

SUBMISSION TO HONG KONG DEPARTMENT OF HEALTH REGARDING IMPLEMENTATION OF THE HONG KONG CODE OF MARKETING AND QUALITY OF FORMULA MILK AND RELATED PRODUCTS, AND FOOD PRODUCTS FOR INFANTS & YOUNG CHILDREN

**La Leche League Hong Kong
December 2012**

Positive steps forward...

La Leche League Hong Kong is pleased to review the draft of the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children. (hereafter referred to as "The Hong Kong Code"). The Taskforce on Hong Kong Code of Marketing of Breast Milk Substitutes has clearly listened to the feedback from La Leche League Hong Kong, the Consumer Council and many other knowledgeable representations given at the LegCo representation in April 2012 in drafting The Hong Kong Code and overall it reflects the main points of the WHO Code on which it was based (see Appendix 1).

The Hong Kong Code covers all baby and infant breast milk substitutes, formula, food and related products such as teats and bottles from newborn to age 36 months, which provides regulation for all forms of nutrition within Hong Kong, as current food regulations only apply to products suitable for children aged 36 months or more.

This is a positive step forward for Hong Kong in strengthening its own policies to support breastfeeding and improved infant nutrition. It will protect breastfeeding and non-breastfeeding families, as well as health workers, from inaccurate information and inappropriate marketing practices as well as providing regulation of the content and manufacturing of these products.

Contrary to the claims of manufacturers and distributors, The Hong Kong Code does not restrict the availability of or information about substitutes for breast milk, infant formula or other nutritional products nor prevent mothers from using them. Products will still be available to purchase in supermarkets, pharmacies and through many other distribution points, and information about the products and how to use them correctly will still be available.

But there is one major problem:

Unfortunately, there is one major drawback with The Hong Kong Code as it stands: that the Code is voluntary, with minimal monitoring and no penalties for breaches. In fact those who breach the Code will not even be named to the public. This means that while the content is on the whole excellent, it will have little if any impact on the formula industry. The manufacturers themselves have acknowledged that the reason they are also asking for legislation (although in very limited form, covering ONLY marketing aimed at 0-6 month old babies, which is completely inadequate) is because they do not believe their members will follow a voluntary code! They acknowledged this to LegCo in their presentations on 20 November 2012 as well as in various media comments. Their own experience confirms that many manufacturers and distributors will ignore a code that is not legislated and there are many examples in other countries where voluntary codes have been breached.

If The Hong Kong Code is not legislated, all the work over many years of developing and drafting it has been wasted. Parents will continue to be misled and believe, as 50% of parents currently do, that infant formula has unique properties that are in fact only available in breast milk.(1) Hospitals will continue to unnecessarily provide formula to 50% of healthy full term babies within 24 hours of birth (2) and breastfeeding will continue to be undermined.

Manufacturers do not spend \$1.6 billion per year on advertising alone for no reason and if The Hong Kong Code is not legislated and enforced, they have made it clear that they will continue to do so.

COMMENTARY ON SPECIFIC SECTIONS OF THE HONG KONG CODE

Article 1 – Title and Aim and Scope

La Leche League Hong Kong believes the title is clear; however there is a need for an appropriate recognised abbreviation to be used on an everyday basis as it is very long and the comma in the title should be removed.

Article 2 – Aim and Scope

The aim and scope of The Hong Kong Code is clear and appropriate.

Article 3 – definitions

La Leche League Hong Kong is comfortable with most of the definitions in the context of The Hong Kong Code, except for the following:

‘Infant formula’ – is defined as ‘a milk or milk-like product of animal or plant origin formulated industrially to satisfy by itself the nutritional requirements of infants *during the first months of life*’. This should be modified to ‘*during the first six months of life*’ to reflect the WHO recommendations and be consistent with statements elsewhere in The Hong Kong Code.

