



1. Introduction

1.1 In Hong Kong, the daily amount of food waste discarded by business establishments (e.g. food retailers and manufacturers, hotels and restaurants) had surged by a total of 41% within a decade to 985 tonnes in 2015, taking up about 10% of the daily waste disposed at the landfills. While food may be discarded for various reasons, a significant part of it may be unrelated to food safety (e.g. unattractive appearance or close to "best-before" date) and could have remained fit for human consumption.¹ Should this discarded yet edible food ("surplus food") be donated to food banks for distribution to those deprived of food, it can simultaneously meet multiple policy objectives such as welfare support to the needy, environmental protection² and efficiency in resource allocation.

1.2 However, few local firms donate surplus food at present, partly due to potential liability concerns in case the recipients of donated food get sick after consumption. To promote food donation, there are suggestions that Hong Kong could make reference to overseas practices. For instance, in **France**, supermarkets above a designated size are mandatorily required to enter into donation agreements with food banks under a new piece of legislation enacted in February 2016. In the **United States ("US")**, the Good Samaritan Food Donation Act was enacted in October 1996 to exempt food donors from product liability. In the **United Kingdom ("UK")**, voluntary agreements amongst stakeholders in the food supply chain are said to be effective in boosting food donation.

¹ This note focuses on "surplus food" still fit for human consumption. Surplus food can be generated from households, agriculture, manufacturing and service sectors for reasons such as unattractive appearance, overstocking, approaching to expiry date and wrong label. In Hong Kong, surplus food of the business sector comes mainly from food processing, retailing and catering. See Oxfam (2014), Food Waste Reduction Alliance (2016) and Harvard Food Law and Policy Clinic (2016).

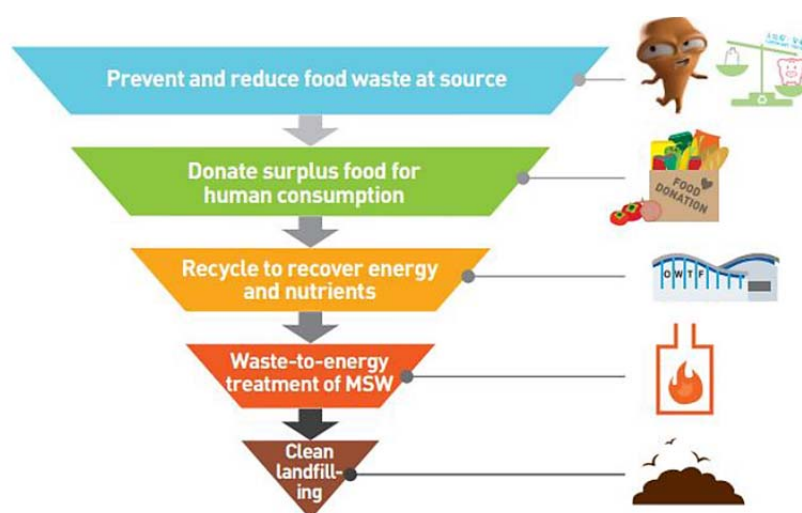
² According to the Government, the average unit cost for collection, delivery, transfer and disposal of solid waste at landfills rose to HK\$614 per tonne in 2015-2016, from HK\$520 in 2014-2015.

1.3 At the request of Hon CHAN Hak-kan, the Research Office has completed a research study on overseas legislation and policies to promote donation of surplus food from the business sector.³ This information note begins with a brief review of major issues and constraints faced by food donors in both global and local contexts, followed by a discussion of food donation policies in France, the US and the UK, along with a summary table (**Appendix**).

2. Recent global developments in food donation

2.1 According to the Food and Agriculture Organization of the United Nations, there are altogether 1.3 billion tonnes of edible surplus food valued at US\$1 trillion (HK\$7.8 trillion) in the world each year. This sheer volume of surplus food is equivalent to one-third of annual global food production and enough to feed about 800 million of under-nourished global population. In face of growing advocacy for better redistribution of this surplus food, many authorities around the world have accorded a higher priority to food donation in their food policies. For instance, in the hierarchy of food waste management adopted in many advanced places, food donation is the second most preferred option, just next to food waste reduction at source (**Figure 1**).⁴

Figure 1 – Hierarchy of food waste management in advanced places



Source: Environment Bureau.

