



Dr. Ko Wing-man, BBS, JP, Secretary for Food and Health (SFH)
C/o 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, Hong Kong

Beijing and Manila, February, 26th 2013,

Dear Dr. Kao,

The United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) would like to congratulate the Hong Kong Government for drafting the "Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children" -in short the Hong Kong Code- thus showing its commitment for children.

Many countries have issued their national Codes in line with the International Code of Marketing of Breast-milk Substitutes -in short the International Code- and its accompanying World Health Assembly (WHA) resolutions. So far, eight country Governments expanded the scope of the national Code to cover up to three years of age or beyond, as the Hong Kong Government plans to do. The scope and age coverage of several country Codes are listed for your reference in Annex 1. A comparison of HK Code with the International Code and WHA resolutions, also for your easy reference, is in Annex 2.

UNICEF and WHO very much appreciate the opportunity of providing comments. A summary of our observations and recommendations are attached as Annex 3. We would like to emphasise the following:

We strongly recommend that the Hong Kong Code be made legally binding rather than pursued on a voluntary basis. In our experience, a voluntary Code may undermine

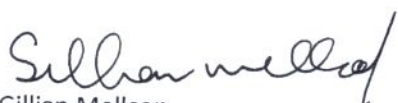
breastfeeding and encourage mothers to artificially feed their babies, and will not provide the necessary protection from marketing of breastmilk substitutions, bottles and teats, thus placing children's survival, growth and development at risk.

We also recommend that the Hong Kong Government establishes an independent monitoring mechanism to ensure the sound implementation of the Hong Kong Code.


We hope our recommendations will assist you in finalizing the Hong Kong Code in line with international best practice. Should you have questions, please do not hesitate to contact us through UNICEF's Chief of Health & Nutrition in China at

We would like to wish you success in the finalization of Hong Kong Code for the benefit of the mothers and children of Hong Kong.

Sincerely yours,



Gillian Mellsop
Representative, UNICEF China



Dr Han Tieru
Director, Programme Management
WHO Western Pacific Regional Office

Annex 1. Scope and age coverage of country Codes.

Country	Scope of Code	
	Foods covered	Age covered (up to)
Bahrain	Food for infants and other breastmilk substitutes – means any milks for up to two years or beyond	24 months
Benin	Covers infant formulas, follow-on formulas or “laits de deuxième âge” (meaning milks up to the age of 24 months) and complementary foods	24 months
Bolivia	All breastmilk substitutes.	24 months
Botswana	(a) infant formula; (b) formulas for special medical purposes intended for infants; (c) follow-up formula; (d) complementary foods; (e) beverages for infants and young children; (f) any product marketed or otherwise presented as suitable for feeding infants and young children; This covers all foods and drinks for children up to the age of 36 months	36 months
Brazil	infant formula and follow-up formulas for infants; follow-up formula for young children from one to three years of age; liquid and powdered milks; transitional foods and cereal-based foods for infants and young children;	36 months
Burkina Faso	All breastmilk substitutes	24 months
Cambodia	infant formula, all products marketed or presented for feeding infant and young children.	24 months
Cameroon	All breastmilk substitutes	24 months
Egypt	Infant Feeding products: Any food or nutrient product prepared or artificially manufactured that is marketed or presented as being suitable for feeding of infants up to 2 years of age whether considered complete or partial.	24 months
Fiji	(a) infant formula; (b) follow-up formula; (c) any other food marketed or otherwise represented as suitable for feeding children up to the age of 5 years;	60 months
Gambia	Infant formula and follow-on formula	24 months
Ghana	Infant formula and follow-on formula	24 months
Guatemala	All breastmilk substitutes	24 months

India	infant milk substitutes defined as, “any food being marketed or otherwise represented as a partial or total replacement for mother’s milk, for infants [and young children] up to the age of two years”, feeding bottles and teats, and infant food defined as, “any food (by whatever name called) being marketed or otherwise represented as a complement to mother’s milk to meet the growing nutritional needs of the infant after the age of six months and up to the age of two years”.	24 months
Kyrgyzstan	1) nutritional mix for feeding infants and young children; 2) any other product marketed or otherwise presented as suitable for feeding infants up to the age of six months; 3) follow-up formula;	24 months
Lao (PDR)	1. Formula milk for infant age under six months old; 2. Formula milk for infant and young child age over six months old up to two years old; 3. Supplementary foods;	24 months
Madagascar	Infant formula, follow-on formula and all other foods or drinks for infants and young children	24 months
Maldives	(1) Infant formula, including special formula; (2) Follow-up or follow-on formula; (3) Any other product marketed or otherwise represented as suitable for feeding children below 6 months; (4) Liquid milk, powdered milk, modified milk and milk of plant origin marketed or represented as suitable for infants and young children; (5) Complementary foods for infants; (7) Nutritional supplements for pregnant and lactating women;	36 months
Mali	All breastmilk substitutes	24 months
Mozambique	All breastmilk substitutes	24 months
Nepal	All breastmilk substitutes	24 months
Nicaragua	All breastmilk substitutes	24 months
Niger	Food products for “nourrissons” (babies from	60 months

	0 – 30 months” and young children (aged from 30 to 5 years)	
Nigeria	Infant formula and follow-up formula	24 months
Oman	All breastmilk substitutes	24 months
Pakistan	Any milk represented as a partial or total replacement for mother’s milk (all breastmilk substitutes)	24 months
Panama	Infant formulas and follow-on formulas	24 months
Peru	Breastmilk substitutes and infant foods for babies up to the age of 24 months	24 months
Philippines	Breastmilk substitutes intended for infants and young children up to 36 months	36 months
Sri Lanka	All breastmilk substitutes	24 months
Tanzania (UR)	Infant formula, follow-on formula, any products to be fed by use of feeding bottle, any other beverages, milks and foods intended for use by infants and young children Young child is defined as person between 12 months and five years.	60 months
Tunisia	All breastmilk substitutes	24 months
Uganda	Infant formula, follow-on formula and complementary foods	24 months
Yemen	Milk products and other foods and drinks being restricted to child up to two years of age.	24 months
Zambia	All breastmilk substitutes	24 months
Zimbabwe	Infant formula and follow-on formula and any other products marketed as suitable for feeding babies and young children. Young child means an infant between the ages of twelve and sixty months	60 months

Annex 2. A comparison of HK Code with the International Code and WHA resolutions.

