

**For discussion
on 12 May 2015**

LegCo Panel on Food Safety and Environmental Hygiene

Implementation of the Food Safety Ordinance

Purpose

This paper briefs Members on the implementation of the Food Safety Ordinance.

Background

2. The Food Safety Ordinance (Cap. 612) (the Ordinance) came into full operation on 1 February 2012. The Ordinance introduces a food tracing mechanism to enable the Centre for Food Safety (CFS) to identify the source of food more effectively and take prompt action when dealing with food incidents in order to safeguard public health. The mechanism consists mainly of the following components:

- (a) a registration scheme for food importers and food distributors; and
- (b) a requirement for food traders to maintain proper transaction records to enhance food traceability.

3. Through the Food Surveillance Programme, CFS monitors whether the food on sale in the market complies with the legal requirements and whether it is fit for human consumption. Should there be any food samples that are found not in compliance with food safety standards or when there is a food incident, CFS can, by virtue of the registration scheme under the Ordinance (paragraph 4 below), promptly identify and contact the food importers and distributors concerned to prevent further sale of the problem food. Through the records kept by food traders, CFS can also obtain information on the source of the problem food and its distribution (paragraphs 8 to 9). The mechanism allows CFS to more accurately assess the scale of the incident and movements of the food in question, as well as the necessary follow-up actions to be taken. When the sources of the problem can be identified early, it would prevent food of the same type without any problem from being implicated unnecessarily. This would also be of great help in restoring public confidence in food safety and maintaining

the stability of food supply.

Registration Scheme for Food Importers and Food Distributors

4. The Ordinance requires food importers and food distributors to register with the Director of Food and Environmental Hygiene (DFEH). The registration procedure, either by paper or electronic means, is convenient and simple. Only essential information such as the particulars of the registered persons or companies (e.g. name of corporation/applicant, name of business, address, telephone number, etc.) and details of the contact person and the food business is required. The registration is effective for a period of three years, and is renewable for another three years each time. Under the Ordinance, DFEH must keep a register of food importers and food distributors for public inspection. The public (including food traders) may therefore inspect the register at any time to find out the status of their trading partners to avoid purchasing food from unknown sources, thus protecting consumers and food traders.

5. 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 the Ordinance are exempted from the registration requirement. They include holders of various food-related permissions or licences issued by DFEH, marine fish farmers licensed by the Director of Agriculture, Fisheries and Conservation, owners of Class III vessels licensed by the Director of Marine, and stockholders of rice registered by the Director-General of Trade and Industry, etc. CFS will, by exercising the power vested in DFEH under the Ordinance, obtain the information mentioned in paragraph 4 above from the relevant departments as well as the exempted food importers and distributors.

6. As at 31 December 2014, 15 037 food importers and food distributors have been registered under the Ordinance, including 8 103 food importers and 6 934 food distributors. The respective numbers of food importers and food distributors exempted from registration are 539 and 981.

A Guide to the Registration Scheme for Food Importers and Food Distributors

7. To facilitate the trade's understanding of the registration scheme, CFS has drawn up a "Guide to the Registration Scheme for Food Importers and Food Distributors" (the Guide). The contents include the procedures of registration and renewal as well as various types of application forms, etc. The Guide also answers some of the frequently asked questions and states

that DFEH will grant approval to an application for registration within seven working days upon receipt of all the required information. CFS has fulfilled this performance pledge and so far has not received any complaints. The Guide has been posted on the dedicated webpage about the Ordinance (www.foodsafetyord.gov.hk) for reference of the trade.

Requirement of Keeping Transaction Records by Food Traders

8. The Ordinance also requires food traders to maintain records of movements of food. Any person who, in the course of business, imports, acquires or supplies by wholesale food in Hong Kong must keep transaction records of the business from which the food was obtained and the business to which it was supplied. Importers, distributors and retailers are required to keep all food import and local acquisition records. Importers and distributors also have to keep records of the wholesale supply of food. The information to be recorded includes the date the food was acquired/supplied; the name and contact details of the company concerned; the total quantity of the food and a description of the food, etc.

9. Food retailers (including restaurants) who only supply food to ultimate consumers by retail are only required to keep acquisition records. Members of the public usually keep the sale receipts of food bought from retailers or at least should know the relevant retailer where the food was sold. If the food retailer in a food incident can be identified, CFS will be able to trace the respective distributor(s) or importer(s) from which the food was supplied through the food acquisition records of the retailer and deal with food incidents more effectively.

Code of Practice on Keeping Records Relating to Food

10. Under Section 43 of the Ordinance, DFEH may issue codes of practice. After consultation with the trade, the Code of Practice on Keeping Records Relating to Food (the Code) was gazetted on 15 July 2011. The Code provides details of the requirements on keeping records relating to food and lists various record keeping templates for reference. Both the Guide and the Code have been posted on the dedicated webpage about the Ordinance (www.foodsafetyord.gov.hk) for reference by the trade.

