

立法會
Legislative Council

Ref : CB2/BC/1/09

LC Paper No. CB(2)647/10-11
(These minutes have been
seen by the Administration)

Bills Committee on Food Safety Bill

Minutes of meeting
held on Tuesday, 16 November 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man

Public Officers attending : Item I

Mr Philip CHAN Kwan-ye, JP
Deputy Secretary for Food and Health (Food) 2

Mr Kevin YEUNG Yun-hung
Principal Assistant Secretary for Food and Health (Food) 1

Dr Constance CHAN, JP
Controller, Centre for Food Safety
Food and Environmental Hygiene Department

Dr LEE Siu-yuen
Assistant Director (Food Surveillance & Control)
Centre for Food Safety
Food and Environmental Hygiene Department

Mr Paul John O'BRIEN
Senior Assistant Law Draftsman
Department of Justice

Ms Angie LI Sau-lee
Government Counsel
Department of Justice

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Maisie LAM
Senior Council Secretary (2) 6

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Meeting with the Administration
[LC Paper No. CB(2)257/10-11(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Mr WONG Yung-kan said that local vegetable farmers who sold their produce directly to the ultimate consumers, say, in the open-air bazaar, opposed the requirement for them to register as food distributors under the Bill. Mr WONG further said that he was arranging a meeting for "菜聯社" to again voice their concern with the Administration in November 2010. At the request of the Chairman, the Administration agreed to revert to members after meeting with "菜聯社" and other primary producers such as fish farmers.

Admin

3. Mr WONG Yuk-man tabled a paper setting out his suggested amendments to the Chinese text of the Bill for consideration by the Administration. Mr WONG said that he had not yet completed examining the Chinese text of the Bill and might provide more suggested amendments to the Administration for consideration later.

Clause-by-clause examination of the Bill

Clause 4 - Requirement for food importers to be registered

4. Assistant Legal Adviser 8 ("ALA8") sought clarification from the Administration as to why only one type of transport, i.e. vessel, was covered under clause 3(2)(b), whereas the types of transport covered by clause 4(3)(c) also included vehicle and aircraft. The Administration explained that unlike clause 4(3)(c) which was an enforcement clause, clause 3(2)(b) was a presumption clause. Furthermore, under clause 3(2)(a), whether the food was found in vehicles or on aircraft was irrelevant in determining whether it was food intended for human consumption. This catch-all presumption clause should ensure that food commonly used for human consumption would indeed be regarded as food under the Bill. According to the Administration's operational experience, including premises and vessel in clause 3(2)(b) should be adequate. Mr Alan LEONG was of the view that notwithstanding that clause 3(2)(b) was a presumption provision, vehicle and aircraft should also be covered by the clause for the sake of consistency. The Administration agreed to consider and revert in writing.

Admin

5. In response to ALA8's further enquiry on what constituted a reasonable excuse in clause 4(2), the Administration said that whether a person had reasonable excuse depended on the facts of each individual case and was ultimately a decision of the Court. "Reasonableness" was a well-established concept in common law. As the law could not provide for all possibilities, such as the circumstantial factors of the individual cases, it was necessary in many cases to provide flexibility for the Court to decide whether an excuse was reasonable from the angle of an average person, based on all the circumstances of the case. A plausible example of "reasonable excuse" for both clauses 4(2) and 5(2) might be when a partner of a registered partnership suddenly ceased. The remaining partners were not able to complete a new registration immediately.

Clause 5 - Requirement for food distributors to be registered

6. Mr WONG Ting-kwong asked whether a food importer was required to register as a food distributor under the Bill if he/she also carried on a food distribution business. The Administration replied that under clause 5(3)(c), a person would not be required to register as a food distributor in respect of that business if he/she had already been registered as a food importer in respect of the business. This was because the

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Administration already possessed their information. The Administration, however, pointed out that a registered food distributor had to register as a food importer if he/she also carried on a food importation business, as it was important to have the full picture of all importers' information to enable better traceability of food in the event of a food incident given Hong Kong imported over 90% of its food. Mr WONG Ting-kwong urged the Administration to step up publicity to make clear to the food traders that food distributors must register as a food importer if they wished to also carry on a food importation business.

Clause 6 - Exemptions by Director

7. The Chairman said that the Director of Food and Environmental Hygiene ("DFEH") should set out the reasons for exempting a person from registration as a food importer or a food distributor in the DFEH's written notice to the person. The Administration explained that the reason for not specifying such in the Bill was to provide DFEH with the flexibility to do so, having regard to the varying circumstances of individual case. The Administration assured members that in considering whether to grant an exemption, DFEH would exercise his power with caution to ensure that public food safety would not be compromised, having regard to the list of factors set out in paragraph 4 of LC Paper No. CB(2)20/10-11(01). Under clause 6(2), DFEH might impose conditions on the exemptions and withdraw the exemption granted should the conditions not been complied with. In addition, food importers and distributors exempted from registration were still required to keep acquisition or wholesale supply records under the Bill. The Chairman was of the view that requiring DFEH to provide reason(s) for exempting a person from registration as a food importer or a food distributor would not limit his flexibility in exercising his discretionary power in exemption. The Administration agreed to consider the Chairman's suggestion and revert in writing.

