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Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 10 January 2017**

Demerit Points System against licensed food premises

Purpose

This paper provides background information on the Administration's implementation of the Demerit Points System ("DPS") against licensed food premises and summarizes major views and concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the system.

Background

2. According to the Administration's information provided to the Panel in May 2015, DPS is an administrative regulatory system implemented by the Food and Environmental Hygiene Department ("FEHD") to deter operators of licensed food businesses from contravening provisions in the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO") and its subsidiary legislation that are related to food safety and environmental hygiene. Under DPS, depending on the nature and severity of the offence, a pre-determined number of demerit points ranging from 5 to 15 will be registered against a licensee upon conviction of an offence in relation to food safety and hygiene-related provisions in PHMSO and its subsidiary legislation. The prescribed demerit points for a particular offence will be doubled and trebled respectively if the same offence is committed for the second and the third time within a period of 12 months. A licence will be suspended for seven days if 15 points are accumulated within a period of 12 months ("first suspension"), and for 14 days if another 15 points are accumulated within 12 months from the date of the last offence that led to the first suspension ("second suspension"). If another 15 points are accumulated within 12 months from the date of the last

offence that led to the second suspension, the licence will be cancelled.

3. Between 2010 and 2014, the numbers of food premises with licences suspended and cancelled due to the accumulation of demerit points under DPS are as follows:

Year	Number of licences suspended	Number of licences cancelled
2010	150	13
2011	145	12
2012	236	23
2013	242	29
2014	208	11
Total	981	88

4. A licensee dissatisfied with FEHD's decision to suspend or cancel its licence may:

- (a) make a representation to FEHD, as an administrative procedure, in seven days, or in four days for a serious breach;
- (b) appeal to the Licensing Appeals Board ("LIAB") against FEHD's decision within 14 days under section 125(9) of PHMSO; and
- (c) in case LIAB upholds or varies FEHD's decision, appeal to the Municipal Services Appeals Board ("MSAB") within 14 days under section 125B(4) of PHMSO.

Members' concerns

5. Issues relating to DPS were raised at a number of Panel meetings. Members' major views and concerns are summarized below.

Need to review the Demerit Points System

6. Members were concerned that many offences under DPS were outdated and unclear. For example, failing to provide a sufficient number of dustbins, and failure in maintaining spittle receptacles in the proper manner and

displaying no spitting notices. There was a suggestion that the Administration should review and amend the schedule of demerit points to bring the offences up to date. The Administration explained that the offences included in the schedule of demerit points were stipulated in PHMSO and its subsidiary legislation. Demerit points would be accorded to offences only upon conviction in court.

7. Noting that there were cases of food businesses with records of repeated offences, some members enquired whether the Administration had considered reviewing DPS to enhance the deterrent effect, e.g. lowering the maximum accumulated demerit points required under DPS for suspending or cancelling the licence of the food premises concerned and/or extending the duration of licence suspension or cancellation. The Administration was also requested to review as early as possible the relevant penalties under PHMSO.

8. The Administration advised that under DPS, the prescribed demerit points for a particular offence would be doubled and trebled respectively if the same offence was committed for the second and the third time within a period of 12 months. In the event that an applicant whose food business licence had previously been cancelled due to repeated offences, his application, or an application made by his representative, for the same type of licence in relation to the same premises would not be processed within 12 months from the date of cancellation of the licence. While the Administration considered the penalties sufficient to create a deterrent effect, it had plans to conduct a review of the food safety-related penalties under PHMSO and its subsidiary legislation as well as the Food Safety Ordinance (Cap. 612), with a view to assessing whether the deterrent effect of the penalties could meet the present day need.