<p>International Code of Marketing of Breast-milk Substitutes</p>	<p>Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children</p>
<p><i>The Scope of the Code as set by Article 2</i> states that "the Code applies to the marketing, and practices related thereto, of the following products: breast-milk substitutes, including infant formula; other milk products, foods and beverages, including bottle-fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast-milk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use.</p>	<p>Art. 2.2</p> <p>The scope of this Code covers the marketing practices of designated products as defined in Article 3. This Code also applies to their quality and availability, and to information on the use of designated products.</p> <p>Art 3.</p> <p>“designated product”</p> <p>- means –</p> <ul style="list-style-type: none"> (a) formula milk; (b) formula milk related products; (c) food products for infants and young children; and (d) any other product declared as a designated product by the Department of Health for the purposes of this Code.
<p>Article 4.1 Government should have the responsibility to ensure that objective and consistent information on infant and young child feeding</p>	<p>4.1.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –</p> <ul style="list-style-type: none"> (a) perform, carry out or sponsor educational functions or activities relating to breastfeeding and formula milk feeding which are intended to reach the general public, pregnant women or mothers of children aged 36 months or below; or (b) produce informational or educational materials referring to breastfeeding and formula milk feeding and distribute such materials to the general public, pregnant women or mothers of children aged 36 months or below or sponsor such production and

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	<p>distribution</p> <p>4.2.1 A manufacturer or distributor of formula milk and formula milk related product may provide information on specific brands of formula milk and formula milk related product to any person on its websites, at the premises of retailers or at health care facilities provided that such information –</p> <p>(a) is restricted to technical and textual information appearing on the label of the product and may only contain information relating to breastfeeding and formula milk feeding in Article 4.4.1(e);</p> <p>(b) is devoid of photographs, pictures or any graphic representation other than for illustrating methods of preparation, except for a pack shot of a size not more than one-tenth of the total space occupied by the information;</p> <p>(c) is devoid of any health claim or nutrition claim regarding the product or its ingredient or constituent, except those health claim or nutrition claim or representations allowed in Articles 8.5.1 to 8.5.3;</p> <p>4.3.1 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 other than breastfeeding and formula milk feeding, provided that –</p> <p>(a) the brand name, logo or trade mark of any formula milk and formula milk related product is not displayed on the materials or in the activities; and</p>

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	<p>(b) such materials or activities are not associated with promotional practices not permitted under Article 5.</p> <p>4.4.1 Informational and educational materials produced or distributed by parties other than manufacturers and distributors, whether written, audio or visual, which refer to infant and young child feeding and nutrition and are intended to reach the general public, pregnant women and/or mothers of children aged 36 months or below should –</p> <p>(a) contain only correct and current information and should not use any pictures or texts that encourage feeding by formula milk or discourage breastfeeding;</p>
<p><i>5.1 “ There should be no advertising or other form of promotion to the general public of products within the scope of this Code</i></p>	<p>5.1 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 formula milk and formula milk related products.</p> <p>5.4 Promotional practices include but are not limited to –</p> <p>(a) advertising;</p> <p>(b) using sales inducement devices such as special displays, discount coupons, premiums, rebates, special sales, loss-leaders, tie-in sales, prizes or gifts;</p> <p>(c) giving one or more samples of formula milk or formula milk related products to any person;</p> <p>(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; and</p>

International Code of Marketing of Breast-milk Substitutes	Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children
	(e) performance or carrying out of educational functions or activities relating to breastfeeding and formula milk feeding or sponsoring such functions or activities.

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<p>Art 5.3 "... In conformity with paragraphs 1 and 2 there should be no point of sale advertising, giving of samples, or any other promotion device to induce sales directly to the consumer..."</p>	<p>5.4 Promotional practices include but are not limited to –</p> <ul style="list-style-type: none"> (a) advertising; (b) using sales inducement devices such as special displays, discount coupons, premiums, rebates, special sales, loss-leaders, tie-in sales, prizes or gifts; (c) giving one or more samples of formula milk or formula milk 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; and (e) performance or carrying out of educational functions or activities relating to breastfeeding and formula milk feeding or sponsoring such functions or activities.
<p>5.4 Manufacturers and distributors should not distribute to pregnant women or mothers any gifts of articles or utensils which may promote the use of BMS or bottlefeeding</p>	<p>4.1.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –</p> <ul style="list-style-type: none"> (a) perform, carry out or sponsor educational functions or activities relating to breastfeeding and formula milk feeding which are intended to reach the general public,

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	<p>pregnant women or mothers of children aged 36 months or below; or</p> <p>(b) produce informational or educational materials referring to breastfeeding and formula milk feeding and distribute such materials to the general public, pregnant women or mothers of children aged 36 months or below or sponsor such production and distribution.</p> <p>4.3.1 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 other than breastfeeding and formula milk feeding, provided that –</p> <p>(a) the brand name, logo or trade mark of any formula milk and formula milk related product is not displayed on the materials or in the activities; and</p> <p>(b) such materials or activities are not associated with promotional practices not permitted under Article 5.</p> <p>6.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –</p> <p>(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 refers to or may promote the use of a designated product; or</p>
<p>5.5 Marketing personnel, in their business capacity, should not seek direct or indirect contact of any kind with pregnant women or with mothers of infant and young children</p>	<p>4.1.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –</p> <p>(a) perform, carry out or sponsor educational functions or activities relating to breastfeeding and formula milk feeding which are intended to reach the general public, pregnant women or mothers of children aged 36</p>

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	<p>months or below; or</p> <p>(b) produce informational or educational materials referring to breastfeeding and formula milk feeding and distribute such materials to the general public, pregnant women or mothers of children aged 36 months or below or sponsor such production and distribution.</p>
<p>Article 6.6: <u>“Free or low-cost supplies of breast-milk substitutes to health care facilities should be prohibited.</u> This article applies to both use of such products within the facility or to the distribution of such products outside of the facility.”</p>	<p>6.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –</p> <p>(a) donate or provide at a price lower than the prescribed wholesale price, where one exists, or, in its absence, 80 percent of the retail price, any quantity of a designated product to a health worker or a health care facility;</p>
<p>Article 7.3:”Financial and material inducements to promote products within the scope of the Code should not be offered by manufacturers or distributor to health workers or members of their families, nor should they be accepted by health workers or members of their families.”</p>	<p>Article 6- Promotion in Health Care Facility 23 6.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –</p> <p>(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 refers to or may promote the use of a designated product; or</p> <p>(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.</p> <p>7.3.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf</p>

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	<p>offer or give any gift or benefit to a health worker or to associations of health workers engaged in maternal and child health, except as allowed under Articles 7.3.2 and 7.3.3.</p>
<p>Article 9.2(b) “manufacturers and distributors of infant formula should ensure that each container has a clear, conspicuous, and easily readable and understandable message either printed on it or a tightly sealed label attached, in an appropriate language which includes a statement of superiority of breastfeeding.”</p>	<p>Article 8 – Labelling</p> <p>8.1 Label of designated product</p> <p>8.2 Labelling requirements for formula milk</p> <p>8.3 Labelling requirements for food products for infants and young children</p> <p>8.4 Labelling requirements for formula milk related products</p>
<p>Article 11 of the Code includes a requirement for governments to take necessary measures to give effect to the provisions and ambitions of the Code within their legal and social infrastructure, including the adoption of national legislation, regulations, or other appropriate measures. It states that <u>the responsibility for monitoring the implementation of the Code rests with governments both individually, and in collaboration with other parties (for example WHO, NGOs, professional groups, amongst others).</u></p>	<p>10.1 The manufacturers and distributors, and appropriate non- governmental organizations, professional groups, and consumer organizations should collaborate with the Government to monitor the application of this Code.</p> <p>10.3 Non-governmental organizations, professional groups, institutions and individuals concerned should have the responsibility of drawing the attention of manufactures or distributors to activities which are incompatible with the principles and aim of this Code, so that appropriate action can be taken. The Government should also be informed of such activities.</p>
<p>WHA 39.28 (1986) states that:</p>	<p>5.1 A manufacturer or distributor should not himself or</p>

