

Consultation Form for Trade 業界諮詢意見表格

**Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food
Products for Infants & Young Children
《香港嬰幼兒配方奶粉和相關產品及食品的銷售及質素守則》**

Part I: Company Details 第一部份: 公司資料

Name in English 英文姓名:	Eleanor Chan	Name in Chinese 中文姓名:	陳穎
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Part II: Your Views 第二部份: 您的意見

(Please attach extra sheets if necessary 如空格不夠填寫, 請另附紙)

(1) Scope & Definitions (Articles 2&3) 範圍及定義(守則第二及三條)

<p>Views 意見:</p> <p>Nestle fully supports the development of HK Code for the purpose of regulating the marketing of breast milk substitutes in Hong Kong on the basis of WHO Code.</p> <p>However, based on the draft code, we have a few suggestions.</p> <ol style="list-style-type: none">1. Legislation is the effective means to end all forms of inappropriate promotion of breast milk substitutes, it is essential for the HK Code to have an effective enforcement mechanism founded on a clear legal basis to ensure compliance by all stakeholders concerned.2. Regulating marketing practices call for a code of marketing, on the model of the World Health Organization's International Code of Marketing of Breast-milk Substitutes, whereas food safety, quality and labeling matters should be addressed separately, in a more technical oriented regulation on standards, as other countries have in their great majority done. Such a separation provides the clarity that is necessary for an effective implementation of both regulations, as the purposes, nature and scope of the two subject-matters cannot be identical. The HK draft code is using the "International Code of Marketing of Breast-milk Substitutes" and CODEX STAND as reference, however, they cover different scopes which should be looked at independently. Since labeling and quality are put into legislation, they should be separated out from a voluntary code by means of a better and effective monitoring and implementation.3. We disagree with the draft's proposal to apply the same marketing restrictions to infant formula AND to other food products suitable to feed children up to 36 months. This is not in line with the WHO Code products scope, and such a product scope has not been adopted by any

developed markets. Considering the Hong Kong is highly developed free trade market, plus the high economic and educational levels of Hong Kong residents. On the other part, there is no evidence that this extended scope can help increase the rate of the desired 0-6 month exclusive breastfeeding. Thus, we respectfully submit that the draft code should cover breast milk substitutes (BMS) of 0-6 months only.

4. Breastfeeding is the best for babies. We fully support exclusive breastfeeding for the first six months, complementary feeding practices with the start of six months and continued breastfeeding for two years or beyond to ensure the babies benefit most from it. As appropriate weaning is very critical for the growth of the babies after 6 months to compensate the additional nutritional needs of breastfeeding babies, provide adequate (in terms of energy and nutrient needs of children), safe (hygienically stored, prepared and fed) and properly fed. Those principles are often not met due to a variety of factors, including poor utilization and quality of local foods and lack of knowledge and time for age-appropriate meal preparation and feeding. We appreciate complementary food is excluded in the information and promotion to public, since inadequate knowledge is often a greater determinant of malnutrition than the lack of food, thus access to factual information about complementary foods is critical to educate caregivers and parents, so that parents can make an informed choice.

More details of our views, rationales and suggestions are stated as below:

Regarding to Art 2&3:

- Add definition of BMS (any food being marketed or otherwise presented as a partial or total replacement for breast milk, whether or not suitable for that purpose), and use BMS to replace “*formula milk*”
- Art 3 definition of “Advertisement”: delete (e) “*circulars, catalogues, price lists*” from the definition
- “Designated product” should refer to “*BMS, and BMS related products; e.g. bottle fed weaning food before 6 months, feeding bottles and teats*” instead of “*formula milk*”

(2) Information and Education(Article 4) 資訊及教育(守則第四條)

Views 意見:

Art 4.1

Views: Education Information should be open and freely available for public, as long as they are factual and scientific. Such educational materials to parents & public should not have product brand name, pack shot, but can have company logo to ensure the source and quality of the information.

