

Regulatory control of food premises

The Audit Commission (“Audit”) conducted a review on the work performed by the Food and Environmental Hygiene Department (“FEHD”) on the regulatory control of food premises.

2. Hon SHIU Ka-fai declared that he served as an unremunerated honorary adviser/an unremunerated member of some non-governmental organizations or trade associations upon their invitations.

3. FEHD is the licensing authority of food premises and exercises control through its licensing regime, inspections and enforcement actions under the Public Health and Municipal Services Ordinance (Cap. 132). At present, there are 19 District Environmental Hygiene Offices (“DEHOs”) under FEHD responsible for, among others, conducting inspections of food premises and enforcing the Ordinance. In 2022, FEHD conducted 197 778 and 49 790 inspections to licensed/permitted and unlicensed food premises respectively. In 2022-2023, the expenditure of the FEHD offices responsible for the work in licensing and regulatory control of food premises, among other duties, amounted to about \$497 million.

4. The Committee noted the following findings from the Director of Audit’s Report No. 81:

Regulatory control of licensed and permitted food premises

- FEHD adopted a Risk-based Inspection System for conducting inspections to licensed food premises and the frequencies of inspections were determined by the risk potential of individual food premises. In the annual review on the risk types of licensed food premises for 2023, of the six food premises with conviction records examined by Audit, three (50%) were incorrectly classified at a lower risk level with longer inspection interval adopted;
- FEHD had specified timeframes for conducting inspections to licensed/permitted food premises in its guidelines. There were delays in conducting some inspections in the period from January 2022 to June 2023. While some food premises were found closed at the time of inspections, there were no guidelines on whether unsuccessful inspections could be counted as inspections conducted;

Regulatory control of food premises

- while factory canteens were not allowed to serve members of the public and food factories were not allowed to serve customers for consumption of food on the premises, Audit's research found that the public could dine at 10 food premises and FEHD had not identified such irregularities during its routine inspections conducted between January 2022 and June 2023 to the food premises concerned;
- FEHD had published a performance pledge on inspections to licensed food premises (with a target of 95%) on its website. While FEHD reported that the target was met from 2018 to 2022 annually on an overall basis, the under-performance of individual DEHOs could not be reflected. FEHD also reported the number of food business licences suspended/cancelled in its Controlling Officer's Report ("COR"). From 2018 to 2022, some suspended/cancelled licences were omitted from COR;

Regulatory control of unlicensed food premises

- in the records of three DEHOs examined by Audit, most of the unlicensed food premises identified were referred by the Regional Licensing Offices.¹ In September 2023, Audit selected 35 food premises for examination by using risk-based approach, and matched them against the lists of unlicensed food premises identified with active operation maintained by the respective DEHOs between January and August 2023. Audit found that while 13 (37%) food premises were unlicensed based on the records of FEHD's Licensing Management Information System as of October 2023, 9 of them were neither included in DEHOs' lists of unlicensed food premises identified with active operation nor in other records for taking follow-up actions;
- Audit selected 30 cases of unlicensed food premises (all were referred by the Regional Licensing Offices) identified between January 2021 and April 2023 for examination and found that the concerned DEHOs did not conduct the first inspections within the specified timeframe (i.e. the longest time lapse was 17 days from the date of referral) in 9 (30%) cases. The intervals between inspections were more than one week (ranging from 12 to 70 days, averaging 24 days) on 26 occasions for 1 190 inspections conducted between January 2021 and August 2023,

¹ The three Regional Licensing Offices are responsible for processing applications for new food business licences and online sale of restricted food permits, and issuing of and collecting related fees for food business licences/permits.

and the reasons for the above deviations from requirements were not documented;

- the average success rates of summary arrest operations (i.e. operations to arrest persons operating unlicensed food premises in raid) decreased from 50% in 2018 to 35% in 2022, and varied among the 19 DEHOs (the success rates of six DEHOs were 0% and those of other six were 100% in 2022);
- of 25 unlicensed food premises included in the District Action Plans prepared by three DEHOs for January to April 2023, 12 unlicensed food premises meeting at least one of the criteria set out in FEHD's guidelines had not been included in their lists of targets for summary arrest operations, and the justifications for not conducting the summary arrest operations were not documented for 7 of the 12 unlicensed food premises;

Other related issues

- as of June 2023, 26 rear lanes were covered by a trial scheme allowing licensed/permitted food premises to place large-sized waste containers in their connected rear lanes. The number of target rear lanes covered by the scheme varied among DEHOs and the participation rates of food premises along each of these 26 rear lanes ranged from 18% to 100% (averaging 73%). For eight rear lanes visited by Audit in August 2023, there were incidents of non-compliance with rules of the scheme (e.g. wastes were placed outside waste containers);
- while the presence of dogs on food premises was prohibited under the Food Business Regulation (Cap. 132X), there were increasing numbers of pet-friendly restaurants and complaints against bringing dogs onto food premises from 2018 to 2023. Audit's site visits to three pet-friendly restaurants on a weekend in September 2023 discovered the presence of dogs in two restaurants, but no pet's presence was reported in DEHOs' reports of inspections which were carried out on weekdays from January to June 2023;
- Audit's research found that while legislations in some cities in the Mainland/overseas countries prohibited the presence of dogs on food premises in general, restricted entry of dogs might be allowed under specific conditions (e.g. outside sitting area) or for specific food business licence type (e.g. pet café);

- in 2018 to 2022, for 254 (61%) of 417 cases of non-compliance with the public health laws but without prosecution, the reasons, the approval dates and the approving officers were not recorded in the Summons Tracking Facility in accordance with FEHD's guidelines. Audit also found that the prosecution of three cases was not proceeded because they were time-barred;
- the numbers of prosecutions against licensed and unlicensed food premises were reported as indicators in FEHD's COR, and the figures reported in COR in a year were based on the number of prosecution records created in the Summons Tracking Facility. Audit found discrepancies between the prosecution records created in the Summons Tracking Facility and the prosecution numbers reported in COR from 2018 to 2022, but the supporting documentation on the statistics reported in COR was not available;

5. The Committee did not hold any public hearing on this subject. Instead, it asked for written responses regarding identification of and enforcement against unlicensed food premises, and licensing policy on pet-friendly restaurants. The replies from the **Secretary for Environment and Ecology** are in *Appendix 21*.

6. The Committee wishes to be kept informed of the progress made in implementing the various recommendations made by Audit.