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Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 11 March 2014**

Implementation of Food Safety Ordinance

Purpose

This paper provides background information on the enactment of the Food Safety Ordinance ("FSO") (Cap. 612) and summarizes members' concerns on the implementation of FSO.

Background

Enactment of FSO

2. The Food Safety Bill ("the Bill") was introduced into the Legislative Council ("LegCo") on 2 June 2010 to strengthen legislative control on food safety. The Bill sought to provide for food safety control measures including –

- (a) a registration scheme for food importers and food distributors;
- (b) a requirement for food traders to maintain proper transaction records to enhance food traceability;
- (c) power for the authorities to make regulations for tightening import control on specific food types based on risk assessment; and
- (d) power for the authorities to make orders to prohibit the import and supply of problem food and order the recall of such food.

3. A Bills Committee was formed at the House Committee meeting on 4 June 2010 for scrutiny of the Bill. The Bill, with amendments, was passed at the Council meeting of 30 March 2011. The Food Safety Ordinance (Commencement) Notice, gazetted on 15 April 2011, provided for the commencement of FSO (except Part 3 and Division 1 of Part 2) on 1 August 2011. To allow sufficient time for traders to adapt to the new requirements, Part 3 and Division 1 of Part 2 of the Ordinance, which stipulate the record keeping requirement and the registration scheme for food importers and distributors respectively, came into full operation on 1 February 2012.

Registration scheme for food importers and food distributors

4. FSO requires food importers and food distributors to register with the Director of Food and Environmental Hygiene ("DFEH"). The registration is effective for a period of three years, and is renewable for another three years each time. As a trade facilitation measure, food importers or food distributors who have already registered or have obtained a licence under other ordinances listed in Schedule 1 of FSO are exempted from the registration requirement.

Code of Practice on Keeping Records Relating to Food

5. FSO introduces a food tracing mechanism that facilitates the Administration to trace the source of the food more effectively and take prompt action when dealing with food incidents. Food traders are required to keep records of the businesses from which they obtained their food and the businesses to which they supplied their food, and DFEH is empowered to inspect these records. Section 43 of FSO provides that DFEH may issue codes of practice. The Code of Practice on Keeping Records Relating to Food ("the Code") was gazetted on 15 July 2011, providing guidance on the actions that the trade should take for compliance with the record keeping requirements under Part 3 of FSO.

6. According to the Code, there is no stipulated format for the records of each transaction to be maintained, but those records must cover the following – (a) the date of the transaction; (b) the name and contact details of the supplier; (c) the place from which the food was imported (for imported food only); (d) the name and contact details of the person to whom the food is supplied (i.e. the buyer); and (e) a description of the food, including the total quantity. Fishermen who capture local aquatic products and supply them in Hong Kong are required to maintain capture records covering the date or period of the capture, the common name of the capture, the total quantity and the area of the capture.

7. Under section 29 of FSO, DFEH may in writing exempt a person from the record keeping requirement. In deciding whether to grant an exemption, DFEH may, in so far as is practicable and reasonable, take into account all factors relevant to the circumstances of the case that DFEH considers appropriate, including but not limited to the following – (a) whether the exemption would cause any undue threat to public health; (b) whether the applicant has mechanisms in place to ensure that the food he supplies is fit for human consumption; (c) past records of the applicant (e.g. previous conviction records under FSO or the Public Health and Municipal Services Ordinance (Cap. 132); (d) whether there is genuine and practical difficulty in keeping the required records under Part 3 of FSO; (e) whether the food in question would be used for charitable purposes; and (f) the type and quantity of food in question.

Law Enforcement

8. Under FSO, any person who does not register but carries on a food importation or distribution business commits an offence and is liable to a maximum fine of \$50,000 and to imprisonment for six months; and any person who fails to comply with the record keeping requirement commits an offence and is liable to a maximum fine of \$10,000 and to imprisonment for three months.

