Purpose

This paper seeks members’ views on the proposed regulatory framework for pesticide residues in food in Hong Kong.

Background

2. At present, the import, manufacture, sale and supply of pesticides in Hong Kong is regulated under the Pesticides Ordinance (Cap. 133), which is enforced by the Agriculture, Fisheries and Conservation Department. While the general provision under the Public Health and Municipal Services Ordinance (Cap. 132), which stipulates that all food on sale must be wholesome, unadulterated and fit for human consumption, could be relied on for cases related to pesticide residues in food, there is currently no legal provision that specifically directs at controlling the level of pesticide residues in food. The introduction of specific regulation on pesticide residues in food is therefore considered necessary.

3. To better protect public health, facilitate effective regulatory control and bring the local regulatory system in line with international standards, the Administration proposes to introduce a regulatory framework to regulate pesticide residues in food in Hong Kong. A public consultation exercise was conducted on the proposed regulatory framework for pesticide residues in food between November 2007 and January 2008. Taking into account comments and views gathered from the consultation exercise, as well as the latest developments in the international communities, the regulatory framework has been refined with key features set out in the ensuing paragraphs.
Key Features of the Regulatory Framework

Objectives

4. The regulatory framework for pesticide residues in food in Hong Kong aims at achieving the following objectives:

   (a) better protect public health;
   (b) facilitate effective regulatory control; and
   (c) promote harmonisation between local and international standards.

5. The main structure of the framework has taken reference from that of the Codex Alimentarius Commission (Codex). Codex, established by the Food and Agriculture Organization and the World Health Organization of the United Nations in 1960s, has been the single most important international reference point for consumers, food producers, processors, national food control agencies and the international food trade in developing food associated standards. The Codex Alimentarius, or the food code, is a collection of these standards, codes of practice, guidelines and other recommendations. Adoption of Codex framework and definitions contributes to meeting the objectives of the Regulation and allow stakeholders, in particular the trade, to have a better understanding of the scope of the regulatory regime.

Definition of “pesticides” and other related terms

6. In defining the key terms such as “pesticide”, “pesticide residue”, “maximum residue limit” (MRL)\(^1\) and “extraneous maximum residue limit” (EMRL)\(^2\) in the proposed regulatory framework, it is proposed to make reference mainly to the definitions adopted by the Codex.

\(^1\) Codex defines “MRL” as the maximum concentration of a pesticide residue (expressed as mg/kg) recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds.

\(^2\) Codex defines “EMRL” as referring to a pesticide residue or a contaminant arising from environmental sources (including former agricultural uses) other than the use of a pesticide or contaminant substance directly or indirectly on the commodity. It is the maximum concentration of a pesticide residue or contaminant that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on a food, agricultural commodity, or animal feed. The concentration is expressed in milligrams of pesticide residue or contaminant per kilogram of the commodity.
Classification of food

7. As Codex standards form the backbone of the local set of standards for pesticide residues in food, we have also adopted the Codex food classification system for consistency. This has the added benefit of adopting the uniform nomenclature used in international trade.

Pesticide residues regulated by MRLs/EMRLs

8. The proposed regulatory framework will specify the limits of pesticide residues that are allowed to be found in the specific kinds of food (i.e. the maximum concentration of specified pesticide residues permitted in specified food commodities). The presence of any of these pesticide residues in food at levels exceeding the specified maximum concentrations, i.e. the MRLs/EMRLs, for the given pesticide-food pairs will contravene the legislation.

9. As a general principle, the MRLs for pesticides in food are established on the basis of the application of Good Agricultural Practice (GAP) with a view to reducing the use of pesticides. In the context of the use of pesticides, GAP includes the use of pesticides necessary for pest control which leaves a residue with the smallest amount practicable. A residue level exceeding the MRL is a reflection of non-compliance with GAP.

10. In setting up the initial list of MRLs/EMRLs for Hong Kong, special consideration is made to ensure the common food items are provided with the relevant pesticide residue levels in the newly established regulation. Thus in addition to adopting the relevant standards recommended by Codex as the backbone, related standards of the Mainland and other major food exporting countries to Hong Kong (i.e. the United States and Thailand) will also be incorporated. This approach is considered pragmatic, taking into account the heavy reliance of Hong Kong on imported food.

