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Panel on Health Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 20 March 2017**

**Hong Kong Code of Marketing of Formula Milk and Related Products,
and Food Products for Infants & Young Children**

Purpose

This paper provides the background information and summarizes the concerns of members of the Panel on Health Services ("the HS Panel") and the Panel on Food Safety and Environmental Hygiene ("the FSEH Panel") on the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants and Young Children¹ ("the Hong Kong Code").

Background

2. The World Health Organization ("WHO") and the United Nations Children's Fund ("UNICEF") have for many years emphasized the importance of maintaining the practice of breastfeeding as a way to improve the health and nutrition of infants and young children. Against the backdrop of a declining trend in breastfeeding due to, among other factors, the promotion of breastmilk substitutes, WHO promulgated an International Code of Marketing of Breastmilk Substitutes ("the WHO Code") in 1981. The aim of the WHO Code is to contribute to the provision of safe and adequate nutrition for infants and young children, by the protection and promotion of breastfeeding, and by

¹ The Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children is renamed as Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children in the 2017 Policy Address.

ensuring the proper use of breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

3. Locally, to better protect breastfeeding and ensure the provision of safe and quality food products for infants and young children, the Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes² was set up in June 2010 under the Department of Health ("DH") to develop the Hong Kong Code with reference to the WHO Code and the relevant subsequent resolutions passed by the World Health Assembly.

4. The Government launched in October 2012 a four-month public consultation exercise on the draft version of the Hong Kong Code, which comprised 10 articles to provide voluntary guidelines to manufacturers and distributors on the marketing, labelling and quality of designated products (i.e. formula milk,³ feeding bottles, teats and pacifiers, and food products) for infants and young children aged 36 months or below. Major provisions of the draft version of the Hong Kong Code cover the following areas:

- (a) promotional practices for designated products to the public;
- (b) production and distribution of informational and educational materials related to breastfeeding and formula milk feeding and nutrition to the general public, pregnant women and mothers;
- (c) promotion in healthcare facilities;
- (d) distribution of informational materials related to designated products to health workers, and the sponsorship of continuing education activities for health professionals;
- (e) labelling for formula milk, food products for infants and young children and formula milk related products; and
- (f) quality standards of formula milk and food products for infants and young children.

5. According to the Administration, the outcome of the public consultation exercise was that while the healthcare sector, non-governmental organizations

² The Taskforce comprises a multidisciplinary team drawn from community organizations, professional bodies, academia, and Government bureau and departments.

³ Formula milk includes infant formula and follow-up formula.

("NGOs") and the general public were supportive of the draft Hong Kong Code, the trade on the whole did not support the draft and its provisions on marketing practices.

Deliberations of members

6. Issues relating to the Hong Kong Code were discussed at two meetings of the HS Panel held in April 2012 and July 2014 respectively, and at a joint meeting of the HS Panel and the FSEH Panel in November 2012. A total of 11 and 25 deputations respectively attended the meetings in April and November 2012 to express their views on the subject.

Restrictions over promotional practices for formula milk and related products

7. Members held different views on the proposed restrictions over the promotional practices for formula milk for infants and young children aged 36 months or below as put forth in the draft Hong Kong Code. Some members agreed that there was a need to impose restrictions on formula milk for infants and that for young children, as promotion of follow-up formula for the latter could be taken as de facto infant formula promotion through marketing practices. The marketing practices had also caused parents to have misconceptions about the nutritional value of formula milk for infants and young children. In their views, there were adequate avenues to provide mothers who chose to feed their infants with formula milk with non-commercial information on infant feeding.

8. Some other members considered that the scope of restrictions should be narrowed down. These members considered that the proposed restrictions would interfere free market and undermine parents' right to access to information on formula milk. There was a view that the restrictions should at the very least not be applied to formula milk for young children aged 12 months or above, same as the practice adopted by many developed countries or places. Another suggestion was to regulate only unethical marketing practices for formula milk and require the packages of these products to bear the message that breastmilk was the best food for infants. A mechanism could be put in place by the Administration to scrutinize the trade's advertisements on formula milk for infants and young children to regulate misleading or deceptive health claims.

9. The Administration advised that there was formula milk that was intended for use as a sole source of nutrition for infants aged six months or below, and also for consumption by young children older than six months alongside complementary feeding. While advertising formula milk for infants below the age of six months was already not allowed currently, study had shown that the

current marketing practices of promoting follow-up formula as promoting de facto infant formula through the use of packaging, branding and labelling closely resembled those of infant formula had caused confusion to mothers of newborn babies. In addition, over-consumption of formula milk among young children aged one to two years was common under the aggressive marketing of follow-up formula. There was therefore a need to prohibit any promotional practices for formula milk for infants and young children aged 36 months or below. The trade would be allowed to provide information of their products on their websites. The Administration further advised that a survey of DH showed that around 60% to 70% of mothers supported the imposition of restrictions over the marketing practices of formula milk.

10. On the control on labelling, quality and health claims, the Administration advised that it had introduced into the Legislative Council ("LegCo") the Food and Drugs (Composition and Labelling) (Amendment) (No. 2) Regulation 2014 ("the Amendment Regulation"), which regulate nutritional composition of infant formula⁴, and nutrition labelling of formula products and prepackaged foods for infants and young children under the age of 36 months⁵, in June 2014. Separately, it was preparing to conduct a public consultation exercise around end of 2014 on the regulation of nutrition claims and health claims on formula products and foods for infants and young children under the age of 36 months by legislation. Hence, the contents of the draft Hong Kong Code would be refined before its implementation in order to avoid overlapping with the future legislation on labelling, quality and claims.

