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**Panel on Food Safety and Environmental Hygiene and
Panel on Health Services**

**Background brief prepared by the Legislative Council Secretariat
for the joint meeting on 20 November 2012**

Regulation of formula products and foods for infants and young children

Purpose

This paper summarizes the concerns of the members of the Panel on Health Services ("the Health Panel") and the views of the Public Accounts Committee ("PAC") on issues relating to formula products and foods for infants and young children.

Background

2. The Centre for Food Safety ("CFS") announced on 8 August 2012 the results of its testing of 14 samples of the nutritional composition of infant formulae available in the local market. It was found that the iodine content of two samples from two different Japanese brands of infant formulae was rather low and when infants were fed according to the instructions printed on the labels of these two infant formulae, the iodine intake of infants would be less than one-third of the value recommended by the World Health Organization ("WHO"), i.e. 15 microgram per kilogramme of body weight. CFS subsequently announced that another four infant formulae imported from Japan and one infant formula imported from New Zealand were also found to have low iodine content and might have potential adverse health effects on infants. As iodine deficiency may affect the functioning of the thyroid gland and there

may be potential impact on the brain development of infants, the test results have aroused wide public concern over the safety and regulation of formula products.

Lack of regulation over the nutritional composition and labelling of formula products and food for infants and young children

3. The safety of infant formula is regulated by section 54 of the Public Health and Municipal Services Ordinance (Cap. 132), which stipulates that all food for sale must be fit for human consumption. However, there is currently no regulation governing the nutritional composition or labelling of formula products and food for infants and young children under the age of 36 months. The Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) has introduced a mandatory nutrition labelling scheme ("NLS") for prepackaged foods since July 2010 to, inter alia, regulate misleading or deceptive labels and claims, but it does not apply to formula or food products intended to be consumed by infants and young children under the age of 36 months due to their special nutritional requirements and the separated requirements on nutrition labelling for the above types of food stated in the guidelines published by the Codex Alimentarius Commission ("Codex")¹.

The Hong Kong Code of Marketing of Breastmilk Substitutes

4. The Health Panel was briefed on the development of a Hong Kong Code of Marketing of Breastmilk Substitutes ("the Hong Kong Code") at its meeting on 16 April 2012. According to the Administration, the Taskforce on the Hong Kong Code of Marketing of Breastmilk Substitutes ("the Taskforce") was set up in June 2010 under the Department of Health to develop the Hong Kong Code and guidelines for the labelling of foods for infants and young children under the age of 36 months. The Hong Kong Code aims to contribute to the provision of safe and adequate nutrition for infants and young children by protecting breastfeeding and ensuring the proper use of formula milk and related products for infants and young children up to the age of 36 months. In line with WHO guidelines which encourage the provision of objective and adequate information

¹ The Codex Alimentarius Commission was established under the Joint Food Standards Programme by the Food and Agriculture Organization of the United Nations and WHO in 1963 to develop food standards, guidelines and related codes of practice. The main purposes of the Joint Food Standards Programme are protecting health of the consumers, ensuring fair trade practices in the food trade, and promoting co-ordination of all food standards work undertaken by international governmental and non-governmental organizations.

on infant and young child nutrition, the Hong Kong Code will also cover nutrition labelling, nutritional composition and claims of breastmilk substitutes and related products.

Deliberations of the Panel on Health Services

5. The Health Panel held a meeting in April 2012 to discuss the development of the Hong Kong Code and receive views of deputations on the subject. The deliberations and concerns of members on issues relating to the regulation of formula products and foods for infants and young children are summarized below.

Implementation of the Hong Kong Code

6. Members generally supported the introduction of the Hong Kong Code to regulate the practices of advertising and marketing of breastmilk substitutes and related products. Noting that the Hong Kong Code would be promulgated in the first half of 2013, members urged its early implementation.

7. Members were advised that the Hong Kong Code would be implemented in the form of voluntary guidelines. There was concern about the effective implementation of the Code and the trade's compliance. Pointing out that 103 countries had already enacted legislation or other legislative means to enforce all or certain provisions of the International Code of Marketing of Breastmilk Substitutes developed by WHO, members urged the Administration to consider regulating formula milk by legislation. There was also a view that the legislation could be introduced by phases.

