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FOOD BUSINESS (AMENDMENT) REGULATION 2010

(Made by the Director of Food and Environmental Hygiene under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Commencement

This Regulation comes into operation on 1 August 2010.

2. Restriction on sale, etc. of specified articles

Section 30 of the Food Business Regulation (Cap. 132 sub. leg. X) is amended by adding before subsection (1A)—

“(1AA) Subsection (1) does not apply to item 9, 10, 11, 12, 13, 14, 15, 17, 18, 19 or 20 of Schedule 2 if the sale, or the preparation for sale, of the item is carried on under and in accordance with a composite food shop licence.”.

3. Licensing of food business

(1) Section 31(1)(a) is amended by repealing “, not being a milk factory or a frozen confection factory”.

(2) Section 31(1)(c) is amended by repealing “mei or lo” and substituting “mei and lo”.

(3) Section 31(1)(e) is amended by repealing the full stop and substituting “; or”.

(4) Section 31(1) is amended by adding—
“(f) any composite food shop.”.

(5) Section 31 is amended by adding—

“(1A) If a food business involves only either or both of the following—

(a) the sale of all or any of the foods or classes of food specified in Part 2 of Schedule 2A for human consumption off the premises;

(b) the sale of food by a vending machine for human consumption off the premises,

and the food business is carried on in compliance with section 30(1), subsection (1) does not apply to the food business.”.

(6) Section 31(2) is amended, in the definition of “food factory”, by repealing “manufacture or”.

(7) Section 31(2) is amended, in the definition of “temporary licence”, by repealing “section 31(5)” and substituting “subsection (5)”.

- (8) Section 31(2) is amended by adding—
- ““authorized person” (認可人士) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);
- “composite food shop” (綜合食物店) means any food business which involves—
- (a) the sale and preparation for sale of all or any of the foods or classes of food specified in Part 1 of Schedule 2A;
 - (b) the sale of all or any of the foods or classes of food specified in Part 2 of that Schedule;
 - (c) the reheating of pre-cooked food for sale; or
 - (d) the sale of food by a vending machine,
- for human consumption off the premises;
- “composite food shop licence” (綜合食物店牌照) means a licence granted under this section in respect of a composite food shop;
- “general restaurant” (普通食肆) means a restaurant other than a light refreshment restaurant;
- “light refreshment restaurant” (小食食肆) means a restaurant selling only light refreshments;
- “registered structural engineer” (註冊結構工程師) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);”.

(9) Section 31(3)(c) is amended by repealing everything after “any food” and substituting “or class of food other than the food or class of food that is specified in the licence;”.

- (10) Section 31(3) is amended by adding—

“(d) in the case of a composite food shop licence, a condition prohibiting or restricting the preparation for sale at the food premises to which the licence relates of any food or class of food other than the food or class of food that is specified in the licence.”.

(11) Section 31(3) is amended, in the Chinese text, by repealing “各項或任何一項” and substituting “任何或所有”.

4. Application for licence

- (1) Section 32(1) is amended by adding—

“(da) if the application relates to a composite food shop, the space, and equipment and furniture of a substantial and permanent nature, allocated for use in the sale, or the preparation for sale, of the food or class of food to which the licence will relate, and the siting of the space, equipment and furniture;”.

- (2) Section 32 is amended by adding—

“(2A) Every plan submitted for approval under subsection (1) in an application for a composite food shop licence must be—

- (a) accompanied by a statement in writing declaring the food or class of food intended to be covered by the licence; and
 - (b) certified by an authorized person or a registered structural engineer to be in conformity with the layout of the food premises to which the application relates.”.
- (3) Section 32 is amended by adding—
- “(4) Every application for a composite food shop licence must be accompanied by a certification made by an authorized person or a registered structural engineer that, in relation to the premises in respect of which the application is made, the authorized person or registered structural engineer is satisfied as to all matters specified in section 33(1)(b), (c), (d), (e), (f), (fa), (g), (h), (i), (l) and (m).”.

