under subsection (1) is liable to a fine at level 3 and to imprisonment for 3 months.

**PART 3****KEEPING RECORDS RELATING TO FOOD****Division 1—Acquisition and Capture Records****21. Record of local acquisition of food**

(1) A person who, in the course of business, acquires food in Hong Kong must record the following information about the acquisition of the food—

- (a) the date the food was acquired;
- (b) the name and contact details of the person from whom the food was acquired;
- (c) the total quantity of the food;
- (d) a description of the food.

(2) A record must be made under this section within 72 hours after the time the food was acquired.

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

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

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

- (a) without reasonable excuse, fails to make a record in accordance with this section;
- (b) includes in a record information that the person knows is false in a material particular; or
- (c) recklessly includes in a record information that is false in a material particular.

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

**22. Record of acquisition of imported food**

(1) A person who, in the course of business, imports food must record the following information about the acquisition of the food—

- (a) the date the food was acquired;
- (b) the name and contact details of the person from whom the food was acquired;
- (c) the place from where the food was imported;
- (d) the total quantity of the food;
- (e) a description of the food.

(2) A record must be made under this section at or before the time the food is imported.

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

(4) This section does not apply—

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

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

(i) the food is air transshipment cargo; or

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

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

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

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

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

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

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

### **23. Capture of local aquatic products**

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

(a) the date or period of the capture;

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

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

(d) the area of the capture.

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

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

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

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

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

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

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

## **Division 2—Supply Records**

### **24. Record of wholesale supply of food**

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

(a) the date the food was supplied;

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

(c) the total quantity of the food;

(d) a description of the food.

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

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

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

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

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

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

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

### **25. Defence for retailers**

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

(a) the person's normal business is the supply of food by retail; and

(b) it was reasonable for the person to assume that the supply was not a wholesale supply.

(2) In this section—

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

### Division 3—Duration of Keeping Records and their Inspection

#### 26. Duration of keeping records

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

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

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

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

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

#### 27. Inspection of records

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

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

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

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

**28. Use and disclosure of records by Director**

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

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

**Division 4—Exemptions****29. Exemptions by Director**

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

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

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

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

**PART 4****FOOD SAFETY ORDERS****30. Food safety orders**

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

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

- (e) prohibit the carrying on of an activity in relation to any food, or permit the carrying on of any such activity in accordance with conditions specified in the order, for the period specified in the order.

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

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

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

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

(4) A food safety order must specify—

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

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

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

(7) In this section—

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

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

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

(1) A food safety order must be in writing and may be addressed to—

(a) a particular person or particular persons;

(b) a class of persons; or

(c) all persons.

(2) A food safety order addressed to a particular person or particular persons—

(a) must be served on that person, or each of those persons; and

(b) takes effect in relation to a person when it is served on that person.

(3) A food safety order addressed to a class of persons or all persons—

(a) must be published in the Gazette; and

(b) takes effect at the time specified in the order.

(4) A food safety order is binding on the person or persons to whom it is addressed.

### **32. Contravention of food safety orders**

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

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



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

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

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

(2) If a sample of food is provided to the Director in compliance with a notice under subsection (1)(b), the Director must pay to the person appearing to have the lawful custody of the food the market price of the sample or, if the market price is unknown or not readily ascertainable, a reasonable price.

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

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

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

### **34. Power to obtain information or copies of documents**

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

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

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

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

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

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

### **35. Appeals to Municipal Services Appeals Board**

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

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

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

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

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

### **36. Compensation**

(1) A person bound by a food safety order may apply for an amount of compensation, recoverable as a civil debt due from the Government, that is just and equitable in all the circumstances of the case, for any loss of a kind set out in subsection (3).

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

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

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

- (a) total or partial loss of the food that is the subject of the order and that—
    - (i) has been destroyed or otherwise disposed of;
    - (ii) is no longer fit for human consumption; or
    - (iii) is depreciated in value;
  - (b) costs or expenditure actually and directly incurred.
- (4) The amount of compensation recoverable—
- (a) in relation to a loss of a kind set out in subsection (3)(a), must not exceed the market value of the food immediately before the time of making the food safety order or immediately before the time of the variation, as the case may be; and
  - (b) in relation to a loss of a kind set out in subsection (3)(b), must not exceed the actual amount of the costs or expenditure incurred.
- (5) An application under subsection (1) may be made—
- (a) to the Small Claims Tribunal, for claims up to the maximum jurisdiction of the Tribunal; or
  - (b) to the District Court, irrespective of the amount claimed.

