

立法會
Legislative Council

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**Paper for the meeting
of the Panel on Food Safety and Environmental Hygiene
on 25 September 2014**

**Legal Service Division Report on
a food safety order made under section 30
of the Food Safety Ordinance (Cap. 612) (G.N. (E.) 29 of 2014)
Gazetted on 14 September 2014**

Statutory power to make a food safety order

Under section 30(1) of the Food Safety Ordinance (Cap. 612)¹, the Director of Food and Environmental Hygiene (the Director) may make an order to, among other things, prohibit the import, supply² of any food for the period specified in the order, or to direct that any food supplied be recalled and specify the manner in which, and the period within which, the recall is to be conducted. Section 30(2) of Cap. 612 provides that the Director may only make a food safety order if the Director has reasonable grounds at the time of making the order to believe that the making of the order is necessary –

- (a) to prevent or reduce a possibility of danger to public health; or
- (b) to mitigate any adverse consequence of a danger to public health.

2. In determining whether there are reasonable grounds, the Director may take into account all factors relevant to the circumstances of the case that the Director considers appropriate, including a list of factors set out in section 30(3) of Cap. 612.

3. Under section 30(6) of Cap. 612, a food safety order is not subsidiary legislation. Therefore, the food safety order is not required to be tabled before the Legislative Council and is not subject to amendment by the Legislative Council.

¹ Section 30 of Cap. 612 re-enacted section 78B of the Public Health and Municipal Services Ordinance (Cap. 132). Five section 78B orders were gazetted in 2011. The first one was considered by a subcommittee formed under the House Committee, which reported its deliberation to the House Committee on 10 June 2011 (LC Paper CB(2)2000/10-11). The remaining four were considered by the Panel on Food Safety and Environmental Hygiene on 14 June 2011.

² Under section 2(1) of Cap. 612, "supply", in relation to food, means (a) to sell the food; (b) to offer, keep or exhibit the food for sale; (c) to exchange or dispose of the food for consideration; or (d) for commercial purposes, to give the food as a prize or to make a gift of the food.

The Order

4. Pursuant to section 30 of Cap. 612, the Director made a food safety order, which was published as General Notice (G.N. (E.) 29 of 2014) in the Gazette on 14 September 2014 (the Order). The Order –

- (a) prohibits all persons from importing into or supplying within Hong Kong the food specified in Annex A to the Order, that is intended for human consumption, from noon, 14 September 2014 until further notice; and
- (b) directs that the food specified in Annex A to the Order, that is intended for human consumption and has been supplied to be recalled within a period of 14 days from noon, 14 September 2014 and be disposed of in the manner specified in Annex C to the Order.

5. The food specified in Annex A to the Order includes all lard/lard products from Chang Guann Company Limited (Chang Guann) produced on or after 1 March 2014 including but not limited to the products specified in the Appendix to Annex A and all food products made with such lard/lard products on or after 1 March 2014 (the specified food).

6. The Order has taken effect from noon, 14 September 2014. The effect of the Order is that from then onward, importing or supplying the specified food in Hong Kong is prohibited until further notice and the specified food must be recalled within 14 days from the effective date of the Order.

Reasons for making the Order

7. The reasons and principal factors for making the Order is set out in Annex B to the Order. According to Annex B, the making of the Order relates to the incident of the use of substandard lard (known as 全統香豬油(合將香豬油)) first reported by Taiwan authorities on 4 September 2014. On 11 September 2014, the Taiwan authorities announced that another 24 lard/lard products produced by Chang Guann might have been contaminated. According to Taiwan authorities, the substandard lard/lard products from Chang Guann were produced from collected waste oils and substandard ingredients such as lard for animal feeds. Lard/lard products so produced are subject to contamination by harmful substances such as benzo[a]pyrene, aflatoxins and metallic contaminants etc. These harmful substances can cause cancers or other adverse health effects to consumers and thus presenting possible danger to public health.

8. Six Hong Kong importers have imported some of these contaminated products. As lard is widely used in Hong Kong to produce food products, the substandard lard/lard products imported may possibly be used to manufacture food products locally. In light of the above circumstances, the Administration considered that there is reasonable ground to conclude that the consumption of the lard/lard products produced by Chang Guann and food products made with such lard/lard products in Taiwan or Hong Kong will pose health risks.