Rationales: WHO Code 1981 doesn't have similar restriction. This code aims to protect breastfeeding, improve breastfeeding rate, but has no conflict with company achieving improving corporate image, so the ban is not necessary and proportionate. M&D should have the responsibility to promote breast feeding in the spirit of WHO Code.

Suggested rewording:

“Information and education on breastfeeding and formula milk feeding by manufacturers and distributors.”

Art 4.1.1

Views: Should only prohibit direct contact with pregnant women or mothers. Sub-clause (b) should not mention breastfeeding, as education on breastfeeding should be allowed as long as this does not imply a direct contact with manufacturers' marketing personnel.

Rationales: All stakeholders in the society have the right to promote breastfeeding in the spirit of WHO code including M&D.

Suggested rewording:

“A manufacturer or distributor:

(a) should not himself or herself, or by any other person on his or her behalf perform, carry out or

sponsor educational functions or activities relating to breast milk substitute feeding which are directed at pregnant women or mothers of infant aged 6 months or below;

(b) should not distribute or produce informational or educational materials referring to breast milk substitutes feeding instructions to be delivered to mothers with baby under 6 months old via health care professionals, such materials should not be distributed by the M&D staffs directly to mothers and parents but should be only used by health care institutions and health care professionals to those mothers who do need;

(c) M&D may produce or sponsor such production on the written request of health care institutions and professionals for use and distribution by those institutions and professionals to the general public, pregnant women or mothers of children aged 6 months or below, for educational purposes.” These scientific and educational materials on promote breastfeeding, nutrition and health educations during pregnancy and lactating, proper feeding, proper weaning as well as the guidelines and recommendatiosn from professional organizations and health institutions, such materials etc should not have any brand name and packshot of the products covered by the HK code. The company logo can be beared to ensure the quality and credibility of the information.

Art 4.2.1(b)

Views: What is the definition of “total space”? One-tenth of the total space occupied by the information meaning the information on that page or all information on the website?

Art 4.3.1

Views: Delete “*other than breastfeeding and formula milk feeding*”

Rationales: Similar to Article 4.1, prohibit M&D’s involvement in breastfeeding and formula feeding educational activities. Not proportionate in achieving the aim, as discussed in Section 4.1.

Suggested rewording:

“A manufacturer or distributor may produce, donate or distribute informational or educational materials, or sponsor or perform educational activities on matters related to infants and young children, provided that-.....”

Art 4.3.1 (a)

Views: Replace “*formula milk*” with BMS

Rationales: “formula milk” is not defined by any other regulatory authority nor scientific expert body. This term is misleading and very confusing because infant formula or follow up formula is not dairy product, some formulas may contain small amount of milk or no milk at all. There is no need to introduce this term as both infant formula and follow-up formula are well defined by globally recognized and referenced regulatory authorities (e.g., Codex Alimentarius, European Union).

Suggested rewording:

“the brand name, logo or trade mark of any breast milk substitutes and breast milk substitutes related product is not displayed on the materials or in the activities; and...”

Art 4.3.1 (a)

Views: Brand name cover a range of products but those over 36mths should be excluded, i.e. product with the same brand name bear clear indication on target age (36mths+) should be excluded in Art 4.3. If gov has no change of code, manufacturers need at least 24 months to change brand name and repacking (refer to Art 8.1 comment).

Art 4.4

Views: Delete any reference to any party whatsoever: what needs to be protected here is the factual objectivity and quality of the information, not who has authored or sponsored it.

Rationales: One of the aims of the WHO code is to promote breastfeeding and safe use of BMS. Manufacturers should be allowed to provide information on breastfeeding education.

Suggested rewording:

“4.4 Information and education on infant and young child feeding and nutrition”

Art 4.4.1(d)

Views: Agree no brand name or logo but company name should be allowed

Rationales: One of the aims of the WHO code is to promote breastfeeding and safe use of BMS. Manufacturers should be allowed to provide information on breastfeeding education.