### **37. Seizure, marking or destruction of food**

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

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

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

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

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

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

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

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

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

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

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

## **PART 5**

### **ADMINISTRATION AND ENFORCEMENT**

#### **Division 1—Administration**

### **39. Authorization of public officers**

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

(2) An authorization—

- (a) must be in writing; and
- (b) may be given in relation to specified provisions of this Ordinance or in relation to this Ordinance generally.

### **40. Delegation by Director**

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

#### **41. Confidentiality**

(1) Except as provided by subsection (2), a public officer must not disclose or give to another person any information concerning a trade, business or manufacturing secret that has come to the knowledge of, or into the possession of, the public officer in the course of the public officer's exercise of powers or performance of functions under this Ordinance.

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

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

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

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

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

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

#### **42. Protection of public officers**

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

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

**Division 2—Codes of Practice****43. Codes of practice**

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

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

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

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

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

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

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

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

**44. Use of codes of practice in legal proceedings**

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

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

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

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

(4) In this section—

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

“court” (法院) means—

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

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

### Division 3—Enforcement

#### 45. Power to obtain information

(1) This section applies if the Director—

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

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

- (a) to provide, within the period specified in the notice, information of a kind specified in the notice; or
- (b) to produce, at the time and place specified in the notice, any document in the person’s possession or control of a kind specified in the notice.

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

- (a) information or documents indicating whether or not a person is a food importer or food distributor;
- (b) information or documents relating to any transaction relating to food;
- (c) information or documents relating to—
  - (i) any information contained, or required to be contained, in an application for registration or renewal of registration under Part 2;
  - (ii) any documents accompanying, or required to accompany, such an application; or
  - (iii) any other information or documents provided, or required to be provided, in relation to such an application.

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

- (a) without reasonable excuse, fails to comply with the notice; or
- (b) in purported compliance with the notice—

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

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

#### **46. General power of entry**

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

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

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

#### **47. Entry under warrant**

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

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

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

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

#### **48. Assistance for authorized officers on entry**

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



**49. Power of arrest in certain cases**

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

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

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

**50. Disposal of certain property**

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

(a) the Director or authorized officer were the police within the meaning of that section; and

(b) the property were property that had come into the possession of the police in connection with an offence.

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

**Division 4—Offences****51. Offences committed by bodies corporate**

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

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

(a) a director, manager, secretary or other similar officer of the body corporate;

(b) a person purporting to act in the capacity of a person referred to in paragraph (a); or

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

## **52. Liability of employers and principals**

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

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

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

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

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

## **53. Defence for employees**

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

- (a) the act or omission of the employee was done or made in the course of the employee's employment and under instructions given by the employer in the course of that employment; and
- (b) the employee was not, at the relevant time, in a position to make or influence a decision regarding that act or omission.

## **54. Obstruction of persons performing official functions etc.**

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

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

**55. Proceedings against several persons**

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

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

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

**56. Time limit for prosecutions**

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

**PART 6****GENERAL****57. Method of giving or serving notice**

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

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

**58. Amendment of Schedules**

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

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

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

**59. Regulations**

- (1) The Secretary may make regulations—
  - (a) providing for any matters that are necessary for giving full effect to the purposes and provisions of this Ordinance;
  - (b) prohibiting, restricting or regulating the importation of food of a specified class; and
  - (c) generally for the better carrying out of the purposes and provisions of this Ordinance.
- (2) Regulations made under subsection (1) may—
  - (a) make different provisions for different circumstances and provide for a particular case or class of cases;
  - (b) be made so as to apply only in the circumstances prescribed by the regulations;
  - (c) specify forms for the purposes of the regulations; and
  - (d) prescribe offences for contraventions of the regulations, punishable by a fine, imprisonment or both.
- (3) The maximum fine that may be prescribed for an offence is level 6 and the maximum imprisonment is 6 months. In addition, in the case of a continuing offence, a further fine not exceeding \$1,500 for each day during which the offence continues may be prescribed.
- (4) Regulations made under subsection (1) may—
  - (a) empower a health officer to—
    - (i) permit the importation of food of a specified class subject to any conditions the health officer may specify;
    - (ii) require imported food of a specified class to be submitted or made available for inspection by a health inspector;
    - (iii) impose any conditions or issue any directions with regard to imported food of a specified class as may appear to the health officer desirable for the purpose of ensuring that the food is sound, wholesome or fit for human consumption; and
  - (b) prohibit the contravention of any condition, requirement or direction referred to in paragraph (a).
- (5) In this section—

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

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

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

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

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

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

**62. Transitional provision—record keeping requirements**

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

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

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

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

**63. Transitional provision—ice-making factories**

During the period of 6 months beginning on the date on which section 64(2) commences, a person does not commit an offence under section 35 of the Food Business Regulation (Cap. 132 sub. leg. X) for a contravention of section 31(1) of that Regulation only because the person carries on, or causes, permits or suffers to be carried on, a business that manufactures or prepares ice, otherwise than under and in accordance with a licence granted under that Regulation.

