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**Panel on Food Safety and Environmental Hygiene**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 12 May 2015**

**Implementation of Food Safety Ordinance**

**Purpose**

This paper provides background information on the Food Safety Ordinance ("FSO") (Cap. 612) and summarizes the main concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the implementation of FSO.

**Background**

2. FSO, which came into full operation on 1 February 2012<sup>1</sup>, provides for food safety control measures as follows -

- (a) a registration scheme for food importers and food distributors. Any person who does not register<sup>2</sup> with the Director of Food and Environmental Hygiene ("DFEH") but carries on a food

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<sup>1</sup> The Food Safety Bill was introduced into the Legislative Council ("LegCo") on 2 June 2010, and was passed, with amendments, 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 FSO, which stipulate the record keeping requirement and the registration scheme for food importers and distributors respectively, came into full operation on 1 February 2012.

<sup>2</sup> 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.

importation or distribution business commits an offence and is liable to a maximum fine of \$50,000 and to imprisonment for six months;

- (b) 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<sup>3</sup> 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<sup>4</sup>. 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;
- (c) DFEH is empowered to make regulations for tightening import control on specific food types based on risk assessment; and
- (d) DFEH is also empowered to make orders to prohibit the import and supply of problem food and order the recall of such food.

### **Members' concerns**

3. The Panel discussed the implementation of FSO at its meeting in July 2012 and March 2014, and members' main concerns are summarized in the ensuing paragraphs.

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<sup>3</sup> The Code of Practice on Keeping Records Relating to Food ("the CoP") 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. According to the CoP, 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 is 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.

<sup>4</sup> 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 take into account all factors relevant to the circumstances of the case that DFEH considers appropriate, including, among others, (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/she supplies is fit for human consumption; (c) whether there is genuine and practical difficulty in keeping the required records under Part 3 of FSO; (d) whether the food in question would be used for charitable purposes; and (e) the type and quantity of food in question.

### Requirements of record keeping and registration

4. Members expressed concern as to whether small-scale retailers encountered difficulties in satisfying the requirements of record keeping. There were also 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.

5. 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, the Centre for Food Safety ("CFS") would then be able to trace the respective sources from which the food was supplied through the food acquisition records of the retailer. To enhance the traders' awareness of the requirements, the Administration had carried out publicity and education exercise in the first six months after FSO came into full operation in February 2012. As at 31 December 2013, 6 779 food importers and 5 959 food distributors had been registered under FSO, and 476 food importers and 865 food distributors had been exempted from registration.

### Inspection and law enforcement

6. Members were concerned about the priority of enforcement actions and the selection criteria for inspection. The Administration was urged to pay particular attention to the high risk food, such as sashimi, sushi and raw oysters, sold in supermarkets. Concern was also raised about whether the Administration could effectively monitor food sold on the Internet.

7. The Administration advised that 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 included in the inspections. Inspections were also made to premises that complaints for food incidents had been reported. Between 1 February 2012 and 31 March 2014, CFS inspected a total of 642 food premises (including 319 importers, 100 distributors and 233 retailers) whose business involved perishable food items (e.g. sashimi, sushi, oysters, aquatic products, meat and meat products), and a total of 13 premises engaged in the sale of food on the internet (including six food importers, two food distributors and five food retailers). All these premises were registered in accordance with FSO and complied with the recording keeping requirement.

## Recent developments

8. When the Panel discussed issues relating to the problem food products produced by Husi food factory in Shanghai<sup>5</sup> and the sub-standard lard incident<sup>6</sup> at its special meetings on 3 and 25 September 2014 respectively, members expressed concerns about whether there was a specific time limit for the trade to submit the transaction records as required by DFEH. Concern was also expressed about CFS's effectiveness in tracing the sources of the problem vegetables which contained pesticide residues exceeding the permitted levels specified under the Pesticide Residues in Food Regulation (Cap. 132CM) when the Panel discussed the subject relating to the supply of vegetables at the special meeting on 3 September 2014.

9. According to the Administration, while FSO had not specified a time limit for submission of transaction records, DFEH might, in requiring the relevant person to submit the required information, stipulate a reasonable time limit having regard to the urgency of individual cases. Following the sub-standard lard incident, CFS had introduced enhancement measures as follows -

- (a) reminding the trade to arrange their transaction records systematically to ensure that the relevant information might be submitted within the timeframe specified by DFEH as necessary;
- (b) reminding the trade that depending on the urgency of the matter, DFEH might require food traders to submit the records and information within a minimum of 24 hours; and
- (c) liaising 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 number and mobile telephone number for getting in touch with the contact person(s) during office/non-office hours in case of emergency food incidents.

10. As regards the food safety of vegetables imported to Hong Kong, CFS

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<sup>5</sup> In July 2014, DFEH made order to suspend the import of all food products from all processing plants of Husi in the Mainland into Hong Kong. Any relevant food products available in the local market were marked and sealed, and banned from selling.

<sup>6</sup> Following the sub-standard lard incident in Taiwan in early September 2014, DFEH made three Food Safety Orders on 14 September, 29 October and 7 November 2014 respectively to mandate recall and proper disposal of all concerned products.

conducted food surveillance at import, wholesale and retail levels. For samples found to be unsatisfactory, the food traders concerned would be required to provide the transaction records under FSO. In the event that sellers failed to keep proper transaction records, CFS would consider initiating prosecution.

11. Following the media report in March 2015 that a batch of carrots from Chiba, Japan was illegally imported for sale in Hong Kong in early 2015, some Panel members raised concern about whether the Administration had put in place effective measures for ensuring that the trade complied with the order<sup>7</sup> made by DFEH in March 2011 to prohibit the import of vegetables and fruits, milk, milk beverages and milk powder from the five prefectures of Japan most affected by the Fukushima nuclear plant incident (i.e. Fukushima, Ibaraki, Tochigi, Chiba and Gunma).

12. The Administration will update members on the implementation of FSO at the Panel meeting on 12 May 2015.

### **Relevant papers**

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

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<sup>7</sup> DFEH made the order through exercising the power provided under the Public Health and Municipal Services (Amendment) Ordinance 2009. With the enactment of FSO, the provisions of the Public Health and Municipal Services (Amendment) Ordinance 2009 which empower DFEH to make the aforesaid food safety orders have been transferred to FSO for continued operation.

**Relevant papers on  
Implementation of Food Safety Ordinance**

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	9.2.2010 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Council meeting	30.3.2011	<a href="#">Report of the Bills Committee on Food Safety Bill</a>
Panel on Food Safety and Environmental Hygiene	11.7.2012 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	11.3.2014 (Item VII)	<a href="#">Agenda</a> <a href="#">Minutes</a> <a href="#">Administration's follow-up paper on enforcement actions taken under the Food Safety Ordinance</a>
	3.9.2014 (Item I and II)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	25.9.2014 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>