Admin

Clause 7 - Application for registration

8. In response to Mr WONG Yung-kan's enquiry on the processing time of an application for registration under the Bill during the six-month grace period, the Administration said that for applications received within the first four months of the grace period, approval-in-principle would be granted by DFEH before expiry of the six-month grace period, provided all the required information was submitted. For applications received within two months before expiry of the grace period, the lead time for

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granting approval-in-principle would depend on the number of applications received.

9. In response to Mr WONG's further enquiry on the processing time of an application for registration under the Bill after the six-month grace period, the Administration said that it would be within 14 working days. Mr WONG Ting-kwong said that granting of applications after the six-month grace period should be made on the same day the applications were received by DFEH, as in the case of granting of driving licences and issuing of business registration certificates, to facilitate businesses. The Administration responded that the processing time could be shortened if the number of applications received was not large and applicants could provide all the required information/documents.

10. Mr WONG Ting-kwong asked whether the authorisation by the partnership required under clause 7(2) would need to be made at a solicitors' firm or taking of oath at a District Office of the Home Affairs Department. The Administration advised that clause 7(2) did not specify such. Authorisation of partnership by other partner(s) of the applicant, say, in the form of a letter, would normally be sufficient. Mr Alan LEONG said that a better approach was to provide in the registration form specified by DFEH, referred to in clause 7(3), spaces for authorisation by the applicant's partner(s). The Administration said that it would take into account Mr LEONG's suggestion in designing the registration form.

11. In response to Mr Alan LEONG's enquiry, the Administration advised that as a partnership was not a single legal entity, the Bill required a partner authorised by the partnership to register on behalf of the partnership. However, pursuant to section 7 of the Partnership Ordinance (Cap. 38), every partner was an agent of the firm and his/her other partners for the purpose of the business of the partnership; and the acts of every partner who did any act for carrying on in the usual way business of the kind carried on by the firm of which he/she was a member bound the firm and his/her partners, unless the partner so acting had in fact no authority to act for the firm in the particular matter, and the person with whom he/she was dealing either knew that he/she had no authority or did not know or believe him/her to be a partner. An act done by a partner not for the purpose of the business of the partnership would not bind the firm and other partners.

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12. The Administration was requested to fine-tune the drafting of clause 7 of the Bill so that the policy intention of registration regarding partnership and limited company could be better reflected in the Bill.

Clause 9 - Registration

13. Mr WONG Ting-kwong asked whether the Administration would remind food importers and distributors in writing for renewal of registration prior to the expiry of the three-year validity period of the registration. The Administration replied in the positive.

II. Date of next meeting

14. The Chairman reminded members that the next meeting had been scheduled for 3 December 2010 at 8:30 am.

15. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
20 December 2010

**Proceedings of the meeting of the
Bills Committee on Food Safety Bill
on Tuesday, 16 November 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000151	Chairman	Opening remarks	
000152 - 000429	Admin Mr WONG Yung-kan	Briefing by the Administration on its response to issues raised by members at the meeting on 1 November 2010 [LC Paper No. CB(2)257/10-11(01)] The Administration agreed to revert to members after meeting with "菜聯社" and other primary producers such as fish farmers.	Admin (para. 2 of the minutes refers)
000430 - 000913	Hon WONG Yuk-man Chairman Admin	Mr WONG's suggested amendments to the Chinese text of the Bill	
000914 - 004157	Chairman Admin Mr WONG Ting-kwong Mr WONG Yung-kan ALA8 Mr WONG Yuk-man	<u>Clause-by-clause examination of the Bill</u> <i>Clause 4 - Requirement for food importers to be registered</i>	
004158 - 004735	Admin Mr WONG Ting-kwong Chairman	<i>Clause 5 - Requirement for food distributors to be registered</i> Mr WONG Ting-kwong's view that the Administration should to step up publicity to make clear to the food traders that food distributors must register as a food importer if they wished to also carry on a food importation business.	
004736 - 005324	Mr Alan LEONG Admin	The Administration was requested to consider expanding the scope of clause 3(2)(b) of the Food Safety Bill ("the Bill") to cover vehicles and aircraft	Admin (para. 4 of the minutes refers)
005325 - 010649	Admin Chairman Mr WONG Yung-kan	<i>Clause 6 - Exemptions by Director</i> The Administration was requested to consider specifying in the Bill that the Director of Food and Environmental Hygiene ("DFEH") should set out the reasons for exempting a person from registration as a food importer or a food distributor in the DFEH's written notice to the person	Admin (para. 7 of the minutes refers)
010650 - 013514	Admin Mr WONG Yung-kan Mr WONG Ting-kwong Chairman Mr Alan LEONG ALA8	<i>Clause 7 - Application for registration</i> Mr WONG Ting-kwong's concern about the long processing time of an application for registration under the Bill after the six-month grace period Mr Alan LEONG's view that the registration form specified by DFEH, referred to in clause 7(3), should provide spaces for authorisation by the applicant's partner(s)	

Time marker	Speaker	Subject	Action required
013515 - 020219	Admin Chairman Mr WONG Ting-kwong ALA8 Mr Tommy CHEUNG Mr Alan LEONG	<i>Clause 8 - Determination of application for registration</i> <i>Clause 9 - Registration</i> The Administration was requested to fine-tune the drafting of clause 7 of the Bill so that the policy intention regarding registration of partnership and limited company could be better reflected in the Bill	Admin (para. 12 of the minutes refers)
020220 - 020254	Chairman	Date of next meeting	

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