Suggested rewording:

“not contain the brand name, logo or trade mark of breast milk substitutes and breast milk substitutes related product”

(3) Promotion to the Public (Article 5) 向公眾推廣(守則第五條)

Views 意見:

Art 5.1

Views: Replace “*formula milk*” with BMS

Rationales: “*formula milk*” is not defined by any other regulatory authority nor scientific expert body. This term is misleading and very confused because infant formula or follow up formula is not dairy product, some formulas may contain small amount of milk or no milk at all. There is no need to introduce this term as both infant formula and follow-up formula are well defined by globally recognized and referenced regulatory authorities (e.g., Codex Alimentarius, European Union).

Suggested rewording:

“A manufacturer or distributor should not himself or herself, or by any other person initiated by or on his or her behalf, carry out any promotional activities involving breast milk substitutes and breast milk substitutes related products.”

Art 5.2

Views: : Replace “*food products for infants and young children*” with “*products other than breast milk substitute*” and sub clause (c) “*does not promote formula milk or formula milk related products*” should be deleted

Rationales: WHO only ban BMS promotion. All other infant nutrition products, including Follow-up Formula are complementary to breastfeeding. The Code should not treat Follow-up Formula and food products for infants and young children differently in terms of promotion restriction. Otherwise, consumers would receive unbalanced information about their product options, restricting their right to choose.

Suggested rewording:

“A manufacturer or distributor may promote products other than breast milk substitute, provided that the promotional practice –

(a) does not take place in a health care facility;

(b) satisfies the requirements under Articles 4.2.1(c), 4.4.1(a) and (c) and 4.4.1(e) (ii)”

Art 5.3

Views: Reword Art 5.3 to reflect Art 5.5 of the WHO Code and prohibition

Rationales: Collecting personal details with consent should not lead to mothers being discouraged from breastfeeding or being misinformed about breastfeeding or formula milk feeding. It intended to prevent M&Ds from sending information to mothers and pregnant women. However, a blanket prohibition on collecting personal details is too broad in scope and not necessary for satisfying the objectives of the Draft Code.

Not such a prohibition with respect to the promotion of any other consumer product, or indeed pharmaceuticals or medical devices that are subject to greater regulatory control under Hong Kong law.

Invite participation of infants, young children and women to activities won't discourage the breastfeeding. M&Ds such activities are to improve corporate images and should not be banned, This restriction is not proportionate.

Suggested rewording:

“(a) seek directly or indirect contact with pregnant women or mothers of children aged 6 months or below; or

(b) invite participation of infants, pregnant women and mothers of children aged 6 months or below in activities including baby shows, mother craft activities for the purpose of promoting its BMS. Except to handle consumer inquires & complaints.”

Art 5.4

Views: Delete (e) *“performance or carrying out of educational functions or activities relating to breastfeeding and formula milk feeding or sponsoring such functions or activities.”* and replace *“formula milk or formula milk related products”* with BMS or BMS related products.

Rationales: Why manufacturer does not have the role to promote breastfeeding which is the spirit of WHO Code?

Suggested rewording:

“(c) giving one or more samples of breast milk substitute or breast milk substitute related products to any person;

(d) production and distribution of informational or educational materials on breastfeeding and formula milk feeding or sponsoring such production and distribution, except as allowed under Articles 4.2.1, 4.2.2, and 4.4.1”

Art 5.5

Views: *“designated products”* shall be revised to in alignment with WHO code to cover only breast milk substitute, as mentioned above.

Rationales: The term *“designated product”* is origin from *“Model Law”*, in which defines a broad scope of *“designated product”* covering infant formula, follow-up formula, feeding bottles, teats, pacifiers and any other product marketed or represented as suitable for feeding infants. Such a broader definition in the Model Law creates scope to draw more products into the ambit of the law.