³ The request was made under a pilot scheme of a new initiative to strengthen research support to individual Members in the Sixth Legislative Council.

⁴ In the pecking order of food waste management hierarchy, food donation is ahead of other options such as energy recovery, recycling via composting, and disposal at landfill.

2.2 Yet food donation is easier said than done, as both food donors and intermediary food recipients (mainly food banks and charity organizations for onward delivery to consumers) face a number of barriers and constraints in the donation process. These barriers are summarized below:⁵

- (a) **Liability of donors over food safety:** As donated food is still required to meet statutory standards and requirements (e.g. food safety, hygiene and labelling), this may drive prospective donors to discard surplus food in order to avoid risks associated with liability for donated food. For instance, the donors may fear that if the final consumers of the donated food get sick, the donors may face prosecution and compensation claims. The risks of criminal and civil liabilities may cause prospective donors to discard the edible food instead;
- (b) **Confusion over date labelling on food products:** Food manufacturers or distributors are required to put date marks on food products to meet food labelling regulations and standards, but these marks may cause confusion to food donors. For instance, "use by" date concerns more about food safety and health risks, while "best before" date is more related to food quality. Therefore, food products approaching their "best before" dates may still be donated if they are properly stored. A poor understanding of the use of these date marks may discourage food donation;
- (c) **Logistics challenges:** The "lack of funds for the organization of logistics" is considered as "one of the most limiting factors in food redistribution".⁶ **First**, donors need to spare resources to store the food before delivery. Storage could be costly, especially for highly perishable food under the cold chain. **Secondly**, the cost of transporting donated food from donors to food banks and then to final consumers can be high, particularly when the donation is in large quantity. Food banks may not have the financial and human resources to tackle the logistic challenges in transportation. **Thirdly**, given that the donated food is usually close to the expiry of "best before" date, both donors and food banks need to deliver the food to the needy under a very tight schedule; and

⁵ See Oxfam (2014), Food Waste Reduction Alliance (2016), and Harvard Food Law and Policy Clinic (2016).

⁶ See European Economic and Social Committee (2014).

- (d) **Lack of tax incentives for donation:** Given the high operating cost and potential liabilities, food businesses have little incentive to donate surplus food. Offering fiscal incentives in the form of tax concessions may enhance the viability of donation relative to other options in the hierarchy of food waste management. However, not many places across the globe offer such tax incentives to food donors at this juncture.

2.3 In view of these barriers, some European governments have introduced certain policy initiatives to encourage food donation over the past decade or so. They include:

- (a) **Good Samaritan Law in Italy:** Following the example of the US (See Section 5 below), Italy is the first European country to enact a national Good Samaritan Law in 2003, exempting food donors from liabilities for the consequences of breaches of food safety and hygiene up to the point of food banks or charities. Hence, the final recipients of the food will not be able to sue the donors for the breaches;
- (b) **Review of date labelling of food products in EU:** To address the confusion over the expiry date of food products, the European Commission is reviewing the date marking system in the European Union ("EU"). A study on how date marking is used by food business operators and regulatory authorities is expected to be completed by end-2017, assisting formulation of date marking policy afterwards;
- (c) **Guidelines on food donation in EU:** Meanwhile, the European Commission is developing a unified set of "food donation guidelines" to clarify various regulatory requirements (e.g. food safety and hygiene, tax, liability), with a view to facilitating food donors' and food banks' compliance with the requirements in the 28 member states of EU. The set of guidelines is expected to be available at end-2017; and
- (d) **Tax incentives for food donation:** At least nine EU countries have made food donation tax deductible (i.e. cost incurred in donation can be counted as operating expense to reduce taxable

income). In Spain, 35% of the net book value of donated food can be used as a corporate tax credit (i.e. cost incurred in donation can offset tax directly), which is considered as a generous incentive.

2.4 Notwithstanding the above initiatives, the amount of food donation in EU is still considered to be rather small. The European Federation of Food Banks reported that 6.1 million people received a total of 531 000 tonnes of food aid on a daily basis via its network of 37 000 charities in 2016.⁷ Yet this donation represented just 0.6% of the annual estimated 88 million tonnes of food waste in EU.⁸

3. Food donation policy in Hong Kong

3.1 During 2005-2015, food waste disposed of at landfills by the business sector in Hong Kong had surged by 41%, more than offsetting the 2.6% decrease in food waste disposed of by households. The share of business sector in overall food waste had also increased noticeably from 22% to 29% during the same period.

