

立法會
Legislative Council

LC Paper No. CB(2)1127/16-17(01)

Ref : CB2/PL/HS

Panel on Health Services

**Updated background brief prepared by the Legislative Council Secretariat
for the special meeting on 10 April 2017**

**Hong Kong Code of Marketing of Formula Milk and Related Products,
and Food Products for Infants & Young Children**

Purpose

This paper provides the background information and summarizes the concerns of members of the Panel on Health Services ("the HS Panel") and the Panel on Food Safety and Environmental Hygiene ("the FSEH Panel") on the Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants and Young Children¹ ("Hong Kong Code").

Background

2. The World Health Organization ("WHO") and the United Nations Children's Fund have for many years emphasized the importance of maintaining the practice of breastfeeding as a way to improve the health and nutrition of infants and young children. Against the backdrop of a declining trend in breastfeeding due to, among other factors, the promotion of breastmilk substitutes, WHO developed and the World Health Assembly ("WHA")² adopted an International Code of Marketing of Breastmilk Substitutes ("the WHO Code") in 1981. The aim of the WHO Code is to contribute to the provision of safe and adequate nutrition for infants and young children, by the protection and promotion of breastfeeding, and by ensuring the proper use of

¹ The Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children is previously named as Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children.

² WHA is the decision-making body of WHO.

breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution. Subsequent resolutions issued by WHA have clarified and updated certain provisions of the WHO Code. In 2010, the Sixty-third WHA recognized that the promotion of breastmilk substitutes and some commercial foods for infants and young children undermined progress in optimal infant and young child feeding, and urged Member States of WHO to end inappropriate promotion of foods for infants and young children. In 2016, WHO issued a guidance on ending the inappropriate promotion of foods and infants and young children ("the 2016 WHO Guidance").

3. Locally, to better protect breastfeeding and ensure the provision of safe and quality food products for infants and young children, the Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes³ was set up in June 2010 under the Department of Health ("DH") to develop a code of marketing and quality of formula milk⁴ and related products for infants and young children with reference to the WHO Code and the relevant subsequent resolutions passed by WHA.

4. The Government launched in October 2012 a four-month public consultation exercise on the draft code entitled "the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants and Young Children" ("2012 draft Hong Kong Code"), which provided voluntary guidelines to manufacturers and distributors on the marketing, labelling and quality of designated products for infants and young children aged 36 months or below.

5. According to the Administration, the outcome of the public consultation exercise was that while the healthcare sector, non-governmental organizations and the general public were supportive of the 2012 draft Hong Kong Code, the trade on the whole did not support the draft and its provisions on marketing practices. Subsequently, the Administration has refined the 2012 draft Hong Kong Code. Similar to the 2012 draft Hong Kong Code, the Hong Kong Code comprises nine articles to provide voluntary guidelines to local and overseas manufacturers and distributors of designated products⁵ marketed in Hong Kong as well as the healthcare sector in certain area including:

³ The Taskforce comprises a multidisciplinary team drawn from community organizations, professional bodies, academia, and Government bureau and departments.

⁴ Formula milk includes infant formula and follow-up formula.

⁵ Same as the 2012 draft Hong Kong Code, the term "designated product" in the finalized Hong Kong Code means (a) any formula milk; (b) any formula milk related products; (c) any food products for infants and young children; and (d) any other product declared as a designated product by DH for the purposes of the code.

- (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 healthcare facilities;
- (d) distribution of informational materials related to designated products to health workers, and the sponsorship of continuing education activities for health professionals; and
- (e) labelling for formula milk, food products for infants and young children and formula milk related products.

Deliberations of members

6. Issues relating to the 2012 draft Hong Kong Code were discussed at two meetings of the HS Panel held in April 2012 and July 2014 respectively, and at a joint meeting of the HS Panel and the FSEH Panel in November 2012. A total of 11 and 25 deputations respectively attended the meetings in April and November 2012 to express their views on the subject. The HS Panel discussed the refined Hong Kong Code at its meeting on 20 March 2017.