## PART 7

## CONSEQUENTIAL AND RELATED AMENDMENTS

**Division 1—Public Health and Municipal Services Ordinance****64. Section 2 amended (Interpretation)**

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

- (a) in the Chinese text, by repealing “不包括不屬於下列類別的水” and substituting “不包括水，但以下類別的水除外”；
- (b) in the Chinese text, by repealing paragraph (c) and substituting—  
“(c) 不論是處於天然狀態或有加入礦物質的天然泉水；及”；
- (c) by repealing paragraph (d) and substituting—  
“(d) water that is placed in a sealed container and is intended for human consumption;”.

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

““food” (食物) includes—

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

but does not include—

- (f) live animals or live birds, other than live aquatic products;
- (g) fodder or feeding stuffs for animals, birds or aquatic products; or
- (h) medicine as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138) or Chinese herbal medicine or proprietary Chinese medicine as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549);”.

(3) Section 2(1) is amended by adding—

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

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

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

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

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

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

**67. Section 67 amended (Presumptions)**

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

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

(3) Section 67 is amended by adding—

“(4) The presumptions in subsection (1) do not apply to live aquatic products that are in captivity for the purposes of propagation or promotion of growth.”.

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

Part VA is repealed.

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

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

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

**70. Section 139 amended (Obstruction of officers in the exercise of their duty)**

Section 139 is amended, in the Chinese text, by repealing “對其妨礙、抗拒，或對其使用粗言穢語” and substituting “妨礙、抗拒或辱罵該人”.

**71. Third Schedule amended (Designated Authorities)**

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

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

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

**73. Ninth Schedule amended (Penalties)**

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



**Division 2—Customs and Excise Service Ordinance****74. Schedule 2 amended (Ordinances referred to in sections 17 and 17A)**

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding “Food Safety Ordinance (5 of 2011)”.

## SCHEDULE 1

[ss. 4, 5, 18 &amp; 58]

## PERSONS NOT REQUIRED TO BE REGISTERED UNDER PART 2

Column 1	Column 2	Column 3	Column 4
Item	Authorization	Authority	Person not required to be registered under Part 2
1.	A permission under section 30 of the Food Business Regulation (Cap. 132 sub. leg. X)	Director of Food and Environmental Hygiene	The holder of the permission
2.	A licence under Part IV of the Food Business Regulation (Cap. 132 sub. leg. X)	Director of Food and Environmental Hygiene	The licensee
3.	A licence under Part III of the Frozen Confections Regulation (Cap. 132 sub. leg. AC)	Director of Food and Environmental Hygiene	The licensee
4.	A licence under Part II of the Hawker Regulation (Cap. 132 sub. leg. AI)	Director of Food and Environmental Hygiene	The licensee

Column 1	Column 2	Column 3	Column 4
Item	Authorization	Authority	Person not required to be registered under Part 2
5.	A licence under Part III of the Milk Regulation (Cap. 132 sub. leg. AQ)	Director of Food and Environmental Hygiene	The licensee
6.	A licence under the Offensive Trades Regulation (Cap. 132 sub. leg. AX)	Director of Food and Environmental Hygiene	The licensee
7.	A licence under Part II of the Slaughterhouses Regulation (Cap. 132 sub. leg. BU)	Director of Food and Environmental Hygiene	The licensee
8.	Registration as a stockholder of a reserved commodity under regulation 13 of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296 sub. leg. A)	Director-General of Trade and Industry	The registered stockholder
9.	A licence under section 8 or a permit under section 14 of the Marine Fish Culture Ordinance (Cap. 353)	Director of Agriculture, Fisheries and Conservation	The licensee or permittee

Column 1	Column 2	Column 3	Column 4
Item	Authorization	Authority	Person not required to be registered under Part 2
10.	A licence under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D) in respect of a Class III vessel (within the meaning of that Regulation)	Director of Marine	The certificated owner (within the meaning of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D)) of the vessel

---

SCHEDULE 2

[ss. 7 & 58]