(4) Promotion in Health Care Facility (Article 6) 在醫護機構進行推廣(守則第六條)

Views 意見:

Art 6.1

Views: Delete (c) *“promote designated product through health workers or health care facility or distribute designated product through health workers or health care facility to any person.”*

For (b), insert *“bear a brand name of BMS”* between *“which...refers to”*

Remark: The definition of *“designated products”* shall be revised to in alignment with WHO code to cover only breast milk substitute, as mentioned above.

Rationales: Health care facility includes practice engaged directly / indirectly in provide health care, affect freedom of private own practice decision and autonomy.

Suggested rewording:

“(b) donate to or distribute within a health care facility any equipment, service or material such as pen, calendar, poster, note pad, growth chart, toy which bear a brand name of breast milk substitutes refers to or may promote the use of BMS products.”

(5) Information and Promotion to Health Worker (Article 7)向醫護人員提供資訊及推廣 (守則第七條)

Views 意見:

Remarks: The definition of *“designated products”* shall be revised to in alignment with WHO code to cover only breast milk substitute, as mentioned above.

Art 7.3.2

Views: Add *“however, M&D can recommend the topics and speakers”* to the end of (a)

Rationales: Medical organizer may not have first-hand up-to-date information in all aspects in pediatrics includes nutrition. As the sponsor, M&Ds can recommend the topics.

Suggested rewording:

“(a) the manufacturer and distributor exert no influence on the choice of speakers and topics to be discussed in such activities and the organisers sponsored have full autonomy to decide these

(6) Labelling (Article 8) 標籤 (守則第八條)

Views 意見:

Art 8.1

Views: As labeling and quality are put into legislation, they should be taken out from the HK code. Labeling should adopt the article 9 of WHO Code.

Art 8.2

Views: Follow the logic approach laid down by Codex Alimentarius for labeling requirements.

Remark: replaces “*formula milk*” with “*infant formula and follow-up formula*”

Rationales: The labeling requirements laid down in international regulatory authorities differ depending on the infant nutrition product. As such it is not appropriate to go for one size fits all approach such as proposed in the draft HK Code.

Suggested rewording:

Art 8.2.1

In the case of infant formula, the wording changed to:

“In addition to the relevant legal requirements on labeling stipulated in Regulations 4 and 4A of and Schedules 2 to 4 to the Food and Drugs (Composition and Labeling) Regulations, Cap. 132W, the container of infant formula or the label affixed thereto should satisfy the following requirements”

In the case of follow-up formula, the wording changed to:

“In addition to the relevant legal requirements on labeling stipulated in Regulations 4 and 4A of and Schedules 2 to 4 to the Food and Drugs (Composition and Labeling) Regulations, Cap. 132W, the container of follow-up formula or the label affixed thereto should satisfy the following requirements”.

Art 8.2.1 (a)

Views: Agreed to limit the health claim regulation but has high concern on the creative right as it limitation on freedom of creative of artwork design, as no other illustration is allowed.

The above restriction should only apply to BMS.

Delete the last part “*but may show one occurrence of either a company logo or a trade mark of the product*”. Please provide evidences on using more than once of company logo or a trade mark of the product contribute to the decrease of breastfeeding rate.

Rationales: WHO Code only restricts showing picture of infants and other pictures may idealize the use of infant formula. Codex standard for infant formula has similar wording to WHO Code. Whereas, the draft HK Code expands the restriction to “any photograph, drawing or graphic representation other than for illustrating methods of preparation”, by following the “*Model Law*”. The last part of the article “may show one occurrence of either a company logo or a trade mark of the product”, this doesn’t serve the purpose of protecting breastfeeding and protect public health and it is unrealistic. With reference on other WHO code compliance countries, we don’t see such a restriction.

In accordance with the draft code, different companies may have very similar labeling and then similar appearance.

The function of a trademark or logo is to distinguish one trader from another. See the definition of “trade mark”.