8. According to the Administration, the Taskforce comprised representatives of community organizations, professional bodies, academia and Government departments. Some members were of the view that representatives of the trade should also be invited to join the Taskforce. They called on the Administration to consult the trade during the drafting of the Hong Kong Code.

Regulating misleading and exaggerated claims of formula milk

9. Members expressed grave concern about the misleading and exaggerated claims in some formula milk advertisements. They considered that formula milk advertisements making untruthful nutrition or health claims should be subject to regulation. There was also a suggestion that the promotion of infant formula for infants under the age of six months should be banned in order to protect and support breastfeeding.

10. The Administration advised that section 61(2) of the Public Health and Municipal Services Ordinance made it an offence for any person who published or was involved in the publication of an advertisement, which falsely described any food or drug; or was likely to mislead as to the nature, substance or quality of any food or drug. Upon conviction, the person would be liable to a fine at level 5 (HK\$50,000) and imprisonment for six months. Although no prosecution had been taken in the past two years under section 61(2) of the Ordinance, members were advised that advertisements of five infant formulae were suspected of containing misleading claims and legal advice from the Department of Justice was being sought on the matter.

Promotion of breastfeeding

11. Members noted with concern that the rate of exclusive breastfeeding remained low. Pointing out the difficulties encountered by mothers to have exclusive breastfeeding such as the lack of assistance given to mothers in case of insufficient breastmilk and the unfavourable social attitudes towards breastfeeding in public places, members urged the Administration to step up its efforts in promoting breastfeeding.

12. Members also expressed grave concern about the lack of baby care facilities in government properties and shopping malls. They called on the Administration to consider introducing legislation to make the provision of baby care rooms a mandatory requirement so as to promote and encourage breastfeeding.

Views of the Public Accounts Committee on nutrition labelling of infant and special dietary foods

13. In 2011, the Audit Commission conducted a review of CFS's work in the regulatory control of food labelling, covering the implementation of NLS and the adequacy of the nutrition labelling of infant and special dietary foods. PAC held two public hearings in December 2011 and published its report in February 2012. In its report, PAC expressed deep regret and found it unacceptable that the Administration had failed to effectively discharge its role as the food safety authority in overseeing and regulating the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong. It also failed to safeguard public health as there was no separate ordinance or regulation to govern the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong; compliance with the WHO Code and the Codex standards and guidelines was only voluntary; and there were various inadequacies in the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong.

14. Holding the view that the Administration had not taken adequate measures to protect public health, PAC strongly urged the Administration to set a definite timetable for conducting a review on the need to introduce nutrition labelling requirements covering infant and special dietary foods marketed in Hong Kong; expeditiously work out a plan to step up the statutory regulation of nutrition information on infant and special dietary foods; and keep the Panel on Food Safety and Environmental Hygiene and PAC informed of the review results, details of the plan and the progress of implementation.

Recent developments

15. To address the public concern over the safety and call for the regulation of formula products and food for infants and young children, the Government has undertaken to expedite its work to formulate legislative proposals to regulate formula products and foods for infants and young children under the age of 36 months. On 26 October 2012, the Government launched a public consultation on the draft Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants and Young Children ("the draft Code"). The consultation exercise will last for about two months until 31 December 2012.

16. The draft Code provides voluntary guidelines to manufacturers and distributors of designated products for infants and young children aged 36 months or below, with respect to the marketing and quality of these products. It covers the following areas -

- a) promotional practices for designated products to the public;
- b) production and distribution of informational and educational materials related to breastfeeding and formula milk feeding and nutrition to the general public, pregnant women and mothers;
- c) promotion in health care facilities;
- d) distribution of informational materials related to designated products to health workers, and the sponsorship of continuing education activities for health professionals;
- e) labelling for formula milk, food products for infants and young children and formula milk related products; and
- f) quality standards of formula milk and food products for infants and young children.

Relevant papers

17. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

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Committee	Date of meeting	Paper
Public Accounts Committee	6.12.2011 8.12.2011	Programme for the Public Hearing on the Director of Audit's Report No. 57 held on 6.12.2011 Programme for the Public Hearing on the Director of Audit's Report No. 57 held on 8.12.2011 Report (pages 29 to 72) The Government minute (pages 19 to 22)
Panel on Health Services	16.4.2012 (Item V)	Agenda Minutes CB(2)2250/11-12(01)