Law Enforcement

11. The Ordinance provides that 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 also commits an offence and is liable to a maximum fine of \$10,000 and to imprisonment for three months.

12. Every year, staff of CFS conduct inspections on food importers, distributors and retailers to ensure that they comply with the registration scheme and the requirement of keeping transaction records under the Ordinance. CFS has adopted a risk-based enforcement approach in conducting inspections of food premises as scheduled. The priority and frequency of inspections are determined according to factors like risk classifications and modes of operation of the food premises. Food businesses dealing in high-risk foodstuffs like sashimi, sushi and oysters to be eaten raw are the main focus of inspections. Small shops, shops selling traditional food and food distribution websites are also included in the inspections.

13. In 2014, staff of CFS inspected 523 premises and instituted 10 prosecutions against food importers/distributors who had not registered under the Ordinance. Among these 10 cases, five resulted in conviction, with fines of \$9,000 imposed in two cases, \$4,000 imposed in two other cases, and \$1,000 in the remaining one. Besides, one prosecution was instituted against a trader for non-compliance with the record keeping requirements under the Ordinance, which resulted in a \$2,000 fine.

Handling of Food Incidents

14. Since the implementation of the Ordinance, CFS can trace speedily the source and movement of the problem food in the course of food surveillance and handling of food incidents by virtue of the registration scheme and the records kept by food traders under the Ordinance. As such, CFS can handle food incidents more effectively. Under section 27 of the Ordinance, DFEH may, for the purpose of exercising powers or performing functions under the Ordinance, require to inspect, to make a copy of or take an extract from a record kept by these food traders. Those who fail to keep such information or submit the information to DFEH within the specified time commit an offence and are liable to a maximum fine of \$10,000 and imprisonment up to three months. While the Ordinance does not specify a time limit for submission of such information, section 40(1) of the Interpretation and General Clauses Ordinance (Cap. 1) stipulates that “where any Ordinance confers upon any person power to do or enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the

act or thing.” As such, DFEH may, in requiring the relevant person to submit the required information under section 27 of the Ordinance, stipulate a reasonable time limit having regard to the concrete situation.

15. In response to the substandard lard incident in Taiwan last year, CFS issued notices under section 27 of the Ordinance to importers, distributors and traders who might have imported, distributed or used the substandard lard/lard products from CHANG GUANN Co. Ltd in Taiwan, requiring them to submit transaction records of the lard/lard products concerned within a specified time limit, in order for CFS to assess more accurately the scale of the incident, the movement of the problem food and to trace, mark and seal the affected products to prevent their further sale. Traders in general could provide the information required within the specified time limit.

16. In light of the experience of this incident, CFS reminded the trade to arrange their transaction records systematically to ensure that the relevant information could be submitted within the timeframe specified by DFEH as necessary. CFS also reminded the trade that depending on the urgency of the matter, DFEH may require food traders to submit the records and information within a minimum of 24 hours. In addition, CFS has liaised with the trade on enhancing the communication mechanism by requiring food importers and distributors to provide information of at least one contact person, and 24-hour contact telephone numbers and mobile telephone number for getting in touch with the contact person(s) during office/non-office hours in case of emergency food incidents. This will enable CFS to make immediate contact with the relevant traders when necessary to obtain the required information, in order to safeguard food safety.

Issue of Food Safety Orders

17. Section 30(1) of the Ordinance empowers DFEH to make a Food Safety Order to prohibit the import and supply of any food for the period specified in the Order, direct that any food supplied be recalled and specify the manner in which, and the period within which, the recall is to be conducted. In making the Food Safety Order under section 30(1), DFEH must ascertain that there are reasonable grounds to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health, as stipulated by section 30(2) of the Ordinance. Anyone found guilty of contravening any terms of the Order is liable to a maximum fine of \$100,000 and imprisonment for 12 months.

18. In response to the substandard lard incident in Taiwan, DFEH issued three Food Safety Orders under section 30(1) of the Ordinance during September to November 2014 to prohibit the import into and supply within Hong Kong all concerned lard/lard products and edible fats and oils produced by the Taiwan manufacturers involved and all food products made in Taiwan or Hong Kong with such lard/lard products and edible fats and oils, and to mandate their systematic recall and proper disposal so as to ensure that they are no longer in circulation in the local market, thereby protecting public health.

19. The above incident has shown that the food tracing mechanism established by the Ordinance facilitates the identification and tracing of problem food and helps determine the extent of distribution of the food in Hong Kong. Moreover, the Ordinance empowers DFEH to make Food Safety Orders to prohibit the import and supply of problem food and order the mandatory recall of such food so as to ensure the protection of public health.

Advice Sought

20. Members are invited to note and comment on the progress of implementation of the Ordinance.

**Food and Health Bureau
Food and Environmental Hygiene Department
Centre for Food Safety
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