5. Conditions for issue of licence

- (1) Section 33(1)(f) is repealed and the following substituted—

“(f) the floors of every food room are surfaced with smooth, light coloured and non-absorbent material;”.
- (2) Section 33(1) is amended by adding—

“(fa) the internal surfaces of the walls of every food room are surfaced with smooth and non-absorbent material up to a height of not less than 2 m and the junctions between the walls and floors of every food room are coved;”.
- (3) Section 33(1)(h) is amended by repealing “in the opinion of the Director,”.
- (4) Section 33(1)(j), (ja), (k), (ka) and (kb) is repealed.
- (5) Section 33(1)(l) is amended by repealing “and” at the end.
- (6) Section 33(1)(m) is amended by repealing the full stop and substituting a semicolon.
- (7) Section 33(1) is amended by adding—

“(n) if the application relates to a general restaurant—

 - (i) at least one kitchen is provided; and
 - (ii) the area of the food room, or if there is more than one food room, the aggregate area of the food rooms, is not less, or less in proportion to the gross floor area, than that prescribed in Part 1 of Schedule 5A;

- (o) if the application relates to a light refreshment restaurant, the area of the food room, or if there is more than one food room, the aggregate area of the food rooms, is not less, or less in proportion to the gross floor area, than that prescribed in Part 2 of Schedule 5A; and
- (p) if the application relates to a factory canteen, the area of the food room, or if there is more than one food room, the aggregate area of the food rooms, is not less, or less in proportion to the gross floor area, than that prescribed in Part 3 of Schedule 5A.”.

(8) Section 33(1) is amended, in the Chinese text, by repealing everything from “署長除非” to “批出正式牌照” and substituting “凡有正式牌照申請就某處所而提出，署長除非就該處所信納以下事宜，否則不得根據第31條批出該牌照”.

6. Additional requirement for issue of licence for siu mei and lo mei shops

Section 33A is amended by repealing “mei or lo” and substituting “mei and lo”.

7. Compliance with fire safety requirements

Section 33B is amended, in the Chinese text, by repealing “申請牌照” and substituting “申請”.

8. Provisional licence

Section 33C(1)(a) is amended by repealing “to (i), (ja), (ka), (kb) and (m)” and substituting “, (c), (d), (e), (f), (fa), (g), (h), (i), (m), (n), (o) and (p)”.

9. Alteration or addition to the matters specified in section 32(1)

Section 34D(2)(a) is amended by repealing “paragraph (a), (b), (c), (d) or (k) of section 32(1)” and substituting “section 32(1)(a), (b), (c), (d), (da) or (k)”.

10. Sections 34E and 34F added

The following are added in Part IV—

“34E. False certification

Without prejudice to section 125(1)(b) of the Ordinance, if a composite food shop licence is granted on an application under section

32, and the plan or certification referred to in section 32(2A), or the certification referred to in section 32(4), that is submitted in connection with the application is found to be false or misleading in a material particular, the Director may cancel the licence.

34F. Partial suspension or cancellation of licence

Without prejudice to section 125(1)(b) of the Ordinance, a composite food shop licence or a provisional licence granted in respect of a composite food shop may be suspended or cancelled to the extent that it is related to any particular food or particular class of food covered by the licence.”.

11. Offences and penalties

(1) Section 35(3)(a) is amended by repealing everything before “section 29” and substituting—

“(a) for an offence under subsection (1) for contravening”.

(2) Section 35(3)(aaa) is amended by repealing everything before “section 30AA(1)” and substituting—

“(aaa) for an offence under subsection (1) for contravening”.

(3) Section 35(3)(aa) is amended by repealing everything before “section 30(1A)” and substituting—

“(aa) for an offence under subsection (1) for contravening”.

(4) Section 35(3)(b) is amended by repealing everything before “(2)” and substituting—

“(b) for an offence under subsection (1) for a contravention other than those referred to in paragraphs (a), (aaa) and (aa), an offence under subsection”.

12. Section 38 added

The following is added—

“38. Transitional requirements for restaurants and factory canteens

(1) In relation to a restaurant or factory canteen in respect of which a licence was granted under section 31 before 1 August 2010 (“relevant date”), section 33(1)(j), (ja), (k), (ka) and (kb) (“repealed provisions”) as in force immediately before the relevant date continues to apply as if it had not been repealed, and section 34(b) and Schedules 4 and 5 are to have effect accordingly.