Inspections and enforcement actions

9. In response to a suggestion raised by members that FEHD should conduct more inspections to licensed food premises selling high-risk food to ensure their compliance with the licensing requirements, the Administration advised that in accordance with the Risk-based Inspection System ("RBIS") adopted by FEHD, the frequencies of inspections to licensed food premises were determined by the risk potential of individual food premises. Food premises classified as low risk (Type I), medium risk (Type II) and high risk (Type III) would be inspected once every 20 weeks, 10 weeks and 4 weeks respectively. Under RBIS, the frequency of inspection to individual food premises might be adjusted in the light of changes to risk potential, thereby providing an informed basis for prioritizing the allocation of resources for the inspection of various licensed food premises. In conducting inspections to licensed food premises, FEHD officers would check the hygienic conditions of the food premises, covering such aspects as food, equipment, food handlers, conditions of the premises, pest

control and waste disposal. Should any irregularities be detected, inspecting officers would issue warnings or initiate prosecutions where appropriate.

10. An enquiry was raised as to whether FEHD had issued guidelines to inspecting officers on what constituted a defence that the licensee had taken measures to ensure the environmental and hygiene conditions of the food premises. The Administration advised that the Department of Justice's ("DoJ's") advice would be sought as necessary and all relevant information on the offence would be provided to DoJ for consideration of whether there was sufficient evidence to institute prosecution. It would be for the court to rule whether the measures taken by a defendant constituted a defence under the relevant legislation.

Need to streamline the appeal mechanism

11. There was a concern that some licensees might take advantage of the lengthy appeal process under the three-tier appeal mechanism as described in paragraph 4 above to defer the effective date of licence suspension or cancellation. While some members were supportive of the Administration's proposal to simplify the procedures for licence suspension and cancellation, there was another view that any amendments to the appeal mechanism should only be made after sufficient consultation with the trade.

12. The Administration advised that it had consulted the relevant stakeholders, including the Food Business and Related Services Task Force ("FRSTF") and the Business Liaison Groups (Restaurants and Non-restaurants) ("BLGs"), on its proposal to simplify the appeal mechanism from three tiers to two tiers by removing the tier of appeal to MSAB. Members of BLGs had raised concerns about the deprivation of the opportunity and right of appeal of the licensees. FRSTF also strongly objected to the proposal on the grounds that the proposed simplification might infringe on licensees' legitimate right to appeal and undermine the checks and balances within the three-tier appeal system. They opined that the Administration should consider simplifying the appeal procedures instead of removing one tier of statutory appeal in a bid to reduce the time for processing appeal cases. Having carefully considered the stakeholders' views, the Administration considered that there was no imminent need to pursue the simplification of the appeal mechanism. Nevertheless, the Administration assured members that FEHD would vigilantly monitor the situation. If abuse of the appeal mechanism for the purpose of deferring or evading the sanctions of licence suspension or cancellation was observed, the Administration would revisit the need for simplification of the appeal mechanism.

Measures for improving the environmental and hygiene conditions of food premises

13. There was a suggestion that apart from imposing penalty on the licensees who committed an offence, the Administration should consider providing incentives to encourage food business operators to improve the environmental and hygiene conditions of the licensed food premises. The Administration advised that apart from enforcing DPS to deter food business operators from breaching food safety and environmental hygiene requirements, the Administration had also stepped up educational and publicity efforts to encourage the operators to improve their standards. To enhance food safety supervision, large food premises and those selling high risk food were required to appoint both a Hygiene Manager and a Hygiene Supervisor, and other food premises either a Hygiene Manager or Hygiene Supervisor.

Recent development

14. The Administration will provide the Panel with an update on the implementation of DPS for licensed food premises at the Panel meeting on 10 January 2017.

Relevant papers

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

Appendix

Relevant papers on Demerit Points System against licensed food premises

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	14.3.2006 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	6.4.2006 (Item I)	<u>Agenda</u> <u>Minutes</u>
	13.5.2014 (Item VII)	<u>Agenda</u> <u>Minutes</u>
	14.7.2015 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	5.6.2013	<u>Official Record of Proceedings</u> <u>Pages 12990 to 12995 (written</u> <u>question raised by Hon Michael</u> <u>TIEN on "Law enforcement</u> <u>against illegal extension of</u> <u>business area")</u>

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