<p align="center">International Code of Marketing of Breast-milk Substitutes</p>	<p align="center">Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children</p>
<p>“(a) any food or drink given before complementary feeding is nutritionally required may interfere with the initiation or maintenance of breastfeeding and therefore should neither be promoted nor encouraged for use by infants during this period;</p> <p>(b) the practice being introduced in some countries of providing infants with specially formulated milks (so-called "follow-up milks") is not necessary</p>	<p>herself, or by any other person initiated by or on his or her behalf, carry out any promotional activities involving formula milk and formula milk related products.</p> <p>5.2 A manufacturer or distributor may promote food products for infants and young children, provided that the promotional practice –</p> <p>(a) does not take place in a health care facility;</p> <p>(b) satisfies the requirements under Articles 4.2.1 (c), 4.4.1(a) and (c) and 4.4.1 (e) (ii); and</p> <p>(c) does not promote formula milk or formula milk related products.</p>
<p>WHA 47.5 (1994) urges Member States to:</p> <p>“... foster appropriate complementary feeding practices from the age of about six months.”</p>	
<p>WHA 49.15 (1996) urges Member States to:</p> <p>“... ensure that complementary foods are not marketed for or used in ways that undermine exclusive and sustained breastfeeding.”</p>	
<p>WHA 39.28 (1986) urges Member States to:</p> <p>“... ensure that the small amounts of breastmilk substitutes needed for the minority of infants who require them in maternity wards and hospitals are made available through the normal procurement channels and not through free or subsidized</p>	<p>6.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –</p> <p>(a) donate or provide at a price lower than the prescribed wholesale price, where one exists, or, in its absence, 80 percent of the retail price, any quantity of a designated product to a health worker or a health care facility;</p>

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<p>supplies.”</p>	
<p>WHA 47.5 (1994) urges Member States to:</p> <p>“... ensure that there are no donations of free or subsidized supplies of breastmilk substitutes and other products covered by the International Code of Marketing of Breastmilk Substitutes in any part of the health care system.”</p>	
<p>WHA 49.15 (1996) expresses concern over health institutions and ministries possibly being subject to:</p> <p>“... subtle pressure to accept, inappropriately, financial or other support for professional training in infant and child health; ...”</p> <p>and urges Member States to:</p> <p>“... ensure that the financial support for professionals working in infant and young child health does not create conflicts of interest, especially with regard to the WHO/UNICEF Baby Friendly Hospital Initiative.”</p>	<p>7.3.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf offer or give any gift or benefit to a health worker or to associations of health workers engaged in maternal and child health, except as allowed under Articles 7.3.2 and 7.3.3.</p> <p>7.3.2 Subject to review, if any, to be carried out after this Code takes effect, a manufacturer or distributor should not himself or herself, or by any other person on his or her behalf offer health worker or associations of health workers funding for organising or participating in continuing education activities related to maternal and child health, unless that the following requirements are satisfied –</p>
<p>WHA 58.32 (2005) urges Member States to:</p> <p>“ ... ensure that financial support and other incentives for programmes and health</p>	<p>7.3.2 (h) refreshments provided by the manufacturer and distributor during delegate networking opportunities are not lavish.</p>

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<p>professionals working in infant and young-child health do not create conflicts of interest.”</p>	<p>7.3.3 Health workers and associations of health workers should only accept or receive research grants from manufacturers and distributors if, where the manufacturers and distributors have an interest in the subject matter of the research, the grants and any relationships, financial or not, with the manufacturers and distributors are disclosed in the printed materials publishing the result of the research.</p>
<p>WHA 54.2 (2001) urges Member States to: “... Strengthen national mechanisms to ensure global compliance with the International Code of Marketing of Breastmilk Substitutes and subsequent relevant Health Assembly resolutions, with regard to labeling as well as all forms of advertising, and commercial promotion in all types of media.”</p>	<p>Article 8 – Labelling Article 5 Promotion to the Public Article 6: Promotion in Health Care Facilities</p>
<p>WHA 49.15 (1996) urges Member States to: “... ensure that monitoring the application of the International Code and subsequent relevant resolutions is carried out in a transparent, independent manner, free from commercial influence.”</p>	<p>10.1 The manufacturers and distributors, and appropriate non- governmental organisations, professional groups, and consumer organisations should collaborate with the Government to monitor the application of this Code. 10.3 Non-governmental organisations, professional groups, institutions and individuals concerned should have the responsibility of drawing the attention of manufactures or distributors to activities which are incompatible with the principles and aim of this Code, so that appropriate action can be taken. The Government should also be informed of such activities.</p>

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<p>WHA58.32 Infant and young child nutrition (2006)</p> <p>(2) to ensure that nutrition and health claims are not permitted for breast-milk substitutes,</p> <p>except where specifically provided for in national legislation;²</p>	<p>8.5 Representations allowed to appear on the container or label</p> <p>8.5.1 Nutrition claim should not appear on a designated product, except that a nutrition claim meeting the following conditions may be present on the container or labelling of food products for infants and young children, unless prohibited by existing law –</p>
<p>WHA58.32 Infant and young child nutrition (2006)</p> <p>(3) to ensure that clinicians and other health-care personnel, community health workers and families, parents and other caregivers, particularly of infants at high risk, are provided with enough information and training by health-care providers, in a timely manner on the preparation, use and handling of powdered infant formula in order to minimize health hazards;</p> <p>are informed that powdered infant formula may contain pathogenic microorganisms and must be prepared and used appropriately; and, where applicable, that this information is conveyed through an explicit warning on packaging;</p>	<p>Article 8 – Labelling</p> <p>8.1 Label of designated product</p> <p>8.2 Labelling requirements for formula milk</p> <p>8.3 Labelling requirements for food products for infants and young children</p> <p>8.4 Labelling requirements for formula milk related products</p>
<p>World Health Assembly Resolution (WHA 63.23, May 2010)</p> <p>“(4) to end inappropriate promotion of</p>	<p>5.1 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 formula milk and formula milk related</p>

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<p>food for infants and young children, and to ensure that nutrition and health claims shall not be permitted for foods for infants and young children, except where specifically provided for in relevant Codex Alimentarius standards or national legislation;”</p>	<p>products.</p> <p>Art 3. “designated product” - means – (a) formula milk; (b) formula milk related products; (c) food products for infants and young children; and (d) any other product declared as a designated product by the Department of Health for the purposes of this Code</p> <p>5.2 A manufacturer or distributor may promote food products for infants and young children, provided that the promotional practice –</p> <p>(a) does not take place in a health care facility;</p> <p>(b) satisfies the requirements under Articles 4.2.1 (c), 4.4.1(a) and (c) and 4.4.1 (e) (ii); and</p> <p>(c) does not promote formula milk or formula milk related products.</p> <p>Article 8 – Labelling</p> <p>8.1 Label of designated product</p> <p>8.2 Labelling requirements for formula milk</p>

Annex 3. UNICEF and WHO observations and recommendations on:

**Hong Kong Code of Marketing and
Quality of Formula Milk and
Related Products, and Food
Products for Infants & Young
Children**

**Taskforce on Hong Kong Code of Marketing
of Breastmilk Substitutes**

October 2012

Draft (Restricted)

Background

The superiority of breastfeeding in ensuring physical and psychosocial health and well-being of mother and child as well as the important impacts of early nutrition on long-term health are widely recognised. The World Health Organisation (WHO) has made a global public health recommendation that infants should be exclusively breastfed for the first six months of life to achieve optimal growth, development and health and thereafter, to meet their evolving nutritional requirements, infants should receive nutritionally adequate and safe complementary foods while breastfeeding continues for up to two years of age or beyond (Global strategy for infant and young child feeding, WHO / UNICEF, 2003).