9. In response to our enquiry, the Administration has explained that 1 March 2014 was chosen as the cut-off date for the following reasons –

- (a) the food safety authorities in Taiwan provided the Centre of Food Safety with a list of lard/lard products from Chang Guann exported to Hong Kong. All have manufacturing dates of March 2014; and
- (b) reference is also made to the scope of recall of relevant products being conducted in Taiwan.

Recall and disposal of specified food

10. Annex C to the Order sets out the manner in which food product recall and disposal should be conducted by importers, distributors and retailers. In relation to importers and distributors, they are required to –

- (a) immediately conduct a stock take of the storage facilities and isolate any remaining stock of the specified food and distributors are additionally required to return the specified food to the supplier;
- (b) set up telephone enquiry service to handle enquiries related to recall as soon as possible;
- (c) immediately notify all known distributors, retailers and consumers of the recall and its arrangement;
- (d) inform the Food Environmental and Hygiene Department (FEHD) upon commencement of the recall, of detailed description of the food to be recalled and the recall period;
- (e) display posters of prescribed size at a conspicuous location on importers'/distributors' premises on the details of the recall arrangement;

- (f) retract the food returned by the distributors, retailers or consumers and distributors are additionally required to return the returned food to the supplier;
 - (g) report to FEHD within two working days upon completion of recall –
 - (i) in case of importers, and to seek FEHD's advice on final disposal of the recalled food and any remaining stock; and
 - (ii) in case of distributors, the quantity and description of the recalled food and any remaining stock and the date of return to the supplier;
 - (h) in case of importers, submit a report to FEHD within one week from the date of completion of recall which contains prescribed information; and
 - (i) in case of distributors, keep records of prescribed information of recalled food.
11. In relation to retailers, they are required to –
- (a) immediately stop sale and use of, and remove from shelves, all specified food and return them to the supplier;
 - (b) in case there is no supplier, the specified food should be properly destroyed by the retailer; and
 - (c) keep records of the quantity and description of the specified food and the date of return to the supplier (or destruction as appropriate) and report to FEHD the same within two working days upon return to the supplier (or destruction as appropriate).
12. Members may refer to the LegCo Brief (File Ref: FHB/F/5/1/1) issued by the Food and Health Bureau dated 15 September 2014 for further information on the Order.

Enforcement of and appeal against the Order

13. Under section 32(1)³ of Cap. 612, a person bound by a food safety order who contravenes a term of the order commits an offence and is liable to a

³ Section 32 of Cap. 612 re-enacted section 78D of Cap. 132.

fine at level 6 (i.e. \$100,000) and to imprisonment for 12 months. Section 32(2) provides that it is not a defence for the person to show that the food concerned is the subject of a licence, permit or any other form of authorization issued or granted under Cap. 612 or any other Ordinance.

14. Under section 35(1)⁴ of Cap. 612, a person bound by a food safety order who is aggrieved by the order may, within 28 days after becoming bound by the order, appeal to the Municipal Services Appeals Board against the order. Section 35(4) provides that an appeal does not suspend the food safety order unless the Director decides otherwise.

15. Section 36(1)⁵ of Cap. 612 provides that a person bound by a food safety order may apply for an amount of compensation, that is just and equitable in all the circumstances of the case, for losses arising from as a direct result of compliance with the Order. Under section 36(3), these losses are the total or partial loss of the food concerned and costs or expenditure actually and directly incurred.

Consultation with LegCo Panel

16. According to the Clerk to the Panel on Food Safety and Environmental Hygiene (the Panel), the Administration has not consulted the Panel on the Order. However, the Administration will brief the Panel on the substandard lard incident and food safety issues, which relate to the specified food, at the Panel's special meeting on 25 September 2014. The Panel will also receive views from relevant parties on the subject at the meeting. All Members are invited to attend the special meeting.

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⁴ Section 35 of Cap. 612 re-enacted section 78G of Cap. 132.

⁵ Section 36 of Cap. 612 re-enacted section 78H of Cap. 132.