3.2 The Government is largely taking a voluntary approach to reduce food waste and promote food donation from the business sector, with the following major initiatives. **First**, it has provided funding support to food recovery and donation projects through the Environment and Conservation Fund ("ECF") since July 2014. By end-2016, ECF has allocated a total of HK\$32 million to 20 food donation projects to recover 2 300 tonnes of food for delivery to some 1.9 million headcounts.⁹ **Secondly**, to assist organizations engaging in food donation and redistribution, the Centre of Food Safety introduced a Food Safety Guideline for Food Recovery in 2013, offering safety tips on food inspection, storage and transportation. The Centre had also advised that food past the "best by date" are not necessarily unfit for

⁷ Overall donation statistics for EU are not available. The European Federation of Food Banks is the most representative food bank network across Europe, with 326 food banks located in 23 member states of EU.

⁸ The annual food waste estimate was based on 2012 data. See FUSIONS (2016).

⁹ There is very limited information about food donation in Hong Kong as donors are not required to publicly disclose nor report the data to the Government. According to the second largest supermarket chain in Hong Kong, it has donated a total of over 800 tonnes between 2012 and 2016. A large food charity also reported that it collected 948 tonnes of food in 2015-2016.

consumption.¹⁰ **Thirdly**, it has launched the Food Wise Charter since 2013, with 698 companies and institutions pledging to promote food donation. Yet this voluntary approach seems to have muted impact on food donation, as the majority (94%) of food companies indicated that they did not know how food donation worked in a survey report released in 2014.¹¹

3.3 The Government has reiterated that it has no intention to introduce legislation on food donation. At end-2015, the Environment Bureau declared that "the Government has no plan to introduce a Good Samaritan Law", partly because the contractual arrangement between food donors and charity organizations should have already addressed the liability issues. In addition, as food donation is not regarded as food sale activities, food donors are not subject to the Public Health and Municipal Services Ordinance (Cap. 132).¹² Moreover, even with liability exemption under a Good Samaritan Law, it is considered to be more important to ensure that the donated food comply with the food safety regulations. The Government also declared that it was not prepared to provide tax incentives to food donors, as such incentives may not be effective in reducing food waste.¹³

3.4 According to a survey report released in 2014, local food establishments generally face the same set of barriers and constraints in food donation as discussed in the above section. As many as 74% of food companies and 99.5% of food retailers did not donate any food to charity organizations.¹⁴ About 67% of those food establishments which did not donate food cited "worries about product liability" as their top concern, followed by logistic concerns like "insufficient resources and manpower" (22%) and "difficulties in bearing extra transport costs" (15%). Meanwhile, 19% of the surveyed businesses indicated that "lack of knowledge over donation channels" was a major hurdle to donation (**Figure 2**).¹⁵

¹⁰ See Centre for Food Safety (2014).

¹¹ See Oxfam (2014).

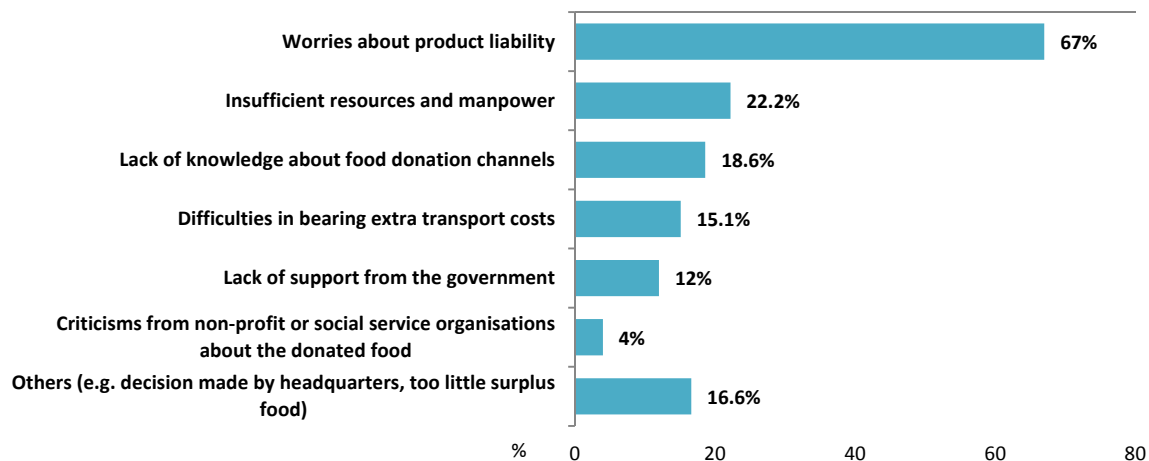
¹² The Public Health and Municipal Services Ordinance regulates only the sale of unfit food for consumption. See GovHK (2012), Part V of Cap. 132, and Official Record of Proceedings of the Legislative Council, 2 December 2015.