The creation of an environment that protects, promotes and supports breastfeeding requires a systemic approach, which includes enabling parents to make informed decisions on infant feeding free from commercial influence, ensuring policies and practices of maternal-and-child-health facilities are supportive of breastfeeding, and building family-friendly social policies (e.g. maternity legislations) and community services. To protect breastfeeding from being undermined by inappropriate marketing, the International Code of Marketing of Breastmilk Substitutes (International Code) was adopted by the WHO in 1981. The aims of the International Code is to empower mothers to make fully informed decisions on infant feeding free from commercial influences, restrict marketing practices of breastmilk substitutes so that breastfeeding can thrive and minimise risks for infants who are fed formula milk. Subsequent World Health Assembly

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(WHA) resolutions have been passed to clarify the International Code and keep it up-to-date with scientific advances and evolving marketing strategies.

The Government has all along endeavoured to promote, protect and support optimal feeding of infants and young children. In February 2010, the Steering Committee on Prevention & Control of Non-Communicable Diseases, chaired by the Secretary for Food and Health, endorsed the proposal of developing and implementing a code of marketing of breastmilk substitutes, which is part of an action plan recommended by the Working Group on Diet and Physical Activities under the Steering Committee to promote healthy diet and physical activity in Hong Kong. The proposal was made in response to the aggressive marketing of formula milk in Hong Kong, which is considered a factor that contributes to the low breastfeeding rates.

For the purpose of developing the code of marketing of breastmilk substitutes, the Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes (“the Taskforce”) was set up in June 2010 by the Department of Health. In drafting the code for Hong Kong, the Taskforce has referred to the International Code and the relevant subsequent WHA resolutions, which prescribe the current international standards on the matters covered. It has also studied the local situation on infant-and-young-child feeding and come to the view that the code to be developed should not only cover the marketing of breastmilk substitutes but also the quality standards of formula milk and food products for infants and young children. The Taskforce therefore developed and promulgated the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for

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Infants & Young Children (“the HK Code”) to provide guidelines on marketing and quality of formula milk, feeding bottles, teats and pacifiers, and food products for infants and young children aged 36 months or below to manufacturers and distributors, health workers and health facilities.

The HK Code is voluntary in nature and aims to contribute to the provision of safe and adequate nutrition for infants and young children without interfering with the sale of products for infant-and-young-child feeding. The implementation of the HK Code is monitored through a dual surveillance / survey and complaint system, with collaboration from non-governmental organisations, professional bodies, institutions and individuals concerned. Under the HK Code, the trade is also responsible for monitoring its own marketing practices according to the principles and aim of the code.

Parents’ practices of feeding infants and young children are affected by a multitude of socio-economic, cultural and environmental factors, and as such, ongoing and concerted actions by the Government and the various sectors of the community, including the trade, are required to protect, promote and support breastfeeding and optimal infant and young child feeding. Implementation of the HK Code is just part of such a concerted action. The effectiveness of the HK Code in contributing to the desired outcome should not be evaluated only by the breastfeeding rates but the overall changes in the quality of young children’s diet as well as the underlying socio-economic, cultural and environmental factors affecting them.

Comment [SC1]:

UNICEF/WHO observation:

This Code is voluntary in nature, which in our experience will not provide the necessary protection from the unethical marketing of breastmilk substitutes, bottles and teats that undermine breastfeeding and encourage mothers to artificially feed their babies, placing their survival, growth and development at risk.

UNICEF/WHO recommendation:

We strongly recommend that the Hong Kong Code be adopted as a legally binding measure, as this is the only effective way to improve the marketing behaviour of the manufacturers and distributors.

Draft (Restricted)

Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes
October 2012

Draft (Restricted)

Article 3 - Definitions

1 Title of the Code

This Code is named as the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children.

2.1 The Aim

The aim of this Code is to contribute to the provision of safe and adequate nutrition for infants and young children, by –

- (a) protecting breastfeeding; and
- (b) ensuring the proper use of formula milk, formula milk related products, and food products for infants and young children up to the age of 36 months,

on the basis of adequate and unbiased information and through appropriate marketing.

2.2 Scope

The scope of this Code covers the marketing practices of designated products as defined in Article 3. This Code also applies to their quality and availability, and to information on the use of designated product.

“advertisement”⁷

- means any form of advertising intended for the general public which is published by any means including the following –
 - (a) newspaper or other publication;
 - (b) television or radio broadcast;
 - (c) electronic messages;
 - (d) display of notices, signs, labels, showcards or goods;
 - (e) distribution of samples, circulars, catalogues, price lists or other materials; or
 - (f) exhibition of pictures, models or filmsand "advertise" will be construed accordingly

“bottle feeding”

- means feeding liquid or semi-solid food from a bottle with a nipple.

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Article 3 - Definitions

“brand name” or “product name”

- means a name given by the manufacturer to a product or range of products.

“breastfeeding and formula milk feeding”

- means breastfeeding and feeding by formula milk of infants and young children, including nutrition of breastmilk and formula milk.

“claim”⁹

- means any representation which states, suggests or implies that a food has particular characteristics relating to its origins, nutritional properties, nature, production, processing, composition or any other quality.

“complementary food”³

- means any food except milk or milk-like product suitable or represented as suitable as an addition to breastmilk or formula milk for infants of or above the age of 6 months and young children of or below the age of 24 months.

“container”⁷

- means any form of box, bottle, tin, carton, package or wrapping enclosing an article or substance, but does not include an outer cover or wrapping superimposed for the purpose of consignment or delivery.

“Department of Health”

- means the Department of Health of the Government of the Hong Kong Special Administrative Region.

“designated product”

- means –
 - (a) formula milk;
 - (b) formula milk related products;
 - (c) food products for infants and young children; and
 - (d) any other products declared as a designated product by the Department of Health for the purposes of this Code.

“ distributor”

Comment [SC2]:

UNICEF/WHO observation:

The terms “breastfeeding” and “formula milk feeding” should not be defined together, as this implies some sort of equivalence. The International Code does not permit wording or language that implies equivalence.

UNICEF/WHO recommendation:

Perhaps the simplest way is to amend the definition of “formula milk” to read: **“formula milk”** means infant formula, follow-on formula and any other milk product marketed or represented as suitable for feeding infants and young children.

Comment [SC3]:

UNICEF/WHO observation:

The definition of “designated product” while intending to cover milks and foods for infants and young children, may not achieve its purpose due to the market segmentation tactics of the major companies. While the definition of “formula milk” covers both infant formula and follow-on formula” companies have now started to introduce a 12 month upper age limit for their follow-on formulas, and invented “growing-up” or “toddler” milks which are marketed from one year on. This undermines WHA’s public health recommendation that babies should continue to be breastfed until the age of 2 years or beyond. It is thus important that the definition of “designated product” be amended to cover the growing up milks that have been introduced to take the place of those formerly marketed as follow-on formulas. Perhaps the simplest way to achieve this is to amend the definition of “formula milk” to read: **“formula milk”** means infant formula, follow-on formula and any other milk product marketed or represented as suitable for feeding infants and young children.

UNICEF/WHO recommendation:

See modification under “2.2. Scope – formula milk” below.

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Article 3 - Definitions

- means a person, corporation or other entity engaged in the sale, whether wholesale or retail, of any designated product.