Restrictions over promotional practices for formula milk and related products

7. Members held different views on the proposed restrictions over the promotional practices for formula milk for infants and young children aged 36 months or below as put forth in the Hong Kong Code. Some members agreed that there was a need to impose restrictions on formula milk for infants and that for young children, as promotion of follow-up formula for the latter could be taken as de facto infant formula promotion through marketing practices. The marketing practices had also caused parents to have misconceptions about the nutritional value of formula milk for infants and young children. In their views, there were adequate avenues to provide mothers who chose to feed their infants with formula milk with non-commercial information on infant feeding. These members expressed support for the introduction of the Hong Kong Code.

8. Some other members considered that the scope of restrictions should be narrowed down. These members considered that the proposed restrictions would interfere free market and undermine parents' right to access to

information on formula milk. There were views that the restrictions should only be applied to formula milk for infants less than six months of age, or at the very least not be applied to formula milk for young children beyond 12 months of age, same as the practice adopted by many developed countries or places. This would encourage voluntary compliance by manufacturers and distributors of designated products with the Hong Kong Code. Another suggestion was to regulate only unethical marketing practices for formula milk and require the packages of these products to bear the message that breastmilk was the best food for infants. A mechanism could be put in place by the Administration to scrutinize the trade's advertisements on formula milk for infants and young children to regulate misleading or deceptive health claims. Some members held the view that the Trade Descriptions Ordinance (Cap. 362), which prohibited, among others, false trade descriptions and false, misleading or incomplete information in respect of goods provided in the course of trade, could cover deceptive acts of traders.

9. The Administration advised that there was formula milk that was intended for use as a sole source of nutrition for infants aged six months or below, and also for consumption by young children older than six months alongside complementary feeding. While advertising formula milk for infants below the age of six months was already not allowed currently, study had shown that the current marketing practices of promoting follow-up formula as promoting de facto infant formula through the use of packaging, branding and labelling closely resembled those of infant formula had caused confusion to mothers of newborn babies. The 2016 WTO guidance had clarified that the coverage breastmilk substitutes under the WHO Code and relevant subsequent WHA resolutions included follow-up formula and growing-up milks intended for feeding infants and young children up to the age of 36 months. In addition, over-consumption of formula milk among young children aged one to two years was common under the aggressive marketing of follow-up formula. There was therefore a need to prohibit any promotional practices for formula milk for infants and young children aged 36 months or below. The trade was free to provide correct and factual product information via their websites, and upon a person's request via any electronic or physical means, provided that such information would not convey biased information or discourage breastfeeding. The Administration further advised that a survey of DH showed that around 60% to 70% of mothers supported the imposition of restrictions over the marketing practices of formula milk.

10. On the control on nutrition labelling and quality, the Administration advised that it had introduced into the Legislative Council ("LegCo") the Food and Drugs (Composition and Labelling) (Amendment) (No. 2) Regulation 2014 ("the Amendment Regulation"), which regulated nutritional composition of

infant formula⁶, and nutrition labelling of formula products and prepackaged foods for infants and young children under the age of 36 months⁷, in June 2014. As regards regulation over nutrition and health claims of formula and food products, the Administration advised that it had conducted a separate public consultation exercise in 2015 on the proposed regulatory framework of nutrition and health claims for formula products and food for infants and young children under the age of 36 months. It was currently working on legislative proposals taking into account views expressed during the public consultation, international obligations of Hong Kong and the latest international development. The Hong Kong Code no longer contained provisions related to nutrition and health claims.

Bottle feeding

11. Members noted that under the Hong Kong Code, manufacturers and distributors of formula milk and formula milk related product should not promote bottle feeding, which meant feeding liquid or semi-solid food from a bottle with a nipple. Some members considered that since some mothers might for various reasons choose to provide breastmilk to their babies through feeding bottles, it was necessary to define more clearly what constituted bottle feeding under the Hong Kong Code. The Administration advised that bottle feeding would have negative effect on breastfeeding and should only be used as and when necessary. The WHO Code recommended restrictions on marketing practices of breastmilk substitutes, feeding bottles and teats.

Implementation of the Hong Kong Code

12. Some members were concerned that the Hong Kong Code, which was planned to be promulgated around mid-2017, would be implemented only in the form of voluntary guidelines and would not be backed up by any sanctions. This might result in inconsistent practice among traders, with only the large traders observing the guidelines. There was a view that the Administration

⁶ Under the Amendment Regulation, infant formula must contain energy and 33 nutrients (1+33), and the energy value and content of each nutrient must fall within the range specified in the Amendment Regulation. Certain nutrients must also follow the relevant proportion requirements. The Amendment Regulation also requires infant formula composed of taurine and docosahexaenoic acid ("DHA") to follow the relevant standards in terms of maximum value and proportion respectively. Furthermore, the Amendment Regulation mandates that infant formula be labelled with a statement associated with dental fluorosis, if its fluoride content exceeds the stipulated maximum level.