¹³ The Government claimed that such incentive might not lead to less food discarded because food retailers may still want to keep the food for commercial reason or there may be a time gap in food donation. See GovHK (2012) and Official Record of Proceedings of the Legislative Council, 2 December 2015.

¹⁴ The survey was conducted during September-October 2013, covering 225 food retailers (mainly convenience stores) and 128 food companies (food manufacturers and wholesalers). See Oxfam (2014).

¹⁵ On policy measures to promote food donation, 59% of food companies with previous donation experience considered that enhancement of promotion channels would be very/quite effective, followed by tax deductions (57%), assistance in transporting the food (54%), and matching services between food donors and relevant charity organisations (51%). See Oxfam (2014).

Figure 2 – Reasons for not engaging in food donation in Hong Kong



Source: Oxfam (2014).

4. Food donation policy in France

4.1 France is widely recognized as one of the global leaders in minimizing food waste and promoting food donation, largely attributable to a higher priority placed on food issues in the policy agenda by the French government.¹⁶ In June 2012, a new ministry position¹⁷ attached to the then Minister of Agriculture was created to oversee specific policy issues relating to the food system. In June 2013, a "National Plan to Combat Food Waste" was launched with a target of reducing food waste by half by 2025. In April 2015, after a two-year review, the French government released the report "Fighting Food Waste: Proposals for a Public Policy", rolling out 36 proposed regulations and measures for progressive implementation in the coming years.¹⁸

4.2 More recently in February 2016, the National Assembly of France passed a law (i.e. Law 2016-138), compelling food retailers and supermarkets above a certain size to enter into contractual agreements with at least one charity organization to donate their surplus food. As the first national legislation mandating food donation in the world, it has the following key features:

¹⁶ In France, about 10 million tonnes of food waste is discarded through the food supply chain each year, with an estimated market value of €16 billion (HK\$137 billion). Analysed by source, the agriculture sector is the largest generator (33%), followed by household consumers (33%), food processing (21%) and food wholesale and retailers (14%). See Agency for the French Environment and Energy Management (2016).

¹⁷ The new position was named as Minister Delegate for the Food and Forestry.

¹⁸ The report was produced by Guillaume Garot, the Minister Delegate for Food and Forestry. His report was commissioned by the Prime Minister to propose concrete measures to meet the target set in the National Plan to Combat Food Waste.

- (a) **Food waste hierarchy:** Priority of various waste treatment options in the food supply chain is explicitly stated in the law, with food waste prevention at the top, followed by food reuse and donation. They are both above recycling (e.g. animal feed, compost or anaerobic digestion) and disposal options;
- (b) **Prohibition of destruction of edible unsold food:** It is an offence for large food retailers and supermarkets (i.e. those with a floor area of 400 square metres or above) to destroy and throw away unsold but edible food. There are more than 7 000 of such supermarkets in France. Offence would be subject to a penalty of €3,750 (HK\$32,213); and
- (c) **Agreement to donate unsold food to partnered organizations:** Each of the large food retailers needs to establish partnership with at least one of the charity organizations capable of handling food donation within one year before 11 February 2017.

4.3 On **liability protection**, France does not have a Good Samaritan Law to deal with the legal implications arising from illnesses caused by the consumption of donated food. Apart from criminal liability, both food donors and charities may also be subject to civil liability under the French Civil Code.¹⁹ To clarify the legal responsibilities, the French government recommends that both food donors and food charities subscribe civil liability insurance, covering all of the potential harmful consequences of their activities.