‘Retailer’ – is defined as ‘any sales outlet or premises *including but not limited to pharmacies, shops and supermarkets*’. This should be modified to read ‘*including but not limited to online retailers, pharmacies, shops and supermarkets*’.

When terms in The Hong Kong Code are used within this submission, they are in line with the definitions as provided in Article 3.

Article 4 – Information and Education (to the general public, pregnant women and mothers)

This Article is broad in scope and effectively prohibits any form of marketing of formula or formula-related products such as bottle and teats, including any health claims. It specifies that only technical and textual information may be provided about such products. Manufacturers and distributors are still able to produce informational or educational materials, but these materials may not be branded or particular formula names or brands referred to in these materials.

This Article also requires that any information and educational materials produced by any parties should not in any way discourage breastfeeding or create a belief that a substitute product is equivalent to, comparable with or superior to breast milk or breastfeeding. It also requires specific information outlined in s.4.4.1(e) to be included in any such material.

This is consistent with the WHO Code and is welcomed by La Leche League Hong Kong. Manufacturers and distributors are still able to provide informational and educational material, so their claims that the public will have less access to and be less informed about infant formula milk are unfounded. What they won't be able to do is make any claims related to a specific brand or make of formula, as it has not yet been scientifically proven that any one brand of formula is different from another. It is for this reason that the manufacturers and distributors object so strongly to this Article.

Article 5 – Promotion to the Public

This Article covers all promotional activities such as advertising, sales promotions, baby clubs etc. in relation to both formula milk and related products and also other food products. No promotion of formula milk or related products is permitted, and those activities for food products are not permitted within health care facilities and must satisfy the relevant sections in Article 4.

This section specifically excludes pricing policies and also promotion, funding and sponsorship to health workers which is covered in Article 7.

Again, this Article is consistent with the WHO Code and is welcomed by La Leche League Hong Kong. It will assist in providing a more level playing field for the dissemination of information about baby and infant feeding. Billions of dollars are spent by manufacturers and distributors of breast milk substitutes, while organisations that promote and educate on breastfeeding are either publicly funded, such as the Department of Health or UNICEF, or voluntary organisations funded by donations such as La Leche League Hong Kong and Hong Kong Breastfeeding Mothers Association. It is therefore impossible for such organisations to counteract the inaccurate and misleading information that the general public currently receives from manufacturers and distributors on a widely available basis.

Research by the Department of Health confirms that a large proportion of Hong Kong parents hold incorrect beliefs about the nutritional and other benefits of formula. These beliefs can only have been obtained from advertising and other promotion. These claims must not be allowed to continue.

Article 6 – Promotion in Health Care Facility

This Article prohibits manufacturers and distributors from providing free or discounted formula milk and any other promotional materials, such as posters, pens, calendars, growth charts etc. to health care facilities.

This is a critically important section because, as noted in our April 2012 submission, currently many private doctors' offices and private hospitals are awash with such materials. This certainly gives the impression to the public that formula is at least equivalent, if not in fact superior to, breast milk and breastfeeding even though it has been proven for many years that this is not the case. In addition, the provision of free formula in hospital has been demonstrated to impact breastfeeding rates, both here in Hong Kong and in other developed countries.

La Leche League Hong Kong believes monitoring and enforcement of this Article is of particular importance for these reasons.

Article 7 – Information and promotion to Health Worker

This Article covers the responsibilities of health workers in the provision of information, including product information, about infant feeding as well as the sponsorship and funding of health workers' research or educational activities.

Article 7.1 requires health workers to be informed of the provisions of The Hong Kong Code. It allows maternal and child health workers **only** to demonstrate the use of infant formula where necessary and, if this is deemed necessary, that the relevant sections of Article 4.4.1 be provided as part of the demonstration.