MAIN FOOD CATEGORIES AND FOOD CLASSIFICATIONS

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

Column 1	Column 2	Column 3
Item	Main food category	Food classification
		<ul style="list-style-type: none"> <li>(f) Nut and seed products</li> <li>(g) Beans</li> <li>(h) Bean products</li> </ul>
3.	Sashimi, sushi and ready-to-eat raw oysters	<ul style="list-style-type: none"> <li>(a) Sashimi</li> <li>(b) Sushi</li> <li>(c) Ready-to-eat raw oysters</li> </ul>
4.	Aquatic products (other than snack food, sashimi and ready-to-eat raw oysters)	<ul style="list-style-type: none"> <li>(a) Wild-caught coral reef fish (live and unprocessed)</li> <li>(b) Other marine fish (live and unprocessed)</li> <li>(c) Freshwater fish (live and unprocessed)</li> <li>(d) Crustaceans, molluscs (live and unprocessed)</li> <li>(e) Puffer fish (processed and unprocessed)</li> <li>(f) Other edible aquatic products (live and unprocessed)</li> <li>(g) Dried seafood</li> <li>(h) Other processed aquatic products</li> </ul>
5.	Meat and meat products, (other than snack food and sashimi)	<ul style="list-style-type: none"> <li>(a) Frozen, chilled, fresh game (unprocessed)</li> <li>(b) Frozen, chilled, fresh meat (unprocessed)</li> <li>(c) Frozen, chilled, fresh poultry (unprocessed)</li> <li>(d) Processed game products</li> <li>(e) Processed meat products</li> <li>(f) Processed poultry products</li> </ul>
6.	Eggs and egg products	<ul style="list-style-type: none"> <li>(a) Chicken eggs</li> <li>(b) Duck eggs, goose eggs, quail eggs and other poultry eggs</li> <li>(c) Egg products</li> </ul>

Column 1	Column 2	Column 3
Item	Main food category	Food classification
7.	Milk and dairy products (other than infant/follow-up/growing-up formula)	(a) Milk and milk beverages (b) Cream, cheese, butter (c) Condensed milk, evaporated milk, filled milk products (d) Dried milk (e) Other dairy products
8.	Frozen confections	Ice cream, popsicles, frozen yogurt and others
9.	Fat and oil	(a) Animal fat and oil, vegetable fat and oil, other fat and oil (b) Salad dressing
10.	Beverages (other than milk and dairy products)	(a) Soft drink and other carbonated drinks (b) Fresh fruit and vegetable juice, fruit and vegetable juice drink (c) Coffee beans, tea leaves, instant drink mixes (d) Bottled water and edible ice (e) Other non-alcoholic beverages (f) Beer and ales (g) Other alcoholic beverages
11.	Sugars and sweets	(a) Sugars, frostings, toppings, dessert sauces (b) Sweeteners (c) Honey, molasses, syrups (d) Jams/preserves, jellies (e) Candy, chocolate, chewing gum
12.	Dim sum, Chinese pastry, mixed dishes, desserts, bakery products and snack food (other than candy, chocolate and chewing gum)	(a) Dim sum, Chinese pastry (b) Mixed dishes (c) Desserts, bakery products (d) Snack food (puffer fish products) (e) Snack food (others)

Column 1 Item	Column 2 Main food category	Column 3 Food classification
13.	Salts, condiments and sauces, herbs and spices	(a) Vinegar, gravy, savoury sauces, including soya sauces, oyster sauces (b) Salts, condiments (c) Herbs and spices
14.	Chinese herbs and their products	(a) Chinese herbs (b) Chinese herb products
15.	Infant/follow-up/growing-up formula and baby food	(a) Infant/follow-up/growing-up formula (for babies up to 36 months) (b) Other baby food
16.	Miscellaneous	Miscellaneous

---

SCHEDULE 3

[ss. 9, 13, 15 & 58]

FEES

Column 1 Item	Column 2 Section	Column 3 Description	Column 4 Fee
1.	9(1)	Fee for registration under Part 2	\$195
2.	13(1)	Fee for renewal of registration under Part 2	\$180
3.	15(5)(b)	Fee for copy of entry in or extract from register	\$1 per page (copies made on both sides of a sheet count as 2 pages)

SCHEDULE 4

[ss. 47 & 58]

FORM OF WARRANT

FOOD SAFETY ORDINANCE

(5 of 2011)

(section 47(2))

Warrant to enter [premises/vessel\*]

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

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

Dated:

(Signed) .....  
Magistrate

\* Strike out as applicable.

---

SCHEDULE 5

[ss. 49 & 58]

ARRESTABLE OFFENCES

Section 4

Section 5

Section 54

Any regulation made under section 59