“follow-up formula” ^{2, 3, 4 & 10}

- means –

- (a) a milk or milk-like product of animal or plant origin formulated industrially and marketed or otherwise represented as a food suitable for use as a liquid part of the weaning diet for infants from the 6th month on and for young children; and
- (b) any formula for special medical purposes for infants from the 6th month on and for young children not as a sole source of nutrition and is specially manufactured to satisfy the special nutritional requirements of infants from the 6th month on and young children with specific disorder(s), disease(s) or medical condition(s).

“food products for infants and young children” ^{4, 5 & 6}

- means –

- (a) any food, except formula milk, intended primarily for use during the normal infant’s weaning period and for the progressive adaptation of infants and young children to ordinary food, which may be either in ready-to-eat form or in dry form requiring reconstitution with water, milk or other suitable liquids, and includes complementary food;
- (b) any food, except formula milk, for special medical purposes which are specially processed or formulated and presented for the dietary management of infants and young children and may be used only under medical supervision and are intended for the exclusive or partial feeding of infants and young children with limited or impaired capacity to take, digest, absorb or metabolise ordinary foodstuffs or certain nutrients contained therein, or who have other special medically-determined nutrient requirements, or whose dietary management cannot be achieved only by modification of normal diet and/or other food for special dietary uses.

Draft (Restricted)

Article 3 - Definitions

“formula milk”

- means infant formula and follow-up formula.

“formula milk related products”

- means feeding bottles, teats, and pacifiers for infants and young children.

“health care facility”

- means any institution or organisation or practice engaged directly or indirectly in the provision of health care or in health care education, including day-care centre, nursery, or other infant care facility.

“health claim”⁹

- means any representation that states, suggests, or implies that a relationship exists between a food or a constituent of that food and health and includes –

(a) nutrient function claim;

(b) other function claim – claim concerning specific beneficial effects of the consumption of foods or their constituents, in the context of total diet, on normal functions or biological activities of the body and relating to a positive contribution to health or to the improvement of a function or to modifying or preserving health;

[Example

“Substance A (naming the effect of substance A on improving or modifying a physiological function or biological activity associated with health). Food Y contains x grams of substance A.”]

and

(c) reduction of disease risk claim – claim relating the consumption of a food or food constituent, in the context of the total diet, to the reduced risk of developing a disease or health-related condition by significantly altering a major risk factor(s) or a disease or a health-related condition.

[Examples:

Comment [SC4]:

UNICEF/WHO recommendation:

To amend the definition of “formula milk” to read: “**formula milk**” means infant formula, follow-on formula and any other milk product marketed or represented as suitable for feeding infants and young children.

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“A healthful diet low in nutrient or substance A may reduce the risk of disease D. Food X is low in nutrient or substance A.”

“A healthful diet rich in nutrient or substance A may reduce the risk of disease D. Food X is high in nutrient or substance A.”]

“health professional”

- means a health worker with a professional degree, diploma or licence, such as a medical practitioner, nurse, midwife, dietitian, nutritionist, clinical psychologist, educational psychologist or such other person as may be specified by the Department of Health for the purposes of this Code.

“health worker”

- means a person providing or who are in training to provide health care services in a health care facility, whether professional or non-professional, including voluntary unpaid worker.

“infant”¹

- means a person not more than 12 months of age.

“infant formula”: 1, 3, 4 & 10

- means –
 - (a) 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 up to the introduction of feeding by appropriate complementary food; and
 - (b) any formula for special medical purposes that is specially manufactured to satisfy by itself the special nutritional requirements of infants with specific disorder(s), disease(s) or medical condition(s) during the first months of life up to the introduction of feeding by appropriate complementary food.

“ingredient”⁷

- means any substance, including any additive and any constituent of a compound ingredient, which is used in the manufacture or preparation

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of a food and which is still present in the finished product, even if in an altered form.

“label”

- means any tag, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed, attached or otherwise appearing on a container of a designated product.

“labelling”⁷

- in relation to a designated product other than formula milk related products, includes any word, particular, trade mark, brand name, pictorial matter or symbol relating to the designated product and appearing on the packaging of the designated product or on any document, notice, label, ring or collar accompanying the designated product.

“logo”

- means an emblem, picture or symbol by means of which a company or a product is identified.

“manufacturer”

- means a person, corporation or other entity engaged in the business of manufacturing a designated product whether directly, through an agent, or through a person controlled by or under an agreement with it.

“marketing”

- means product promotion, distribution, selling and advertising, product public relations and information services and “market” will be construed accordingly.

“nutrient”⁷

- means any substance present in a designated product other than formula milk related products, which –
 - (a) belongs to, or is a component of, one of the following categories –
 - (i) protein;
 - (ii) carbohydrates;
 - (iii) fat;

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- (iv) dietary fibres;
- (v) vitamins;
- (vi) minerals;

and

- (b) satisfies any of the following conditions –
 - (i) the substance provides energy
 - (ii) the substance is needed for growth, development and normal functions of the body;
 - (iii) a deficit of the substance will cause characteristic bio-chemical or physiological changes to occur.

“nutrition claim”^{7*}

- means any representation which states, suggests or implies that a food has particular nutritional properties, and includes –
 - (a) nutrient comparative claim⁷ –
nutrition claim that compares the energy value or the content level of a nutrient in different versions of the same food or similar foods.

and

- (b) nutrient content claim⁷ –
nutrition claim that describes the energy value or the content level of a nutrient contained in a food.

“nutrient function claim”⁷

*For the purposes of the Code, the following do not constitute a nutrition claim-

- (a) mention of any nutrient content in a list of ingredients required by section 2 of Schedule 3 of the Food and Drugs (Composition and Labelling) Regulations, Cap. 132W;
- (b) any quantitative or qualitative declaration of any nutrient content specified in section 2(4E)(a) of Schedule 3 of the the Food and Drugs (Composition and Labelling) Regulations, Cap. 132W;
- (c) other quantitative or qualitative declaration of energy value or any nutrient content required by the Hong Kong law;
- (d) any quantitative or qualitative declaration of change in nutritional value due to genetically modified process;
- (e) any claim forming part of the name, brand name or trade mark of a prepackaged food; and
- (f) any quantitative declaration of energy value or any nutrient content contained in a prepackaged food which-
 - (i) is expressed-
 - (A) as an actual amount; or
 - (B) in any manner specified in section 2 or 3 of Schedule 5 of the Food and Drugs (Composition and Labelling) Regulations, Cap. 132W; and
 - (ii) does not place any special emphasis on the high content, low content, presence or absence of energy or that nutrient contained in the food.

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- means a claim that describes the physiological role of a nutrient in growth, development and normal functions of the body.

[Example:

“Nutrient A (naming a physiological role of nutrient A in the body in the maintenance of health and promotion of normal growth and development). Food X is a source of/ high in nutrient A.”]

“nutritive value”

- means the content of energy and nutrients provided in foods.

“pacifier”

- means an artificial teat for babies to suck, which is also referred to as a dummy.

“pack shot”

- means any representation of a designated product either by photograph or graphic illustration.

“promote”

- means to employ any method of directly or indirectly encouraging a person to purchase or use a designated product.

“quality standard”^{1,2,5&6}

- means the requirements of a designated product other than formula milk related products on essential composition and quality factors (including but not limited to energy content, nutrient content, ingredients, consistency/particular size, and purity requirements), food additives, contaminants and hygiene.