While it is the case that it may be occasionally required for maternal and child health workers to demonstrate the use of infant formula, we query how such workers will determine when this is 'necessary'. Many Hong Kong private hospitals routinely give formula to all new babies, for example. How will the Department of Health ensure that these practices change? What guidelines will be provided to the maternal and child health workers in both public and private facilities to ensure they are aware when infant formula is truly necessary? Currently almost 50% of healthy, full term babies born in Hong Kong public hospitals are given infant formula in the first 24 hours of birth where it is almost certainly not 'necessary'. While these rates have improved, they are still far too high and undermine the mothers' ability and confidence to breastfeed.

La Leche League Hong Kong also hears from mothers every day who have been given completely inappropriate advice from medical professionals about breast milk, breastfeeding and the use of formula. It is unlikely that the introduction of The Hong Kong Code will change the knowledge and practices of hospitals and their staff overnight, so this issue needs to be addressed to ensure appropriate implementation of Article 7.1.

Article 7.2.1 allows manufacturers and distributors to provide infant formula to health workers or health care facilities only for the purpose of evaluation or research at the institutional level. While this appears an appropriate and legitimate provision, without rigorous monitoring it would be difficult to determine whether free or discounted infant formula was being used for these purposes or would be a breach of **Article 6**.

Article 7.2.2 requires any information provided by manufacturers and distributors to health care workers to be restricted to scientific and factual matters or referring to published, peer-reviewed studies. This is an appropriate and necessary Article to ensure health workers are accurately informed. As outlined above, currently many health workers are clearly sadly ill-informed about the potential harm that can be caused by the use of infant formula and when its use may or may not be appropriate.

Article 7.3 covers the sponsorship and financial benefit to health workers by manufacturers and distributors. This Article allows sponsorship of research and educational activities, provided no influence is exerted by the sponsor on choice of speakers, topics or sponsorship recipients, and any interest or relationship must be disclosed in writing. In addition only company brands or logos, but not product names or brands, may be used in material, there can be no commercial exhibits of designated product, and any exhibition by the sponsor must be in a separate area from the plenary and break-out rooms. No promotional items can be distributed and any refreshments 'are not lavish'.

In addition, research grants are still permitted but the source of the grants must be disclosed in the results of the research.

La Leche League Hong Kong is disappointed that this Article is included in The Hong Kong Code. We believe the provision of sponsorship or other financial benefit is inappropriate and creates a conflict of interest for health workers. Policing of levels of influence exerted would be difficult if not impossible, as would many of the other requirements in this article. We believe that Article 7 should be in line with the WHO Code and there should be **no** financial benefits to health workers from formula manufacturers and distributors.

Article 8 – Labelling

Articles 8.1 and 8.2 provide fairly rigorous requirements on the labelling of formula milk, such as no photographs, drawings or graphics, required warnings being of a minimum size, health claims only to be made if scientifically proven, and restrictions on use of the terms such as ‘maternalise’, ‘humanised’ or similar words. It also requires disclosure of the source of protein and requires certain wording about health risks, preparation risks and other items to be on all formula labels. This is an important Article and is in line with the WHO Code.

Article 8.3 outlines labelling requirements for other food products for infants and young children and refers to a number of the WHO standards in relation to nutritive value as well as only permitting health claims in line with **Article 8.5** which are in line with existing laws within Hong Kong. As La Leche League is not familiar with the legislation governing other food products, we provide no comments on this Article.

Article 8.4 refers to the labelling of formula milk related products such as bottles, teats and pacifiers (dummies). It requires appropriate warnings about the importance of breastfeeding and the appropriate use of the product. La Leche League supports this Article as it is in line with the requirements of the WHO Code.

Article 8.5 covers the representations that are allowed to be made on the container or label of a product in relation to its nutritive content and any health claims. As mentioned, this section covers both formula milk and other food products. It requires that any claim be based on current relevant scientific substantiation and must be permitted by recognised international/national authorities. This is another critically important Article for The Hong Kong Code, as currently claims are made about formula milk in relation to intelligence, immune systems and other supposed benefits that are inaccurate and misleading.