Implementation of the Hong Kong Code

11. Some members were concerned that the Hong Kong Code was proposed to be implemented only in the form of voluntary guidelines. There was a view that the Administration should impose penalty against non-compliance or make public the names of those parties which failed to comply with the Hong Kong

⁴ Under the Amendment Regulation, infant formula must contain energy and 33 nutrients (1+33), and the energy value and content of each nutrient must fall within the range specified in the Amendment Regulation. Certain nutrients must also follow the relevant proportion requirements. The Amendment Regulation also requires infant formula composed of taurine and docosahexaenoic acid ("DHA") to follow the relevant standards in terms of maximum value and proportion respectively. Furthermore, the Amendment Regulation mandates that infant formula be labelled with a statement associated with dental fluorosis, if its fluoride content exceeds the stipulated maximum level.

⁵ The Amendment Regulation requires the labelling of energy value and 29 nutrients (1+29) for infant formula, and the labelling of energy value and 25 nutrients (1+25) for follow-up formula. Prepackaged food for infants and young children must be labelled with its energy value and the content of four nutrients, namely protein, fat, carbohydrates and sodium (1+4), as well as vitamins A and D (if they are added to the food).

Code. Some members went further to suggest that the implementation of the Hong Kong Code should be made mandatory, as more than 100 countries had already enacted legislation or other legislative means to enforce all or certain provision of the WHO Code.

12. According to the Administration, the implementation of the Hong Kong Code would ensure that formula milk and related products would not be marketed in a way that might cause confusion and undermine breastfeeding. Implementing the Hong Kong Code on a voluntary basis was the first step in raising the awareness among the trade and the public about the importance for protecting breastfeeding and infant and young child feeding from undue commercial influence. Manufacturers and distributors of the relevant food products had social responsibility to bring their own marketing practices in line with the principles and aim of the Hong Kong Code. The Administration would work with the relevant NGOs to urge the trade to take the responsibility of monitoring its own marketing practices and would review the effectiveness of the Hong Kong Code after its implementation.

Promotion of breastfeeding

13. Members noted the benefits of breastfeeding in ensuring physical and psychosocial health and well-being of mother and child, and the positive impacts of breastfeeding on the long-term health of the breastfed subjects. They were concerned about the low breastfeeding rate in Hong Kong when compared with other developed economies. While 85% of new born babies had ever been breastfed, the exclusive breastfeeding rate dropped to 19% at four months and 2% at six months. They urged the Administration to step up its efforts in promoting breastfeeding; creating a breastfeeding-friendly environment in the community; and providing support for mothers, in particular working mothers, in sustaining exclusive breastfeeding. Concerns were raised about the work targets of the Committee on Promotion of Breastfeeding set up by the Administration in April 2014 to oversee and coordinate breastfeeding promoting and supporting activities.

14. The Administration advised that a comprehensive strategy comprising key actions on different fronts to promote, protect and support breastfeeding was being developed. The Committee on Promotion of Breastfeeding would further strengthened the promotion, protection and support for breastfeeding through ensuring the attainment of service standards of Baby Friendly Hospital in hospitals and other healthcare facilities, promoting the provision of baby care and breastfeeding facilities in workplace and public places. In August 2013, an advice on public health had been issued by the Secretary for Food and Health to all Government bureaux and departments to encourage the implementation of a

breastfeeding friendly workplace policy. A working group had been set up under the Committee to provide specific recommendations to encourage private enterprises to implement the same policy.

Recent developments

15. The provisions on nutritional composition and nutrition labelling of infant formula of the Amendment Regulation have come into force since December 2015, and those relating to the nutrition labelling requirements for follow-up formula and prepackaged food for infants and young children under the age of 36 months have come into operation since 13 June 2016.

16. Separately, the Administration conducted a public consultation exercise from 6 January to 17 April 2015 on the proposed regulatory framework on nutrition claims and health claims on formula products and foods for infants and young children under the age of 36 months. According to the Administration, vast majority of traders and members of the public supported the establishment of a regulatory framework in this regard. It would continue to study the latest development in finalizing the legislative proposals.

17. Internationally, WHO and UNICEF have formed a global Breastfeeding Advocacy Initiative in 2015 to encourage, among others, the adoption of the WHO Code and subsequent relevant World Health Assembly resolutions through national laws in order to regulate the marketing of breastmilk substitutes, bottles and teats.

18. The Administration will brief the Panel on the voluntary Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children, which is planned to be promulgated in May 2017 to protect breastfeeding and support the optimal feeding of infants and young children, on 20 March 2017.

Relevant papers

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

Relevant papers on Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children

Committee	Date of meeting	Paper
Panel on Health Services	16.4.2012 (Item V)	Agenda Minutes CB(2)2250/11-12(01)
Panel on Food Safety and Environmental Hygiene and Panel on Health Services	20.11.2012 (Item II)	Agenda Minutes
Panel on Health Services	21.7.2014 (Item IV)	Agenda Minutes CB(2)2256/13-14(01)

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