“retailer”

- means any sale outlet or premises including but not limited to pharmacies, shops and supermarkets.

“sample”

- means a single or small quantities of a designated product provided without cost.

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“trade mark”⁸

- means any sign which is capable of distinguishing the goods or services of one trader from those of others and may consist of words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of the goods or their packaging or any combination of such signs.

“young child”²

- means a person from the age of more than 12 months up to the age of three years (36 months).

Reference

1. Standard for Infant Formula and Formulas for Special Medical Purposes intended for Infants (Codex Stan 72-1981)
2. Codex standard for Follow-up Formula (Codex Stan 156-1987)
3. Model Law, IBFAN
4. Codex Standard for the Labelling of and claims for foods for special medical purposes (Codex Stan 180-1991)
5. Codex Standard for Canned Baby Foods (Codex Stan 73-1981)
6. Codex Standard for Processed Cereal-based Foods for Infants and Young Children (Codex Stan 074-1981, Rev.1-2006)
7. Food and Drug (Composition and labeling) Regulations , Cap. 132W, Laws of Hong Kong
8. Hong Kong Law Cap. 559, Trade Mark Ordinance
9. Guidelines for Use of Nutrition and Health Claims (CAC/GL 23-1997)
10. Codex Code of Hygienic Practice for Powdered Formulae for Infants and Young Children (Codex CAC/RCP 66-2008)

Draft (Restricted)

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

4.1 No information and education on breastfeeding and formula milk feeding by manufacturers and distributors

4.1.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –

- (a) perform, carry out or sponsor educational functions or activities relating to breastfeeding and formula milk feeding which are intended to reach the general public, pregnant women or mothers of children aged 36 months or below; or
- (b) produce informational or educational materials referring to breastfeeding and formula milk feeding and distribute such materials to the general public, pregnant women or mothers of children aged 36 months or below or sponsor such production and distribution.

4.2 Product information provided by manufacturers and distributors

4.2.1 A manufacturer or distributor of formula milk and formula milk related product may provide information on specific brands of formula milk and formula milk related product to any person on its websites, at the premises of retailers or at health care facilities provided that such information –

- (a) is restricted to technical and textual information appearing on the label of the product and may only contain information relating to breastfeeding and formula milk feeding in Article 4.4.1(e);
- (b) is devoid of photographs, pictures or any graphic representation other than for illustrating methods of preparation, except for a pack shot of a size not more than one-tenth of the total space occupied by the information;
- (c) is devoid of any health claim or nutrition claim regarding the product or its ingredient or constituent, except those health claim or nutrition claim or representations allowed in Articles 8.5.1 to 8.5.3;

Comment [SC5]:

UNICEF/WHO observation:

The prohibition on performance or sponsorship of educational functions should not be limited to activities related to breastfeeding and formula milk feeding. Article 8.2 of the International Code prohibits the performance of all educational functions in relation to pregnant women and mothers of infants and young children.

UNICEF/WHO recommendation:

Suggest to reformulate as follows:

4.1.No information and education to pregnant women or mothers of infants and young children by employees of manufacturers and distributors

4.1.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –

- (a) perform, carry out or sponsor educational functions or activities which are intended to reach the general public, pregnant women or mothers of children aged 36 months or below; or
- (b) produce informational or educational materials and distribute such materials to the general public, pregnant women or mothers of children aged 36 months or below or sponsor such production and distribution.

Comment [SC6]:

UNICEF/WHO observation:

Article 4.2.1 basically allows promotion of products on the internet (and we know that in some places companies interpret this to mean providing information through text messages). The International Code allows companies to provide product information only to health professionals (Article 7.2) and this should be the case in Hong Kong too.

UNICEF/WHO recommendation:

Suggest to reformulate as follows:

4.2.1 A manufacturer or distributor of formula milk and formula milk related product may provide information on specific brands of formula milk and formula milk related product to health professionals only provided that such information –

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

- (d) satisfies the requirements in Article 4.4.1(a) to (c); and
- (e) is provided only upon request.

4.2.2 The information referred to in Article 4.2.1 may include the name, address and telephone hotline of the manufacturer or distributor.

4.3 Information and education on other matters provided by manufacturers and distributors

4.3.1 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 other than breastfeeding and formula milk feeding, provided that –

- (a) the brand name, logo or trade mark of any formula milk and formula milk related product is not displayed on the materials or in the activities; and
- (b) such materials or activities are not associated with promotional practices not permitted under Article 5.

4.4 Information and education on infant and young child feeding and nutrition other than manufacturers and distributors

4.4.1 Informational and educational materials produced or distributed by parties other than manufacturers and distributors, whether written, audio or visual, which refer to infant and young child feeding and nutrition and are intended to reach the general public, pregnant women and/or mothers of children aged 36 months or below should –

- (a) contain only correct and current information and should not use any pictures or texts that encourage feeding by formula milk or discourage breastfeeding;
- (b) be written in Chinese and/or English (with or without other language(s));

Comment [SC7]:

UNICEF/WHO observations:

In allowing manufacturers and distributors to distribute educational materials or sponsor or perform educational functions on matters other than infant and young child feeding this article is going against Article 8.2 of the International Code which prohibits the performance of all educational functions in relation to pregnant women and mothers of infants and young children.

The International Code aims to prevent such personnel from having any contact whatsoever with pregnant women or mothers – see Article 5.5 of the International Code.

UNICEF/WHO recommendation:

Suggest to delete article 4.3.

Draft (Restricted)

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

- (c) not give an impression or create a belief that a designated product is equivalent to, comparable with or superior to breastmilk or breastfeeding;
- (d) not contain the brand name, logo or trade mark of formula milk and formula milk related product nor of the names of any manufacturer or distributor of formula milk and formula milk related product;
- (e) clearly and conspicuously explain the following matters, which are considered appropriate to the age of the infants and young children and the stage of feeding in discussion and the type of informational and educational materials made –
 - (i) where the materials are about breastfeeding –
 - (A) the benefits and superiority of breastfeeding;
 - (B) the value of exclusive breastfeeding for six months followed by sustained breastfeeding for two years or beyond;
 - (C) how to initiate and maintain exclusive and sustained breastfeeding;
 - (D) why it is difficult to reverse a decision not to breastfeed;
 - (E) the importance of introducing complementary food from the age of six months;
 - (F) how and why any introduction of bottle feeding or early introduction of complementary food negatively affects breastfeeding;
 - (ii) where the materials are on complementary feeding –
 - (A) the benefits and superiority of breastfeeding;
 - (B) the importance of introducing complementary food from the age of six months;
 - (C) how and why any introduction of bottle feeding or early introduction of complementary food negatively affects breastfeeding;

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- (D) that complementary food can easily be prepared at home using ordinary ingredients; and
- (iii) where the materials are on feeding by formula milk or the use of a feeding bottle –
 - (A) the benefits and superiority of breastfeeding;
 - (B) the value of exclusive breastfeeding for six months followed by sustained breastfeeding for two years or beyond;
 - (C) how to initiate and maintain exclusive and sustained breastfeeding;
 - (D) why it is difficult to reverse a decision not to breastfeed;
 - (E) instructions for the proper preparation and use of feeding bottle and teat, including cleaning and sterilisation of feeding utensils;
 - (F) the health risks of feeding by formula milk, feeding by using a feeding bottle and teat and improper preparation of feeding bottle and teat;
 - (G) explanations that powdered formula milk is not a sterile product and that to minimize the risks of serious illness, formula should be prepared one feed at a time using boiled water cooled to no less than 70°C* and that the reconstituted formula milk should be consumed within 2 hours after preparation and any unused milk must be discarded;
 - (H) the approximate financial cost of feeding an infant with feeding bottle and teat in the recommended quantities,except that all of the matters in paragraph (iii) (A) to (H) should be covered if the materials are about feeding of infants below 6 months of age.