(2) In relation to a restaurant or factory canteen in respect of which a licence was granted under section 31 before the relevant date, if any alteration is made on or after the relevant date in respect of any matter specified in the repealed provisions applicable to it under subsection (1), and the written permission of the Director referred to in section 34 is given in respect of the alteration—

- (a) subsection (1) ceases to apply on the date of the written permission; and
 - (b) section 33(1)(n), (o) or (p) applies to the restaurant or factory canteen as if a licence were granted in respect of it under section 31 on or after the relevant date.
- (3) The repealed provisions are set out in Schedule 7.”.

13. Restricted foods

Schedule 2 is amended by repealing item 9 and substituting—

“9. Milk or any milk beverage within the meaning of the Milk Regulation (Cap. 132 sub. leg. AQ) other than milk or milk beverage approved by the Director under section 5(2) of that Regulation”.

14. Schedule 2A added

The following is added—

“SCHEDULE 2A

[s. 31]

FOOD AT COMPOSITE FOOD SHOP

PART 1

FOODS OR CLASSES OF FOOD THAT MAY BE
PREPARED FOR SALE AND SOLD
AT COMPOSITE FOOD SHOP

1. Coffee
2. Tea
3. Salad
4. Sandwich
5. Waffle

6. Sashimi
7. Sushi
8. Oyster to be eaten in raw state
9. Soft ice cream
10. Frozen carbonated beverage

PART 2

FOODS OR CLASSES OF FOOD THAT MAY BE SOLD AT COMPOSITE FOOD SHOP

1. Siu Mei or Lo Mei
2. Cut fruit
3. Leung Fan
4. Non-bottled drinks
5. Frozen confections
6. Chinese herb tea
7. Milk or any milk beverage within the meaning of the Milk Regulation (Cap. 132 sub. leg. AQ) other than milk or milk beverage approved by the Director under section 5(2) of that Regulation
8. Sashimi
9. Sushi
10. Oyster to be eaten in raw state”.

15. Apportionment of space in restaurants

Schedule 4 is amended by repealing “[s. 33(1)(j) & (k)]” and substituting “[s. 38 and Sch. 7]”.

16. Apportionment of space in restaurants and factory canteens

Schedule 5 is amended by repealing “[s. 33(1)(ja), (ka) & (kb)]” and substituting “[s. 38 and Sch. 7]”.

17. Schedule 5A added

The following is added—

“SCHEDULE 5A

[s. 33]

FOOD ROOM REQUIREMENT FOR RESTAURANTS
AND FACTORY CANTEENS

PART 1

GENERAL RESTAURANTS

Gross floor area	Minimum area of food room
100 m ² or less	25% of gross floor area, but not less than 8 m ²
exceeding 100 m ² but not exceeding 150 m ²	22% of gross floor area, but not less than 25 m ²
exceeding 150 m ² but not exceeding 250 m ²	19% of gross floor area, but not less than 33 m ²
exceeding 250 m ² but not exceeding 500 m ²	16% of gross floor area, but not less than 48 m ²
exceeding 500 m ² but not exceeding 1 000 m ²	13% of gross floor area, but not less than 80 m ²
exceeding 1 000 m ²	10% of gross floor area, but not less than 130 m ²

PART 2

LIGHT REFRESHMENT RESTAURANTS

Gross floor area	Minimum area of food room
23 m ² or less	Not less than 4.5 m ²
exceeding 23 m ² but not exceeding 35 m ²	20% of gross floor area or 6 m ² whichever is less

Gross floor area	Minimum area of food room
exceeding 35 m ² but not exceeding 55 m ²	18% of gross floor area or 7.5 m ² whichever is less
exceeding 55 m ² but not exceeding 95 m ²	14% of gross floor area or 12 m ² whichever is less
exceeding 95 m ² but not exceeding 185 m ²	13% of gross floor area or 17 m ² whichever is less
exceeding 185 m ²	9% of gross floor area or 18 m ² whichever is more