4.4 On **food safety and hygiene of donated food**, the General Food Law of EU is transposed into French national legislation.²⁰ Under this law, both food donors and food banks are considered as food business operators, and they must comply with EU regulations on food safety, hygiene, labelling and traceability. Upon receipt of donated food from food donors, food banks in France are required to verify the date marking of the donated food, inspect the food packaging and the core temperature of the fresh food. If everything is in order, they can issue receipt slips to the donors, confirming the transfer of the food ownership and responsibility.²¹ The slips can also serve as proof of compliance for the donors.

¹⁹ Article 1382 of the Civil Code.

²⁰ The EU law is EC 178/2002. The rules, among others, cover the maximum temperature for frozen food and minimum temperature for warm food during transport and storage.

²¹ See European Economic and Social Committee (2014).

4.5 In December 2016, the French government issued additional regulations to lay down the conditions of food donated by food retailers to charity organizations. These regulations **(a)** limit donation to only food with at least 48 hours prior to expiry of the use-by dates;²² **(b)** allow donation of food with incorrect or missing labels provided that the required information is made accessible to end-consumers; **(c)** require donors to sort the donated food in accordance with the above two regulations; and **(d)** allow charity organizations to reject donated food appearing to be unfit for consumption. These conditions are now incorporated into a model agreement between the donors and charities recommended by the French government, protecting charities from receiving donated food contravening the hygiene and safety standards.

4.6 France also provides a number of **tax incentives to food donors**. **First**, it offers a generous tax reduction of 60% of food donation, based on the net book value of food. While the amount of tax reduction is capped at 0.5% of the annual turnover of donor, any shortfall below the cap in a particular year can be carried forward for up to five years. **Secondly**, the tax break also applies to the provision of delivery and storage of food for donation, which could relieve the huge logistics burden faced by food charities. This tax break is said to be able to offset part of the food donation cost, and make donation of perishable food €148 (HK\$1,271) per ton cheaper than sending the food to recycling such as anaerobic digestion.²³

4.7 Between 2000 and 2016, the annual amount of donated food received by the largest food bank network in France has doubled to 106 000 tonnes.²⁴ According to a global ranking on food system sustainability of 25 selected places in 2016, France is ranked the top position in both the overall index and the sub-index on food waste and loss sub-index, on the ground of "its holistic policy response to food waste".²⁵

²² A shorter duration is allowed if the charity can prove that it can redistribute the food before the expiry date.

²³ See Tatum (2016).

²⁴ The figure was based on collection by the French Food Bank Federation, which has 79 food bank members redistributing food to over 5 000 charities.

²⁵ The Food Sustainability Index is based on 58 indicators across three pillars, namely (a) food loss and waste; (b) sustainable agriculture; and (c) nutritional challenges. See EIU (2017).

4.8 As to the recent legislative measures imposed on supermarkets, it is premature to assess its effectiveness as the retailers are given one year to conclude a partnership with food charities before 12 February 2017. Based on scattered media reports, some food charities were said to have flagged concerns about the logistic difficulties in handling additional donation, while some supermarkets may tend to donate a small amount of surplus food to circumvent the requirement.²⁶ More time should be given for a thorough review of the effectiveness of this pioneering law.

5. Food donation policy in the United States

5.1 Food waste has become one of the major policy issues in the US in recent years, with the US Government stipulating its first national target on food loss and waste in September 2015, aiming at 50% reduction by 2030. The United States Department of Agriculture ("USDA") and Environmental Protection Agency ("EPA") then launched a Food Recovery Summit in the same year, with inputs from all stakeholders including businesses in the food supply chain to identify actions required to achieve the target.²⁷

5.2 The US is one of the pioneers to offer liability protection to food donors. As early as in October 1996, the US Congress approved the Bill Emerson Good Samaritan Food Donation Act ("the Act"), a federal law protecting food donors and non-profit organizations distributing the donations across 50 states against liability.²⁸ The key provisions are summarized below:

- (a) **Covering a wide range of parties:** The Act protects any individuals, business firms, non-profit making food recovery organizations, government entities, and gleaners;

²⁶ As the law does not specify the quantity or quota of food donation, a supermarket donating just 1% of its surplus food could still meet the statutory requirement. See European Court of Auditors (2016).

²⁷ These actions include using the food waste hierarchy, raising public awareness, improving food waste data, clarifying food date label, and creating new partnership.

