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Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 9 May 2017**

Implementation of the Food Safety Ordinance

Purpose

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

Background

2. FSO, which came into full operation on 1 February 2012, 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 scheme¹ for food importers and food distributors;
and
- (b) a requirement for food traders to maintain proper transaction

¹ 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 to FSO are exempted from the registration requirement.

records² to enhance food traceability. The Director of Food and Environmental Hygiene ("DFEH") is empowered to inspect these records³.

3. FSO 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. As at 31 December 2015, a total of 17 696 food importers and food distributors were registered under FSO, including 9 664 food importers and 8 032 food distributors. The numbers of food importers and food distributors exempted from registration were 654 and 1 222 respectively.

4. CFS staff conduct regular inspections on food importers, distributors and retailers to ensure that they comply with the registration scheme and the requirement of keeping transaction records under FSO. CFS adopts a risk-based enforcement approach in conducting inspections. The priority and frequency of inspections are determined according to factors such as risk classifications and modes of operation of the food premises. Food businesses dealing with high-risk foodstuffs such as 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. In 2015, staff of CFS inspected 473 premises and instituted nine prosecutions against food importers/distributors who had not registered under FSO, eight of which resulted in conviction with fines ranging from \$420 to \$5,000.

² The information to be recorded includes the date the food is acquired/supplied; the name and contact details of the supplier and the buyer; the total quantity of the food and a description of the food, etc. While there is no stipulated format for the records of each transaction to be maintained, CFS has issued a Code of Practice on Keeping Records Relating to Food providing guidance on the actions that the trade should take for compliance with the record keeping requirement under Part 3 of FSO.

³ Under section 29 of FSO, DFEH may exempt a person from the record keeping requirement. In deciding whether to grant an exemption, DFEH may take into account all relevant factors including (a) whether the exemption would cause any undue threat to public health; (b) whether the applicant has mechanism 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.

Members' concerns

5. The Panel discussed the implementation of FSO at a number of meetings between 2012 and 2016. Members' major views and concerns are summarized below.

Requirements of record keeping and registration

6. Concern was raised about the difficulties encountered by small-scale retailers in satisfying the record keeping requirement. Some members expressed 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 incidents.

7. 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 from whom the food was bought, 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 traders' awareness of the registration and record keeping requirements, the Administration had launched publicity and education programmes after FSO had come into full operation.

CFS' effectiveness in addressing food incidents

8. In response to members' concern over the effectiveness of the food tracing mechanism under FSO in assisting CFS to handle food incidents, the Administration advised that since the implementation of FSO, CFS could trace speedily the source and movement of the problem food in the course of food surveillance and handling food incidents by virtue of the registration scheme and the records kept by food traders. 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 that occurred in Taiwan in early September 2014, CFS had 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 had also reminded 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. In addition, CFS had liaised with the trade on enhancing the communication mechanism by requiring food importers and distributors to provide information on at least one contact person during office/non-office hours in case of emergency food incidents. This enabled CFS to make immediate contact with the relevant traders when necessary to obtain the required information.

9. The Administration further advised that section 30(1) of FSO empowered DFEH to (a) make a food safety order to prohibit the import and supply of any food for the period specified in the order, (b) direct that any food supplied be recalled and (c) specify the manner in which and the period within which the recall was to be conducted. Taking the sub-standard lard incident occurred in Taiwan in 2014 as an example, DFEH had promptly responded to the incident by issuing three food safety orders under section 30(1) of FSO between September and November 2014 to prohibit the import into and supply within Hong Kong all problem foods concerned, and to mandate their recall and proper disposal so as to protect public health.

10. Responding to members' enquiry about follow-up actions taken by CFS when food incidents occurred in the neighbouring regions, the Administration advised that CFS regularly monitored websites of overseas food safety agencies and media reports on food safety issues. CFS would ascertain whether the problem food had entered into the local market based on the registration records under FSO and intelligence collected. Where necessary, DFEH would make food safety orders to prohibit the import and supply of the food concerned and order a mandatory recall to protect public health.

Regulating online food sale

11. Enquiries were raised about the Administration's work in regulating online food selling activities, how CFS could trace the source and movement of foods purchased through offshore shopping websites and whether CFS had required operators of offshore shopping websites to submit transaction records for inspection. According to the Administration, the existing legislation regulated food safety and food trade operations in many aspects, including food operations through electronic or other means. While each case was determined on its own merits, if the website operator was an importer/distributor/retailer, he or she had to keep all food import and local acquisition records in accordance with FSO.

12. The Administration further advised that in view of the prevalence of online sale of foods in recent years, the Food and Hygiene Department ("FEHD") had, since 22 February 2016, introduced a new set of licensing conditions for regulation of operators without physical premises and selling restricted foods via the Internet or social media platforms. The licensing conditions mainly required that restricted foods must be obtained from lawful sources, that the food should not be tempered with during transportation to prevent cross-contamination, and that the food products would be stored at a safe and proper temperature at all times. Moreover, website operators should

provide on their websites information about their permits, such as the permit number, the registered address and the restricted foods permitted for sale, so as to enable consumers to verify such information through FEHD's website when purchasing foods online. As at 31 January 2017, FEHD had issued 168 such permits.

Law enforcement

13. Some members were of the views that the existing legislation had inadequacies in providing safeguards against illegal importation and smuggling of restricted foods and the penalties for contravention of FSO were not sufficient to achieve the desired deterrent effect. There was a suggestion that the Administration should devise further measures to strengthen the enforcement against illegal importation of restricted foods.

14. The Administration advised that CFS had all along been collaborating with the Customs and Excise Department in combating at the boundary control points illegal importation and smuggling of foods, including mounting joint operations. Besides, CFS monitored food on sale through its regular Food Surveillance Programme. It took food samples at the import, wholesale and retail levels (including from online retailers) for testing. In 2016, CFS conducted test on a total of about 65 500 food samples under various food surveillance projects. CFS would continue with various efforts, including imposing control at source, monitoring the procedures and conducting tests, to safeguard food safety.

Recent development

15. The Administration will update members on the implementation of FSO at the Panel meeting on 9 May 2017.

Relevant papers

16. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Appendix

Relevant papers on the implementation of the Food Safety Ordinance

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	11.7.2012 (Item V)	Agenda Minutes
	11.3.2014 (Item VII)	Agenda Minutes
	12.5.2015 (Item V)	Agenda Minutes
	12.4.2016 (Item V)	Agenda Minutes

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