PART 3

FACTORY CANTEENS

Gross floor area	Minimum area of food room
250 m ² or less	14% of gross floor area, but not less than 5 m ²
exceeding 250 m ² but not exceeding 1 000 m ²	12% of gross floor area, but not less than 35 m ²
exceeding 1 000 m ²	10% of gross floor area, but not less than 120 m ²

Note: In this Schedule, “gross floor area” (總樓面面積), in relation to a restaurant or factory canteen, means the roofed-over area used exclusively for the business of the restaurant or factory canteen. It includes any area used for a store-room, cold storage chamber, staff changing room, office, air-conditioning engine room, lavatory, lift lobby or stair hall.”.

18. Schedule 7 added

The following is added—

“SCHEDULE 7

[s. 38]

SECTION 33(1)(*j*), (*ja*), (*k*), (*ka*) AND (*kb*) IN FORCE
IMMEDIATELY BEFORE 1 AUGUST 2010

- (*j*) in the case of any restaurant (other than a restaurant selling only light refreshments) in respect of which—
- (i) a licence was granted before 1 February 1974; and
 - (ii) since that date, no alteration has been made to the space allocated to the kitchen, the preparation of food or the seating accommodation,
- the space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in proportion to the space allocated to the seating accommodation than that prescribed in Schedule 4;
- (*ja*) in the case of any restaurant (other than a restaurant selling only light refreshments) in respect of which a licence was not granted before 1 February 1974, the space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in area, or in proportion to the gross floor area, than that prescribed in Part I of Schedule 5;
- (*k*) in the case of any light refreshment restaurant, in respect of which—
- (i) a licence was granted before 1 February 1974; and
 - (ii) since that date, no alteration has been made to the space allocated to the kitchen, the preparation of food or the usable floor space,
- the total space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in proportion to the usable floor space than that prescribed in Schedule 4;
- (*ka*) in the case of any light refreshment restaurant in respect of which a licence was not granted before 1 February 1974, the total space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in area, or in proportion to the gross floor area, than that prescribed in Part II of Schedule 5;
- (*kb*) in the case of any factory canteen, the total space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in area, or in proportion to the gross floor area, than that prescribed in Part III of Schedule 5;”.

CHEUK Wing-hing
Director of Food and
Environmental Hygiene

17 May 2010

Explanatory Note

The main object of this Regulation is to provide for a new class of licence under the Food Business Regulation (Cap. 132 sub. leg. X) (“the Regulation”) and to relax certain licensing requirements for food businesses.

2. Section 2 amends section 30 of the Regulation so that the requirement that a permission from the Director of Food and Environmental Hygiene (“the Director”) is required for the sale of certain food (“restricted food”) does not apply in respect of a food business selling certain simple or ready-to-eat food, or preparing certain simple or ready-to-eat food for sale, for human consumption off the premises (“composite food shop”), if the licence granted under section 31 of the Regulation for the composite food shop (“composite food shop licence”) covers the restricted food.

3. Section 3 amends section 31 of the Regulation to add a new requirement that a licence is required to carry on the business of a composite food shop. However, if the business of a composite food shop is covered by one or more permissions granted under section 30 of the Regulation, the new requirement does not apply to that composite food shop.

4. Section 4 amends section 32 of the Regulation to provide for specific requirements concerning an application for a composite food shop licence.

5. Section 5 amends section 33 of the Regulation—

- (a) to dispense with the requirement that the internal surfaces of the walls of any food room of a food business must be in a light colour; and
- (b) to provide for relaxed food room requirements for restaurants and factory canteens.

6. Section 10 adds 2 sections relating to composite food shop licences. The new section 34E enables the Director to cancel a composite food shop licence if a false plan or certification has been submitted to the Director to support the application for the licence. The new section 34F provides that a composite food shop licence or a provisional licence granted in respect of a composite food shop may be suspended or cancelled to the extent that it is related to any particular food or particular class of food covered by the licence.

7. Section 12 adds provisions to provide for transitional requirements as regards the food rooms of restaurants and factory canteens.