

Food Safety Seminar 2009

Abstract of presentation of the Public Health and Municipal Services (Amendment) Ordinance 2009 – Food Recall

On 8 May 2009, the Government gazetted the Public Health and Municipal Services (Amendment) Ordinance 2009 (the Amendment) which empowers the Director of Food and Environmental Hygiene (DFEH) to make orders administratively to prohibit the import and supply of problem food, and direct that food supplied be recalled, impounded, isolated, destroyed or disposed of in the manner specified in the order so as to ensure food safety and protect public health. Any person contravening any term of the order will be subject to a fine of \$100,000 and imprisonment of 12 months. However, a person bound by the DFEH's order may appeal to the Municipal Services Appeals Board within 28 days from becoming bound by the order. The person may also apply to the court for compensation for any loss as a result of the order specified in the Amendment but the amount of compensation should not exceed the market value of the food immediately before the time of making the order and the actual amount of the costs or expenditure incurred.

Under the Amendment, DFEH may make orders if he has reasonable grounds to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate the adverse consequence of a danger to public health. DFEH will state clearly in the order the particulars of the food, the reason for making the order, the period within which relevant act is prohibited or required and the person, persons or class of persons to be bound by the order. DFEH will take into consideration the following factors in deciding whether to make the order-

- (a) information obtained from importer or supplier of the food;
- (b) information, reports or testing results obtained from a public analyst;
- (c) information (including reports, alerts, warnings and advisories)

- obtained from international food or health authority or the food or health authority of any place;
- (d) the time required for obtaining reports or testing results from a public analyst;
 - (e) characteristics of any hazard in the food, the level of the hazard in the food, consumption pattern of the food and the exposure of the general public and vulnerable groups to the food;
 - (f) statutory requirement relating to the food; and
 - (g) information on the source and extent of the hazard, in particular on whether the hazard exists throughout or in any part of the manufacture or supply chain or is limited to a particular batch of food.

In addition, DFEH is empowered to issue any code of practice (the Code) which is suitable for providing guidance for provisions of the Amendment. A failure on the part of any person to observe any provisions of the Code does not of itself render that person liable to any civil or criminal proceedings. However, the Code is admissible in evidence in the proceedings in case the court is satisfied that a provision of the Code is relevant to determining a matter that is in issue in the proceedings. It is important to note that the compliance with the Code does not of itself confer immunity from any legal obligations in Hong Kong.