⁷ The Amendment Regulation requires the labelling of energy value and 29 nutrients (1+29) for infant formula, and the labelling of energy value and 25 nutrients (1+25) for follow-up formula. Prepackaged food for infants and young children must be labelled with its energy value and the content of four nutrients, namely protein, fat, carbohydrates and sodium (1+4), as well as vitamins A and D (if they are added to the food).

should impose penalty against non-compliance or make public the names of those parties which failed to comply with the Hong Kong Code. Some members further called for the mandatory implementation of the Hong Kong Code, as more than 100 countries had already enacted legislation or other legislative means to enforce all or certain provision of the WHO Code.

13. According to the Administration, the implementation of the Hong Kong Code would ensure that formula milk and related products would not be marketed in a way that might cause confusion and undermine breastfeeding. Implementing the Hong Kong Code on a voluntary basis was the first step in raising the awareness among the trade and the public about the importance for protecting breastfeeding and infant and young child feeding from undue commercial influence. Manufacturers and distributors of the relevant food products had social responsibility to bring their own marketing practices in line with the principles and aim of the Hong Kong Code. The Administration would assess the overall trends in marketing practices of designated products through regular surveys to evaluate the effectiveness of the voluntary Hong Kong Code before considering the way forward, including whether legislation should be pursued. It was expected that the whole assessment process would take a few years to complete.

Promotion of breastfeeding

14. Members noted the benefits of breastfeeding in ensuring physical and psychosocial health and well-being of mother and child, and the positive impacts of breastfeeding on the long-term health of the breastfed subjects. They were concerned about the low breastfeeding rate in Hong Kong when compared with other developed economies. While 85% of new born babies had ever been breastfed, the exclusive breastfeeding rate dropped to 19% at four months and 2% at six months. They considered that regulating the marketing practices of breastmilk substitutes alone could not achieve optimal infant and young children feeding. The Administration should, in parallel, step up its efforts in promoting breastfeeding; creating a breastfeeding-friendly environment in the community; and providing support for mothers, in particular working mothers, in sustaining exclusive breastfeeding. In addition, the Administration should extend the duration of statutory maternity leave of pregnant employees so as to enable these employees to have more time for breastfeeding after confinement. Concerns were raised about the work targets of the Committee on Promotion of Breastfeeding set up by the Administration in April 2014 to oversee and coordinate breastfeeding promoting and supporting activities.

15. The Administration advised that a comprehensive strategy comprising key actions on different fronts to promote, protect and support breastfeeding was being developed. The Committee on Promotion of Breastfeeding would further strengthened the promotion, protection and support for breastfeeding through ensuring the attainment of service standards of Baby Friendly Hospital in hospitals and other healthcare facilities, promoting the provision of baby care and breastfeeding facilities in workplace and public places. The Queen Elizabeth Hospital was accredited by the Baby Friendly Hospital Initiative Hong Kong Association as the first-baby friendly hospital in Hong Kong in May 2016. Separately, a Practice Note on the Provision of Baby care Rooms in Commercial Buildings was issued in February 2009 to encourage and facilitate the provision of baby care rooms on private commercial premises. In August 2013, an advice on public health had been issued by the Secretary for Food and Health to all Government bureaux and departments to encourage the implementation of a breastfeeding friendly workplace policy. A working group had been set up under the above Committee to provide specific recommendations to encourage private enterprises to implement the same policy.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
5 April 2017

Relevant papers on Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children

Committee	Date of meeting	Paper
Panel on Health Services	16.4.2012 (Item V)	Agenda Minutes CB(2)2250/11-12(01)
Panel on Food Safety and Environmental Hygiene and Panel on Health Services	20.11.2012 (Item II)	Agenda Minutes
Panel on Health Services	21.7.2014 (Item IV)	Agenda Minutes CB(2)2256/13-14(01)
Panel on Health Services	20.3.2017 (Item V)	Agenda

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