* To achieve this temperature, the water should be left for no more than 30 minutes after boiling

Draft (Restricted)

Article 5 - Promotion to the Public

- 5.1 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 formula milk and formula milk related products.
- 5.2 A manufacturer or distributor may promote food products for infants and young children, 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); and
 - (c) does not promote formula milk or formula milk related products.
- 5.3 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf–
- (a) seek directly or indirectly personal details of infants, young children, pregnant women or mothers of children aged 36 months or below; or
 - (b) invite participation of infants, young children, pregnant women and mothers of children aged 36 months or below in activities including baby shows, mother craft activities for the purpose of promoting its products and its brand(s).
- 5.4 Promotional practices include but are not limited to –
- (a) advertising;
 - (b) using sales inducement devices such as special displays, discount coupons, premiums, rebates, special sales, loss-leaders, tie-in sales, prizes or gifts;
 - (c) giving one or more samples of formula milk or formula milk related products to any person;
 - (d) production and distribution of informational or educational materials on breastfeeding and formula milk feeding or

Comment [SC8]:

UNICEF/WHO observations:

Article 5.3(b) provides a loophole since companies can invite mothers to activities such as baby shows as long as these activities are not for the purposes of promoting its products and brands. However, all such activities are intended to promote a company and its brands (otherwise shareholders would not permit the expenses incurred in organizing such events). This provision also goes against article 5.5 of the International Code which forbids direct or indirect contact between company personnel and mothers of infants and young children.

UNICEF/WHO recommendation:

Suggest to reformulate as:

- (b) invite participation of infants, young children, pregnant women and mothers of children aged 36 months or below in activities including baby shows, mother craft activities.

Draft (Restricted)

Article 5 - Promotion to the Public

sponsoring such production and distribution, except as allowed under Articles 4.2.1, 4.2.2, and 4.4.1; and

- (e) performance or carrying out of educational functions or activities relating to breastfeeding and formula milk feeding or sponsoring such functions or activities.

5.5 Promotional practices do not include the following –

- (a) any establishment of pricing policies and practices intending to provide designated products at lower prices on a long-term basis;
- (b) provision of designated products or information or materials about designated products to health worker under Article 7.2; and
- (c) provision of funding or sponsorship to health worker or associations of health workers under Articles 7.3.2. and 7.3.3.

Draft (Restricted)

Article 6- Promotion in Health Care Facility

6.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf –

- (a) donate or provide at a price lower than the prescribed wholesale price, where one exists, or, in its absence, 80 percent of the retail price, any quantity of a designated product to a health worker or a health care facility;
- (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 refers to or may promote the use of a designated product; or
- (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.

Draft (Restricted)

Article 7 - Information and Promotion to Health Worker

7.1 Responsibilities of health worker

- 7.1.1 Health worker should encourage and protect breastfeeding and those who are concerned in particular with maternal and infant nutrition should make themselves familiar with their responsibilities under this Code, including the matters specified in Article 4.4.1 (e).
- 7.1.2 Health worker engaged in maternal and child health may demonstrate the use of infant formula to parents when it is considered necessary and, where demonstration is considered necessary, should give a clear explanation of the risks of the use of infant formula as well as the information specified in Article 4.4.1 (e)(iii) during the demonstration.

7.2 Product and product information for health worker

- 7.2.1 Manufacturers or distributors may provide designated product to health worker or health care facility only for the purpose of professional evaluation or research at the institutional level.
- 7.2.2 Notwithstanding Article 4, manufacturers or distributors may give any materials about designated product to health worker if such materials –
- (a) are restricted to scientific and factual matters regarding the technical aspects and methods of use of the product; or
 - (b) provide references to published peer-reviewed studies to support any representation or claim that states or suggests that a relationship exists between the product or constituent thereof and health, growth or development of infants and young children.

7.3 Sponsorship and benefit to health worker

- 7.3.1 A manufacturer or distributor should not himself or herself, or by any other person on his or her behalf offer or give any gift or benefit to a health worker or to associations of health workers engaged in maternal and child health, except as allowed under Articles 7.3.2 and 7.3.3.

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Article 7 - Information and Promotion to Health Worker

7.3.2 Subject to review, if any, to be carried out after this Code takes effect, a manufacturer or distributor should not himself or herself, or by any other person on his or her behalf offer health worker or associations of health workers funding for organizing or participating in continuing education activities related to maternal and child health, unless that the following requirements are satisfied –

- (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 matters;
- (b) the manufacturer and distributor exert no influence on the choice of sponsorship recipients and the associations to which sponsorship is provided have full autonomy to decide the recipients and the amount of sponsorship provided to each recipient;
- (c) the manufacturer and distributor require the following groups of persons participating in the continuing education activities to disclose any interest in or relationship with them by means of, except where otherwise specified, declaration in writing to the organisers and declaration in the printed materials for distribution to the participants in the continuing education activities –
 - (i) chairs of meetings;
 - (ii) speakers;
 - (iii) discussants (the disclosure may be made verbally, where appropriate); or
 - (iv) responsible persons or authors of programmes or articles published in the printed materials for distribution to the participants;
[Examples of interest or relationship which should be declared include: -
 - employment of the person himself or his close family members (including first degree relatives and spouse) by the manufacturer and distributor whose business is related to any topics to be discussed in the conference;

Comment [SC9]:

UNICEF/WHO observations:

In our opinion the requirements in Article 7.3.2 will not provide the protection needed to avoid conflict of interest.

We suggest a complete prohibition on sponsorship of health workers of any kind, in accordance with the policy of the International Pediatric Association whose 2005 Guidelines for Relationships with Industry state that:

“3. Donations will not be accepted from organisations or industries directly engaged in:

- Negative practises including:
 - Exploitation of children, including child labor
 - Violations of the International Code of Marketing of Breastmilk Substitutes
 - Unethical marketing practises
- Discriminatory business practices”

Draft (Restricted)

Article 7 - Information and Promotion to Health Worker

- receipt of any funding for research from the manufacturer and distributor;
 - receipt of any form of sponsorship from the manufacturer and distributor, e.g. contribution to registration / travel / accommodation expenses]
- (d) the manufacturer and distributor request the organizer to place acknowledgement of corporate sponsorship in printed materials and in backdrops for the continuing education activities with company names or logos but without the use of product names, brand names or trade marks;
- (e) commercial exhibits of designated product are prohibited;
- (f) exhibition stand of the manufacturer and distributor (of maximum size of 3m X 3m) is separated from the plenary and break-out rooms;
- (g) the manufacturer and distributor do not distribute inside the venue any gift, equipment, pen, calendar, poster, note pad, growth chart, toy or any other article or materials which may or may not promote or refer to the use of a designated product or donate such article or materials; and
- (h) refreshments provided by the manufacturer and distributor during delegate networking opportunities are not lavish.
- 7.3.3 Health workers and associations of health workers should only accept or receive research grants from manufacturers and distributors if, where the manufacturers and distributors have an interest in the subject matter of the research, the grants and any relationships, financial or not, with the manufacturers and distributors are disclosed in the printed materials publishing the result of the research.