Article 8.6 requires that designated product which does not meet any of the labelling requirements should not be offered for sale. This is appropriate and in line with the rest of The Hong Kong Code.

Article 9 – Quality Standards

This Article is at the forefront of minds in Hong Kong where there have been recent cases of both contaminated formula milk and examples of imported formula milk that do not meet the required nutritional content standards. La Leche League Hong Kong does not have expertise in quality standards for formula milk, follow-on formula or food products so is unable to comment on the appropriateness of the content of this Article, but supports the sentiment of it.

Article 10 – Implementation and Monitoring

This Article specifies that all interested parties should collaborate with the Government in terms of monitoring and requires manufacturers and distributors to self-monitor their marketing practices in line with The Hong Kong Code. In addition, it outlines a minimal monitoring system to be implemented by the Department of Health and the Centre for Food Safety of the Food and Environmental Hygiene Department.

As outlined in our opening statements, this is where The Hong Kong Code falls down. Global experience shows that where manufacturers and distributors self-regulate voluntary codes, many breaches occur. In fact, some manufacturers state on their own websites that they only follow the

Code in countries where it is regulated, despite the final provision of the WHO Code requiring those same manufacturers to follow the WHO Code in countries where it is not regulated.

The Monitoring System outlined in Annex 1 refers to 'Surveillance and Regular Surveys'. La Leche League Hong Kong questions the level of funding for this monitoring and also the form that such surveys would take; would these be an actual review of marketing practices in all their forms, including surveillance of health care workers and within health care facilities, or simply self-completed written or online surveys?

Many of the current issues with breastfeeding rates start in hospital, particularly the private hospitals, where babies are fed formula milk as routine 'until the mother's milk comes in'. If Article 7 is implemented correctly, free or discounted formula would no longer be available to these hospitals, meaning hospitals have greater financial incentives to support breastfeeding. How will this be supported by the Department of Health to ensure any changes are in line with The Hong Kong Code?

Lastly, there are no sanctions (financial or otherwise) for manufacturers and distributors who breach The Hong Kong Code. A letter is simply written to them informing of the breach and they are not named publically for breaching The Hong Kong Code. This is in line with the voluntary nature of The Hong Kong Code, but given the substantial profits that the manufacturers and distributors currently achieve from the Hong Kong market, it does not change the huge imbalance between their resources and those of the public and voluntary sectors that support breastfeeding and means the current situation is unlikely to change.

La Leche League Hong Kong congratulates the Government on largely including the provisions of the WHO Code in this draft of The Hong Kong Code. This is a huge step forward in assisting in the implementation of the Government's policies to support breastfeeding and breast milk as the normal standard for the feeding of human babies. Without legislation behind it, however, we are concerned that in practice there will be little change to the marketing practices of the manufacturers and distributors. We ask that The Hong Kong Code be enshrined in legislation in full, with appropriate monitoring and financial and other sanctions for breaches, as a matter of urgency.

In addition, we would like to see the proposed training and support that will need to be developed to ensure that all health workers and health care facilities, both public and private, are aware and comply with the provisions of The Hong Kong Code.

**La Leche League Hong Kong
December 2012**

APPENDIX 1 – BACKGROUND INFORMATION ON THE WHO CODE OF MARKETING OF BREAST MILK SUBSTITUTES

Why was the Code developed and who does it impact?

The WHO recommends exclusive breastfeeding up until 6 months of age, with breastfeeding to continue for at least 2 years and beyond. This is a result of the known lifelong health benefits of breastfeeding for both mother and child and the poorer health outcomes for babies fed with breast milk substitutes.

On May 21st 1981 the World Health Assembly (the Governing Body of WHO) adopted the International Code of Marketing of Breast Milk Substitutes, as a set of rules to protect breastfeeding from unethical marketing practices. The Preamble to the Code explains that *“the marketing of breast milk substitutes requires special treatment, which makes usual marketing practices unsuitable for these products.”* Since then, the WHA has passed resolutions that *“clarified and strengthened”* certain provisions of the Code.