9. According to Administration's information paper provided to the Panel on Food Safety and Environmental Hygiene ("the Panel") in July 2012, the Centre for Food Safety ("CFS") put much emphasis on publicity and promotion to ensure smooth implementation of FSO in the first six months after FSO came into full operation in February 2012. A verbal warning would be issued to the food trader who was found to have contravened any requirement under FSO, requiring the trader to rectify the situation within two weeks. If the trader failed to comply within two weeks, CFS would issue a warning letter that required the trader to take action to comply with the statutory requirement within two weeks, after which CFS would take prosecution action.

10. As advised by the Administration, after the first six months of publicity and education, law enforcement would be tightened during the period between 1 August 2012 and 31 January 2013. A warning letter would be issued to any food trader found to have failed to register or maintain records in accordance with FSO during inspection, requiring the trader to take action to comply with requirements within two weeks. Prosecution would be initiated if the trader failed to do so. Starting from 1 February 2013, all non-compliant cases would be subject to direct prosecution.

Members' Concerns

11. The Panel discussed issues relating to the implementation of FSO at its meeting on 11 July 2012, and members' concerns are summarized in the ensuing paragraphs.

The requirements of record keeping and registration

12. Concern was raised as to whether small-scale retailers encountered difficulties in satisfying the requirements of record keeping. There were worries that stall operators in wet markets might not be able to keep their records of transaction systematically such that the sources of supplies might not be traced in case of food incident.

13. The Administration advised that food retailers (including restaurants) who only supplied food to ultimate consumers by retail were only required to keep acquisition records. As members of the public could usually identify the relevant retailer where they bought the food, CFS would then be able to trace the respective sources from which the food was supplied through the food acquisition records of the retailer. In the Administration's view, the six-month publicity and education exercise for the food trade could enhance the traders' awareness of the requirements.

14. According to the Administration, CFS inspected 554 premises between 1 February and 6 June 2012 and issued 47 verbal warnings to food traders who did not keep transaction records in accordance with FSO. The Administration suggested that, since CFS had targeted to select suspicious food traders for inspections during that period, the percentage of non-compliance might be higher than the overall average. The Administration advised the Panel that the concerned food traders were generally co-operative and had rectified the irregularities before the deadline upon receiving verbal warnings.

15. There was also a concern as to why farmers had to pay the three-year registration fee of \$195 while food retailers were not required to register. The Administration explained that food traders who had already registered or had obtained a license under other ordinances listed in the Schedule 1 of FSO were exempted from the registration requirement, and hence holders of various food-related permission or licences issued by DFEH were not required to register under FSO.

Inspection and law enforcement

16. An enquiry was raised about the priority of enforcement actions and the selection criteria for inspection. There was a view that CFS should pay

particular attention to the high risk food, such as sashimi, sushi and raw oyster, sold in supermarkets.

17. According to the Administration, the priority and frequency of inspections were determined in accordance with a range of factors including risk classifications and modes of operation of the food premises. Accordingly, food businesses dealing in high risk foods such as sashimi, sushi and oysters were the main focus of inspections. Small shops, shops selling traditional foods and food distribution websites were also included in the inspections. The Administration further advised that any food premises which sold restricted food such as sashimi, sushi and raw oyster had to obtain the relevant permits. As operators of the food premises would be legally liable if they failed the microbiological assessment under the Food Surveillance Programme of CFS, these operators should properly implement the prevention measures as set out in the licensing conditions to avoid food incidents.

Latest development

18. The Administration will update members on the progress of implementation of FSO at the Panel meeting on 11 March 2014.

Relevant papers

19. A list of the relevant papers on the LegCo website is in the **Appendix**.

Appendix

Relevant papers on the Implementation of Food Safety Ordinance

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	9.2.2010 (Item IV)	Agenda Minutes
Council meeting	30.3.2011	Report of the Bills Committee on Food Safety Bill
Panel on Food Safety and Environmental Hygiene	11.7.2012 (Item V)	Agenda Minutes

Council Business Division 2
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