²⁸ While all of the 50 states in the US have their own state laws to exempt food donors from civil or/and criminal liability before 1990, the variations in state laws make it difficult for food donors to come forward. In September 1995, Missouri Representatives Pat Danner enlisted her colleague Bill Emerson to co-sponsor the Good Samaritan law to provide liability exemption at the federal level. The law was retitled to Bill Emerson Good Samaritan Food Donation Act to honour his contribution after Emerson's death in June 1996, four months before the law was signed by the US President on 1 October 1996.

- (b) **Protection from civil and criminal liabilities:** Under the Act, food donors shall not be subject to civil or criminal liability arising from "the nature, age, packaging, or condition" of the donated items; and
- (c) **Preconditions of liability protection:** However, food donors and charities must meet the following requirements to qualify for the liability protection: (i) the donated items are "apparently wholesome food" meeting various statutory standards;²⁹ (ii) donations are made in good faith and donors honestly believe the food is safe to consume; and (iii) donation to non-profit organizations are for redistribution to needy individuals for free.³⁰ Such protection will be lifted if there is intentional misconduct or gross negligence leading to death or injury of the recipients of the donated food.

5.3 Although the Act has been enacted in the US for more than 20 years, it appears that the food sector is not fully aware of its existence. While there is no reported legal dispute invoking such liability protection, the US Congress has not assigned the Act to any federal agency, resulting in no government agency responsible for offering guidance, answering parliamentary questions or raising public awareness of the Act. As such, some 25% of food distributors and 50% of food manufacturers in the US still cited liability concerns as the main barrier to food donation in 2016.³¹ A recent study pointed out that "numerous existing and prospective donors remain unaware of these protections" under the Act, resulting in "underutilized opportunity".³²

5.4 To address these caveats, a new bill to broaden the scope of liability protection under the Act has been introduced to the House of Representatives in February 2017.³³ The bill aims to extend liability protection to **(a)** food donation sold at a reduced price; **(b)** direct donation to individuals; **(c)** past-date-food; and **(d)** mislabelled food if it is unrelated to food safety. The House of Representatives is still deliberating the bill at this juncture.

²⁹ Apparent wholesome food refers to food that meets all quality and labelling standards imposed by federal, state and city laws and regulations even though the food may not be readily marketable due to its appearance, age, freshness, grade, size, surplus, or other conditions.

³⁰ See Food Waste Reduction Alliance (2016).

³¹ See Harvard Food Law and Policy Clinic (2016).

³² See Harvard Food Law and Policy Clinic (2017).

³³ The bill is known as Food Donation Act of 2017. The bill has been referred to the House Committee on Education and the Workforce for consideration.

5.5 On **food safety and hygiene of donated food**, both food donors and food banks are required to comply with food safety and hygiene requirements specified by the federal and state governments. Yet, while there is no specific guideline on food donation in the federal legislation (e.g. Food Code), some states do have their own regulations or guidance over the kind of food which is safe for donation. Moreover, food donors from the retail business like supermarkets also face challenges of different regulations on food safety and hygiene across states and cities.³⁴ Similarly, on food date labelling, there is no federal system regulating the "sell by", "best by" and "use by" dates, resulting in inconsistent regulations across states.³⁵ All these cause confusion and pose a challenge to prospective food donors.

5.6 On **tax incentives**, the federal government provides up to 15% of tax deduction from taxable income to all eligible businesses donating food, according to an enhanced rule introduced since 1976.³⁶ The enhanced rule is considered to be more generous as it takes into account the profit margin of the donated food, compared with the basic value of donated food under the general deduction rule introduced since 1969.³⁷ In September 2005, the US Congress approved to offer enhanced deduction to all businesses on an annual renewal basis, resulting in a surge in food donation by 137% in 2006.³⁸ Since December 2015, the enhanced tax deduction has become a permanent measure, while the cap on the claimable amount of enhanced deductions was also raised from 10% to 15% in 2016.

5.7 Reflecting the effectiveness of the above initiatives, the annual amount of donated food received by the largest food charity organization in the US has surged by more than 13 times to 1.3 million tonnes during 2009-2016.³⁹ That said, there are still many missed opportunities in food donation in the US. According to an estimate of USDA, one-third of the

³⁴ See Harvard Food Law and Policy Clinic (2016).