The aim of the Code is to *contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, where these are necessary, on the basis of adequate information and through appropriate marketing and distribution.*

Main Points of the WHO Code

In summary, the primary requirements of the Code are:

- Breast milk substitutes or products used to deliver breast milk substitutes to infants (such as bottles and teats) are not to be advertised to the public.
- Free samples of breast milk substitutes or other products are not to be distributed to mothers.
- Breast milk substitutes or other products are not to be promoted in the health care system.
- Company personnel are not to advise mothers on infant feeding practices.
- Gifts or personal samples of breast milk substitutes or other supporting products are not to be distributed to health care workers.
- Pictures of infants or other pictures idealising artificial infant feeding products are not to appear on packaging.
- All information to health care workers should be scientific and factual.
- All information on artificial feeding, including packaging and labels, should explain the benefits of breastfeeding and the costs and dangers associated with artificial feeding.

- Unsuitable products, such as sweetened condensed milk, are not to be promoted for use with babies.
- Manufacturers and distributors should comply with the Code (and all subsequent WHA resolutions) *even if governments have not acted to implement it.*

The International Code of Marketing of Breast Milk Substitutes is

... a code of marketing, not a code of ethics. The code is a set of rules for industry, health workers and governments designed to regulate marketing. Marketing is much more than simply advertising. It includes all promotional activities including packaging, shelf space, gifts to health workers, special displays in shops, discount coupons, direct contact with mothers through telephone help/advice lines and internet sites and specifically relations with health workers and their associations.

... about breast milk substitutes, not just infant formula. The Code covers other milk products, cereals, teas and juices, bottles and teats. Six months of exclusive breastfeeding is recommended thus any other food or drink introduced during that time will replace breast milk, therefore the marketing of cereals, teas, juices or water for children under six months can be interpreted as intending to replace breast milk and undermine breastfeeding.

... a compromise, not the ideal. The Code is the result of negotiations. Therefore national measures could be stronger and adapted to include new products and changing marketing practices. For example, in Iran formula milk is only available by prescription and is provided in plain packaging with no marketing or brand content. It is very important that the Code is put into effect through legislation or enforceable regulations. If this step is not taken, the current routine practice of violations of the Code in Hong Kong will continue.

... a tool, not an end in itself. When properly implemented, the Code will regulate marketing practices and will protect all mothers against the promotion of breast milk substitutes. This will make the work of health professionals promoting and supporting breastfeeding, in line with the Hong Kong government's own policy, easier and more effective.

La Leche League fully supports the WHO International Code of Marketing of Breast Milk Substitutes. The policies and practices of LLL as an international organisation and of its individual Leaders, when they represent LLL at a community level, are fully in accord with the Code.

Appendix 2 – About La Leche League Hong Kong

La Leche League Hong Kong (LLLHK) is part of La Leche League International (LLLI), a non-profit, non-sectarian organisation dedicated to providing support, encouragement and information to women who want to breastfeed. La Leche League has been helping mothers to breastfeed for 55 years and has over 3,000 groups in 68 countries around the world. La Leche League is recognised by the World Health Organisation (WHO) as the foremost authority on breastfeeding and acts as a non-governmental advisor to the United Nations by serving on the Board of Consultants to UNICEF, the United Nation agency concerned with the welfare of the world's children.

LLLHK, like all LLL groups, is run by volunteer Leaders who have breastfed their own babies and also undertaken training in breastfeeding management. They are well informed and well-resourced individuals who can access the substantial resources of LLLI as well as their own knowledge and experience. Leaders hold regular meetings across Hong Kong in English and Cantonese as well as

providing support by telephone and email to breastfeeding mothers, so deal with breastfeeding questions and problems experienced by Hong Kong mothers on a daily basis.

References

- (1) Hong Kong Department of Health Survey March 2012
- (2) University of Hong Kong Research Tarrant et al Nov 2012