

To: Legislative Council Panel on Health Services

**Views on the Latest Draft “Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children” (“HK Code”)**

**I. Introduction**

The Hong Kong Infant and Young Child Nutrition Association (“The Association”/ “HKIYCNA”) was registered under Societies Ordinance in May 2011 and members are long-established manufacturers and suppliers of infant and young child formula and food products. To meet the nutrition needs of infants and young children, our members invest heavily in research and development all along to provide science-based products that support the healthy growth of infants and young children.

HKIYCNA fully supports breastfeeding and the Government’s efforts to promote, protect and support breastfeeding in Hong Kong. However, in regard to the Government’s plan to launch the HK Code this year, HKIYCNA does **NOT support nor agree** with the draft HK Code in its current form, especially the scope of regulation covering infant and young child formula products up to 36 months, and its voluntary nature. The Association would like to share our stance for all Panel members’ reference.

**II. Key Stance and Comments on the Latest Draft HK Code**

**1. Lack of transparency in the revision process and insufficient time for stakeholders to discuss**

- 1.1 Further to the public consultation on the first draft of the HK Code, there have been no room nor suitable platform for manufacturers and distributors to participate in the revision process of the draft HK Code, despite the association’s continuous expression of willingness to collaborate with the Government in order to prepare a Code that is practical and suitable for Hong Kong consumers. Due to the minimal involvement of relevant stakeholders, there is lack of transparency in the revision process, resulting in a disappointing situation where many of stakeholders’ concerns were unattended in the latest draft of the HK Code.
- 1.2 The Government plans to implement the HK Code in the second quarter this year. However, the full version of the latest draft of HK Code was only provided to the manufacturers on February 23 and to the retailers on March 14, leaving insufficient time for further study and discussion among industry stakeholders. It is therefore not possible for industry players and consumers to understand the detailed provisions of the Code in full context, thus refraining the stakeholders from providing detailed and constructive comments to the Food and Health Bureau.
- 1.3 It is regrettable that despite the Association’s repeated attempts to communicate with the Government, the latest draft HK Code has not reflected views nor addressed concerns of the



industry from the public consultation in 2012 and subsequent communications, as stated in point 2 to 6 in this document.

- 1.4 Given the complementary relationship in regulation between the HK Code and the Regulatory Framework on Nutrition and Health Claims, the industry cannot consider the HK Code in isolation, but need to understand the latest proposed Regulatory Framework on Nutrition and Health Claims at the same time.

## **2. Over-regulation in draft HK Code covering products for children up to 36 months**

- 2.1 The Association supports the WHO recommendation that breastmilk is ideal for infants and that exclusive breastfeeding should be encouraged for the first six months of life.
- 2.2 In support of breastfeeding, the Association proactively and voluntarily introduced a HKIYCNA Code of Practice for the Marketing of Infant Formula (“Code of Practice”) in 2011, which is currently followed by all Association members. The Code of Practice is consistent with the common practices in other developed countries.
- 2.3 The Association recommends that the scope of the HK Code takes reference to practices in developed countries which have similar socio-economic situations to Hong Kong, but not that in developing countries such as Afghanistan and Lebanon, where marketing of products up to 36 months is restricted.
- 2.4 The Association does not support the scope of the HK Code which covers designated products up to 36 months. Any over-regulation is contrary to Hong Kong’s free market economy and deprives consumers’ right to information to make informed choice.
- 2.5 Growing-up formula products (for children 1-3 years old), covered under the designated food products, is complementary food in nature. If regulation of complementary food is necessary for the promotion of breastfeeding, all food and drinks that are consumable by young children from 1 year old onward may also need to be covered.
- 2.6 Label requirements in the Code discriminate against formula milk products. For example, label requirement of “*Use of breastmilk substitutes may put infants at risk of diarrhoea and other illnesses, when compared with breastfed infants*” states potential health risk only on serving formula powder. Diarrhoea, however, is at the same risk by serving other food items. This kind of statement will create unnecessary panic to general consumers.
- 2.7 According to the Government’s explanation, the proposed scope of regulation aligns with the resolution adopted by the World Health Assembly (WHA) last year. However, the resolution is only a policy framework for its member states and individual member state shall implement the resolution according to local situations, including legislation in the country as well as various international obligations. According to the Association’s understanding, no developed countries have amended their regulation in response to the resolution to cover products for children up to 36 months thus far.