³⁵ Manufacturers have broad discretion on how the dates on foods are selected, and these dates typically reflect quality and taste rather than safety.

³⁶ To qualify for enhanced tax deduction, the organizations receiving the donation must (a) be listed in the federal Internal Revenue Code, a public charity or a private operating foundation; (b) distribute the donated food to the ill, needy or infants; and (c) may not distribute or resell for money. The receiving organization must also provide a written statement to the donor, and the food donated must comply with food safety regulations.

³⁷ Under the general deduction rule, the deduction is limited to the cost of food. However, under the enhanced rule, the deduction is either the "cost times two" or the "cost plus profit margin divided by two", whichever is lower. In either case, the enhanced deduction is higher than the general deduction.

³⁸ The deduction used to exclude sole proprietorship and partnership.

³⁹ Figures are from annual reports of Feeding America, the largest food bank network in the US having 200 food bank members and 60 000 food pantries.

67 million tonnes of food at the retail and consumer level in the US valued at US\$161 billion (HK\$1,248 billion) were discarded in 2010, while only 18% of the surplus food generated by the retailers was diverted to donation.

6. Food donation policy in the United Kingdom

6.1 The UK does not have any legislation on food donation. As a matter of fact, a public inquiry conducted by the Environment, Food and Rural Affairs Committee of the House of Commons in 2016-2017 concluded in their report that "the majority of the witnesses were not in favour of legislation in England" to boost food donation.⁴⁰

6.2 Instead, the UK government takes a voluntary approach by working closely with the private sector to promote food donation, with **Courtauld Commitment ("CC")** as its major initiative. Launched since 2005, the agreement aimed to improve resource efficiency, reduce food waste and make the food system more sustainable in the UK. In March 2016, an updated commitment target to reduce food and drink waste in the UK by 20% during 2015-2025 was made with some global food manufacturers and major UK retailers, representing more than 93% of the grocery market. The current 100-plus signatories to CC have also pledged to double food donation to 30 000 tonnes by 2020 against the 2015 baseline. The **Waste and Resources Action Programme ("WRAP")**, a registered charity also funded by the UK government, is the implementation arm of CC and works closely with the food businesses to reduce food waste.⁴¹

6.3 On **liability protection**, although there is no Good Samaritan Law for food donation in the UK, it is not regarded as a "significant" barrier to food donation as most of the major retailers already have partnerships with the food charities. That said, a Private Member's Bill was introduced by Kerry McCarthy in the House of Commons for liability protection in 2012, but it could not proceed further without government support.⁴² The EU Committee of the House of Lord was also "unconvinced of the need" for the law, opining

⁴⁰ See House of Commons (2017b).

⁴¹ WRAP had a funding of £40 million (HK\$474 million) in 2014-2015.

⁴² The bill was introduced under the Ten Minute Rule in 2012, a channel allowing Members to introduce Private Members' Bill other than the usual ballot process. However, the bill under this Rule is accorded with the lowest priority in handling. Most often they do not proceed further after first reading. In 2015, Kerry McCarthy introduced another food waste bill under the same Rule, but it once again could not proceed further.

that "such an Act should only be proposed if there is a clear problem to be addressed".⁴³

6.4 On **food safety and hygiene of donated food**, the UK generally follows the EU requirements. As donation is also counted as "selling" under the Food Safety Act 1990, it would be an offence to "sell" or donate food that is past its "use by" date under the UK Food Labelling Regulations 1996. Similarly, there are currently **no tax incentives** for food donation in the UK, although there was some public support to do so, as revealed from the public inquiries into food waste in both Houses.⁴⁴

6.5 According to WRAP, the voluntary approach in the UK appears to have worked quite well in food donation, with a 74% increase in such donation during 2012-2014. Under strong leadership and research support of WRAP,⁴⁵ all major supermarket chains in the UK have arrangements in place to donate surplus food, with the largest chain committing to no disposal of any food safe for consumption by end 2017 and taking the lead in publishing food waste data. These new initiatives may be partly related to a court case where a couple in poverty was arrested and charged for stealing discarded food from the backyard of a supermarket in 2015.⁴⁶ More recently, the retail sector has begun to introduce tailor-made smart application to match local supermarkets with local charities, minimizing delay in collection and saving transport cost. Reportedly, 800 local stores of a major chain has already employed such technology.⁴⁷ That said, some 10 million tonnes of edible food were still discarded in the UK in 2015, about 30% of which were contributed by business establishments. This suggests that there are still opportunities for additional food donation in the UK.