“means any sign which is capable of distinguishing the goods or services of one trader from those of others”.

If a company logo / trademark can only appear once in each label, the consumer may not tell one manufacturer from the other. Then this stipulation doesn’t benefit the consumer, and it will go to the contrary.

Suggested rewording:

“does not show picture of infants and other pictures or text which may idealize the use of infant

formula".

Art 8.2.1 (b)

Views: Should permit nutrition claim for infant formula and follow-up formula if the claim meeting 8.5.1 (b), (c), (d).

Rationales: Although Codex guidelines prohibits the use of nutrition and health claims for foods for infants and young children, some countries, e.g. EU, Singapore have established mechanism of claim evaluation and authorization. Those nutrition and health claims authorized by international regulatory authorities should not be prohibited.

Suggested rewording:

"(b) does not contain any representation that states or suggests any health claim or nutrition claim, except those nutrition claim, health claims and representations provided in Articles 8.5.1, 8.5.2 to 8.5.3"

Art 8.2.1 (d)

Views: We strongly oppose article Art 8.2.1 (d) *"Contains the word "IMPORTANT NOTICE" in capital letters and indicates thereunder the statement "Breastfeeding is the normal means of feeding infants and young children. Breastmilk is the natural food for their healthy growth and development. Use of breastmilk substitutes may put infants and children at risk of diarrhoea and other illnesses" of not less than 2 mm in height"*. This article should be deleted and adopt WHO code Art 9.2. Also, please provide the prevalence rate of infant diarrhea caused by formula feeding.

Rationales: The wording includes several imprecision or even incorrect statement:

- Breastfeeding is NOT the normal means of feeding for young children (1-3 years). Although mothers may decide to continue breastfeeding after 6 months of age, it is definitely not considered the normal means of feeding for older infants and even less so for young children. Hence making this a requirement is misleading the consumer.
- Stating that breast milk is the natural food for their (infants and young children) healthy growth and development is again misleading as it is well recognized that complementary feeding is critical to ensure adequate nutritional support for older infants and young children.
- Stating that breast milk substitutes may put infants and children at risk of diarrhea and other illnesses is again a misleading statement. If the guidelines for reconstitution are appropriately followed there is no risk. This may also cause unnecessary panic to general public. In case a mother cannot breastfeed her baby and doctor advice to use infant formula, she would then be confused by this misleading statement. Moreover the term breast milk substitute is not defined in the current draft HK Code.

Art 8.2.1 (e) (i)

Views: Gives industry to have some flexibility and allow similar wordings in rephrasing the statement as needed.

Delete *"If you use a feeding bottle, your baby may refuse to feed from the breast"*

Follow WHO Code, not to restrict on font size. If there is a recommendation, please standardize and use the CFS guideline.

Rationales: Wording of "warning statement" included in the draft HK code is origin from the "Model Law"

Art 8.2.1 (f), (j), (k)

Views: Replace *"formula milk"* with *"infant formula and follow-up formula"*

Follow WHO Code, not to restrict on font size. If there is a recommendation, please standardize and use the CFS guideline.

Art 8.2.1 (f) (ii)

Views: Add *"or following manufacturer instruction"* behind *"....allowed to cool to no less than 70°C"*

Rationales:

- The use of 70°C water temperature for the preparation of powder formulas may cause scalding of the baby and preparer.
- This temperature may kill probiotics in some products.
- Some nutrients (e.g. Vitamin C) may degrade under high temperature.
- Too focuses on the temperature, which let the mom loose the attention on other key criteria (e.g. cleanliness of hand, sterilization of feeding bottle) that caused to the factors for the contamination of the product. Have to educate how to sterile the feeding bottle & clean the hands for example.

Suggested rewording:

“It is necessary for breast milk substitute to be prepared one feed at a time using boiled water allowed to cool to no less than 70°C, or following manufacturer instruction; and”

Art 8.5.1

Views: Nutrition claim should be allowed for infant formula and follow up formula.