- 3. Proper approach urged to avoid consumer confusion and ensure level-playing field**
  - 3.1 The voluntary nature of the HK Code will lead to unfair competition in the market place. As compliance with the Code is not compulsory, some market players may choose not to follow.
  - 3.2 While different amount and types of information will be disseminated by different manufacturers and distributors, confusion will be caused to consumers.
  
- 4. Administrative measures from Government may turn a ‘voluntary Code’ into mandatory in practice**
  - 4.1 The HK Code is proposed to be voluntary in nature. However, the Government/ public bodies may make its compliance a mandatory requirement for manufacturers or distributors, with reference to the requirement of some projects such as the previous Hospital Authority tender. Measures like this turn the ‘voluntary code’ into mandatory in practice through urging compliance among manufacturers and distributors who want to participate in particular projects.
  - 4.2 Furthermore, while other manufacturers and distributors can choose not to follow the voluntary HK Code, unfairness will be faced by those manufacturers who wish to participate in the projects. This therefore introduces unfairness in implementation of public policy.
  
- 5. Not responding to the need of the public for informed choice**
  - 5.1 Article 4 of the latest HK Code restricts manufacturers and distributors from providing information and education materials on breastfeeding and formula milk feeding unless they are prepared by the Department of Health. This significantly narrows the source of information that can be used by parents at their own choice.
  - 5.2 In addition, the “provide only upon request” approach does not take care of the needs of parents who may not make proactive request for relevant information, thus are unable to make appropriate decision on purchase (when necessary).
  - 5.3 The HK Code actually hinders its stated aim to promote “the proper use of designated products on the basis of ADEQUATE and unbiased information and through APPROPRIATE MARKETING”, as stated in the latest draft at current form, the [draft of Hong Kong Code for public consultation](#) and [briefing to the industry](#), by restricting marketing and promotion, as well as provision of product information that is factual and scientifically substantiated.
  
- 6. Lacking convincing evidence of the effectiveness of the HK Code on enhancing breastfeeding rate**
  - 6.1 The implementation of the HK Code aims at enhancing the local breastfeeding rate. However, there is a lack of scientific data indicating that the low breastfeeding rate in Hong Kong is directly linked with formula milk marketing practices.
  - 6.2 Among the key barriers to breastfeeding revealed by public surveys conducted by different institutes or organizations, formula milk marketing practices is absent, while mothers’ health



conditions, short maternity leave and the lack of supporting facilities, are the primary causes rated for low breastfeeding rate.

- 6.3 The Government did not indicate openly any specific target increase in breastfeeding rate after the Code is implemented. Therefore there will be no yardstick to measure the effectiveness of the HK Code.

### III. Conclusion

HKIYCNA shares a common objective with the Government and the Health Panel in supporting breastfeeding as well as to enhance the health of infants and young children in Hong Kong. In the course of HK Code development, the Association strongly hopes that the above feedback could be taken into account seriously in finalizing the HK Code, otherwise the Association will consider the Code unacceptable and thus can hardly follow.

Hong Kong Infant and Young Child Nutrition Association

17<sup>th</sup> March 2017

*The Hong Kong Infant and Young Child Nutrition Association consists of the following members (in alphabetical order of the company names)*

- *Abbott Laboratories Limited*
- *Danone Nutricia Early Life Nutrition (Hong Kong) Limited*
- *FrieslandCampina (Hong Kong) Limited*
- *Mead Johnson Nutrition (Hong Kong) Limited*
- *Nestle Hong Kong Limited*
- *Snow Brand Hong Kong Company Limited*
- *Wyeth (Hong Kong) Holding Company Limited*