⁴³ See House of Lords (2014).

⁴⁴ See House of Commons (2017b).

⁴⁵ WRAP provides research support in identifying areas where food waste arises, and opportunities for redistribution. Industry awareness on food waste also increased following the publication of the report "Quantification of food surplus, waste and related materials in the grocery supply chain" in mid-2016. Apart from providing a platform for the retail sectors to share experiences in food donation, it has also issued a framework for effective redistribution partnerships for reference.

⁴⁶ The court later decided to discharge the couple.

⁴⁷ A similar app has also been developed by Feeding America, the largest food charity in the US. It allows food businesses of all sizes to post surplus food on the MealConnect platform. Then an algorithm determines which local food program is best suited to pick up and distribute donation in a quick manner.

7. Concluding remarks

7.1 Notwithstanding increased global attention placed on food donation to meet multiple social objectives, there are key hurdles including (a) potential liability over donated food; (b) confusion over date labelling in food products; (c) logistics challenges and additional cost faced by food charities in storage and transportation of donated food within a short span of time; and (d) lack of tax incentives in food donation.

7.2 On top of the mandatory requirement to donate surplus food by the supermarkets in February 2016, France has taken a multi-pronged approach to promote food donation in recent years, including policy measures to address food safety of donated food and tax incentives for food donors. The French government also recommends food donors and food charities to take out civil liability insurance in the absence of a Good Samaritan Law on food donation.

7.3 While the Good Samaritan Law in the US helps remove the liability of donors in food donation, many prospective food donors are not aware of it as no federal agency in the US has been assigned as the enforcement agency. As to the voluntary approach in the UK, it appears that a strong leadership in promoting food donation and a supportive retail sector are the two factors contributing to reduction in food loss and food waste in the country.

Key features of food donation policies in selected places

		Hong Kong	France	United States	United Kingdom
1.	Annual amount of food waste	<ul style="list-style-type: none"> 1.2 million tonnes. 	<ul style="list-style-type: none"> 10 million tonnes. 	<ul style="list-style-type: none"> 67 million tonnes at the retail and consumer level in 2010. 	<ul style="list-style-type: none"> 10 million tonnes (post farm-gate) in 2015.
2.	Amount of food donation	<ul style="list-style-type: none"> No available data. 	<ul style="list-style-type: none"> At least 100 000 tonnes in 2016, with 39% from supermarkets. 	<ul style="list-style-type: none"> No available national data. 	<ul style="list-style-type: none"> 47 000 tonnes of food surplus redistributed in 2015.
3.	Requirement for donated food to comply with food safety and hygiene standard	<ul style="list-style-type: none"> Yes. 	<ul style="list-style-type: none"> Yes. 	<ul style="list-style-type: none"> Yes. 	<ul style="list-style-type: none"> Yes.
4.	Legislation on mandatory food donation	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> Yes, supermarkets with floor area larger than 400 square metres are required to donate. 	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> No.
5.	Good Samaritan Law in food donation	<ul style="list-style-type: none"> No, but food donors are not treated as food sellers and hence not subject to the Public Health and Municipal Services Ordinance (Cap. 132). 	<ul style="list-style-type: none"> No, but food donors and charities are advised to take out civil liability insurance. 	<ul style="list-style-type: none"> Yes, under the Bill Emerson Good Samaritan Food Donation Act 1996. 	<ul style="list-style-type: none"> No.
6.	Tax incentives for food donors	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> Yes, tax reduction up to 60% of the "net book value" of the donated food, but capped at 0.5% of the turnover. 	<ul style="list-style-type: none"> Yes, deduction of up to 15% from taxable income. 	<ul style="list-style-type: none"> No.
7.	Agreements with the food sector on food donation	<ul style="list-style-type: none"> Yes, Food Wise Charter with about 60 signatories from the food and beverage sector. 	<ul style="list-style-type: none"> Yes, National Pact on Combating Food Waste, with signatories including food businesses. 	<ul style="list-style-type: none"> Yes, Food Waste Reduction Alliance formed by 30 food businesses. 	<ul style="list-style-type: none"> Yes, Courtauld Commitment with over 100 signatories.

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