Rationales: It’s not unbiased that the draft HK code treats infant formula & follow-up formula and food products for infants and young children differently in terms of nutrition claim.

Although Codex guidelines prohibits the use of nutrition and health claims for foods for infants and young children, some countries, e.g. EU, Singapore have established mechanism of claim evaluation and authorization. Those nutrition and health claims authorized by international regulatory authorities should not be prohibited.

Suggested rewording:

“Nutrition claim should not appear on a BMS product, except that a nutrition claim meeting the following conditions may be present on the container or labelling of infant formula, follow-up formula and food products for infants and young children, unless prohibited by existing law –

- (a) In the case of food products for infants and young children the claim is related to sodium, sugars, vitamins and minerals;”*

Art 8.5.2

Views: Health claim should be allowed for infant formula and follow up formula.

Rationales: The draft HK code prohibits health claim for infant formula, but not food products for infants and young children. It’s not unbiased that the draft HK code treats infant formula & follow-up formula and food products for infants and young children differently in terms of health claim.

Although Codex guidelines prohibits the use of nutrition and health claims for foods for infants and young children, some contries, e.g. EU, Singapore have established mechanism of claim evaluation and authorization. Those nutrition and health claims authorized by international regulatory authorities should not be prohibited.

Suggested rewording:

“Health claim should not appear on a designated product, except that a health claim meeting the following conditions may be present on the container or labelling of infant formula, follow-up formula and food products for infants and young children, unless prohibited by existing law –.....”

Art 8.5.3

Views: Replace “formula milk” with “infant formula and follow-up formula”

(7) Quality Standards (Article 9) 品質標準(守則第九條)

Views 意見:

The nutritional and safety standards of formulas and foods for infants and young children are extremely important and requires the highest attention. Therefore it is not appropriate to put it in the draft HK code at voluntary basis.

Should use the article 10 of WHO Code.

In addition to Codex standard, other internationally recognized standards, e.g. EU, US, Aus std

should be also included.

(8) Implementation and Monitoring (Article 10) 推行及監察(守則第十條)

Views 意見:

NIL

Conclusion:

We fully support and open to participate and take part in the development of HK Code. We urge the government to put the marketing code mandatory for 0-6 months' infants in spirit of WHO Code. As labeling and quality are under legislation process, these should be taken out from the HK Code.

Part III: Specific Questions 第三部份: 指定問題

(Please attach extra sheets if necessary 如空格不夠填寫, 請另附紙)

- (1) 製造商及分銷商應容許有充分時間來預備守則的推行, 您認為何時是最佳的推行時間? (可就不同條款提出不同推行日期)

Manufacturers and distributors should be given sufficient time to get prepared for implementing the Code. In your opinion, what will be the optimal time for the implementation? (You may wish to provide different time frame for different articles)

Views 意見:

NIL

Signature :



Date:

27/2/2013

Please return us this form on or before 31 December 2012 through any of the following means 請透過以下任何一項途徑於 2012 年 12 月 31 日或之前交回此表格:

Post 郵寄: The Secretariat Office, Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes, Family Health Service, Department of Health, Room 1308, 13/F, Guardian House, 32 Oi Kwan Road, Wanchai, HK
香港灣仔愛群道 32 號愛群商業大廈 1308 室家庭健康服務衛生署香港母乳代用品銷售守則專責小組秘書處

Fax 傳真: (852) 2574 8977

E-mail 電郵: hkcode@dh.gov.hk

Note : In providing us your views, please let us know in case you do not want to be attributed. Unless otherwise specified, all responses will be treated as public information and may be published in the future without further notice. 注意: 如不欲公開姓名, 請於提交意見時清楚表示。除非另加指明, 否則所有意見均視作公共資訊處理, 日後可能會在沒有通知下予以公開。

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