11. The MRLs/EMRLs will be scrutinized in a two-step procedure including, firstly, setting up the preliminary MRLs/EMRLs list based on international reference; and secondly, conducting risk assessment using the preliminary MRLs/EMRLs and local food consumption data. The second step of conducting risk assessment using internationally accepted methods is critical for assessing whether the proposed MRLs/EMRLs are adequate to protect public health in the local setting.
12. As new pesticides and new applications on crops keep emerging, the residue limits of pesticides specified in the legislation will be updated by the Director for Food and Environmental Hygiene regularly.

**Exempted substances**

13. In order to encourage the use of natural pesticides by the trade and to provide transparency in enforcement when dealing with food import, we propose to provide for a list of “exempted substances” in the regulatory framework. An “exempted substance” must fall under the definition of pesticide laid down by Codex and meet one of the following criteria:

(a) the use of the pesticides does not result in residues occurring in food;

(b) the residues are identical to or indistinguishable from natural food components; or

(c) the residues are of no toxicological significance or will not pose any public health risk.

**Pesticide residues with no specified MRL/EMRL in the legislation**

14. With regard to pesticide-food pairs for which no MRL/EMRL has been specified in the new legislation, the general principle is that except for exempted substances, import and sale of the concerned food will be prohibited unless the Director for Food and Environmental Hygiene is satisfied that the detected level of pesticide residue is not dangerous or prejudicial to health. To this end, risk assessment will be conducted whereby sample of the food with the relevant pesticide residue will be tested to confirm whether the food is dangerous or prejudiced to health.

**Penalty**

15. The maximum penalty for non-compliance with the proposed legislation will be a fine at level 5 ($50,000) and imprisonment for six months. This is in line with the penalty for selling food which is unfit for human consumption under section 54 of Cap.132.
Statutory defence

16. Section 71 of Cap. 132 (Annex) stipulates conditions under which warranty may be pleaded by the defendant as defence. For example, a vendor may produce evidence such as invoices to demonstrate that the food concerned is in the original state as obtained from the supplier without any further treatment and the supplier's earlier confirmation of safe food supply.

Grace period

17. To allow sufficient time for the trade to comply with the new regulatory requirement, a two-year grace period is proposed. Before the commencement of the relevant legislation, the Centre for Food Safety will provide briefings and technical training for different sectors. Specific guidelines and information on the proposed requirement for different stakeholders, for example, farmers, food suppliers, private laboratories, consumers etc. will be produced to familiarise them with the new regulatory framework.

Way Forward

18. The Administration is now consulting various stakeholders on the refined regulatory framework. The first technical meeting to discuss related technical issues with the trade and other interested stakeholders was held on 21 January 2011 with over 100 participants. More technical meetings will be held in the coming few months. Taking into account the comments received, a public consultation exercise on the proposed regulatory framework and the proposed MRLs/EMRLs will be conducted in mid-2011. Our plan is to introduce the relevant legislation into the Legislative Council towards the end of 2011.

Advice Sought

19. Members’ views are sought on the proposed regulatory framework as detailed above.

Food and Health Bureau
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Public Health and Municipal Services Ordinance (Cap.132)

PART V – FOOD AND DRUGS

Section 71 - Conditions under which warranty may be pleaded as defence

(1) Subject to the provisions of this section, in any proceedings for an offence under this Part, being an offence consisting of selling, or offering, exposing or advertising for sale or having in possession for the purpose of sale, any article or substance, it shall be a defence for the defendant to prove –

(a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as aforesaid, or, as the case may be, could lawfully be sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and

(b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and

(c) that it was then in the same state as when he purchased it.

(2) A warranty shall only be a defence in proceedings under this Part if –

(a) the defendant –

(i) has, not later than 3 clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it; and

(ii) has also sent a like notice to that person; and

(b) in the case of a warranty given by a person resident outside Hong Kong, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.
(3) Where the defendant is a servant or agent of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer or principal would have been entitled to do if he had been the defendant.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(5) For the purposes of this section and of section 72, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Part.