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Article 8 - Labelling

8.1 Label of designated product

8.1.1 The label affixed to a designated product should not give an impression or create a belief that the product is equivalent to, comparable with or superior to breastmilk or breastfeeding.

8.2 Labelling requirements for formula milk

8.2.1 In addition to the relevant legal requirements on labelling stipulated in Regulations 4 and 4A of and Schedules 2 to 4 to the Food and Drugs (Composition and Labelling) Regulations, Cap. 132W, the container of formula milk or the label affixed thereto should satisfy the following requirements –

- (a) does not show any photograph, drawing or graphic representation other than for illustrating methods of preparation but may show one occurrence of either a company logo or a trade mark of the product;
- (b) does not contain any representation that states or suggests any health claim or nutrition claim, except those representations, health claims provided in Articles 8.5.2 to 8.5.3; and
- (c) indicates in a clear, conspicuous and legible manner the following particulars –
 - (i) instructions for appropriate preparation and use in words and / or in easily understood graphics;
 - (ii) the age for which the product is recommended in Arabic numerals and such age should not be less than 6 months in the case of follow-up formula;
 - (iii) a warning about the health risks of improper preparation and of introducing the product prior to the recommended age;
 - (iv) a declaration of the nutritive value following the standards below:-
 - (A) for infant formula: *Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants* (CODEX STAN 72-1981) ;

Comment [SC10]:

UNICEF/WHO observation:

Article 8.2.1 (a) allows the company to display the company trade mark or logo. This provides the company an opportunity to adopt or use trademarks or logos that may idealise the product. For example, in the USA, Nestle purchased the Gerber brands and now has the Gerber baby face trademark appearing on its infant formulas. In other instances, companies have trademarked symbols that are actually health claims.

UNICEF/WHO recommendation:

Suggest to rephrase as follows:

"(a) does not show any photograph, drawing or graphic representation other than for illustrating methods of preparation."

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Article 8 - Labelling

- (B) for follow-up formula: *Standard for Follow-up Formula* (CODEX STAN 156-1987);
- (v) the required storage conditions both before and after opening of the product, taking into account climatic conditions;
 - (vi) the batch number, date of manufacture and date before which the product is to be consumed, taking into account climatic and storage conditions;
 - (vii) the name and address of the manufacturer or distributor;
 - (viii) the weight of milk powder in one level scoop (for formula milk only);
 - (ix) where the product is an infant formula, a declaration that the product is made in accordance with the *Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants* (CODEX STAN 72-1981);
 - (x) where the product is a follow-up formula, a declaration that the nutritional composition standard(s) adopted are those of the Codex or other recognised international / national authorities;
- (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;
- (e) contains the word ‘Warning’ and indicates thereunder the following statement –
- (i) in the case of infant formula: “Before deciding to supplement or replace breastfeeding with this product, seek the advice of a health professional as to the necessity of its use. It is important for your baby’s health that you follow all preparation instructions carefully. If you use a feeding bottle,

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- your baby may refuse to feed from the breast.” of not less than 1.5 mm in height;
- (ii) in the case of follow-up formula: “Before deciding to supplement or replace breastfeeding with this product, seek the advice of a health professional as to the necessity of its use. It is important for your baby’s health that you follow all preparation instructions carefully.” of not less than 1.5 mm in height;
- (f) contains the following statements under the instructions for preparation of formula milk in powdered form, of not less than 1.5 mm in height –
- (i) “Powdered formula milk is not a sterile product and may become contaminated during preparation”;
 - (ii) “It is necessary for formula milk to be prepared one feed at a time using boiled water allowed to cool to no less than 70^oC*”; and
 - (iii) “Discard any feed that has not been consumed more than two hours after reconstitution”;
- (g) includes a feeding chart in the preparation instructions;
- (h) does not use the terms “maternalise”, “humanised” or terms similar thereto or contain any comparison with breastmilk;
- (i) does not use text that tends to discourage breastfeeding;
- (j) specifies the source of protein contained in formula milk; and
- (k) contains the information that infants should receive complementary food in addition to the formula milk from an age, as advised by an independent health worker, that is appropriate for their specific growth and development needs, and in any case from the age of over six months.

* To achieve this temperature, the water should be left for no more than 30 minutes after boiling

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Article 8 - Labelling

8.3 Labelling requirements for food products for infants and young children

8.3.1 In addition to the relevant legal requirements on labelling stipulated in Regulations 4 and 4A and Schedules 2 to 4 of the Food and Drugs (Composition and Labelling) Regulations, Cap. 132W, the container of food products for infants and young children or the label affixed to these products should satisfy the following requirements –

- (a) does not contain any representation that states or suggests any health claim or nutrition claim, except those provided in Articles 8.5.1 to 8.5.3;
- (b) indicates in a clear, conspicuous and legible manner the following particulars –
 - (i) the age for which the product is recommended in Arabic numerals and such age should not be less than 6 months;
 - (ii) the particulars in Article 8.2.1(c) (i), (iii), (v), (vi) and, (vii); and
 - (iii) a declaration of the nutritive value following the requirements under the relevant standards below-
 - (A) *Standard for Canned Baby Foods* (CODEX STAN 73-1981)
 - (B) *Standard for Processed Cereal-Based Foods for Infants and Young Children* (CODEX STAN 74-1981)
 - (C) *General Standard for the Labelling of and Claims for Prepackaged Foods for Special Dietary Uses* (CODEX STAN 146-1985).

8.4 Labelling requirements for formula milk related products

8.4.1 In addition to the relevant legal requirements stipulated in Toys and Children's Products Safety Ordinance (Cap 424) and the Consumer Goods Safety Ordinance (Cap. 456), the container or package of a formula milk related products or the label affixed thereto should –

- (a) satisfy the requirements in Articles 8.2.1 (a) and (b);

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Article 8 - Labelling

- (b) where the product is a feeding bottle or a teat, indicate in a clear, conspicuous and easily readable manner the following particulars –
- (i) the word “IMPORTANT NOTICE” in capital letters and indicated 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;
 - (ii) the statement “Warning: It is important for your baby’s health that you follow cleaning and sterilization instructions very carefully. If you use a feeding bottle, your baby may no longer want to feed from the breast” of not less than 2 mm in height;
 - (iii) instructions for cleaning and sterilization in words and graphics;
 - (iv) a warning that infants should not be left to self-feed at all and children should not be left to self-feed for long periods of time because extended contact with sweetened liquids, including formula milk, may cause severe tooth decay; and
 - (v) the name and address of the manufacturer or distributor.
- (c) where the product is a pacifier, bear the words “Warning: Use of a pacifier can interfere with breastfeeding” of not less than 1.5 mm in height.

8.5 Representations allowed to appear on the container or label

- 8.5.1 Nutrition claim should not appear on a designated product, except that a nutrition claim meeting the following conditions may be present on the container or labelling of food products for infants and young children, unless prohibited by existing law –
- (a) the claim is related to sodium, sugars, vitamins and minerals;

Comment [SC11]:

UNICEF/WHO observations:

The World Health Assembly stated clearly in 2010 in Resolution WHA63.23 that Governments should ensure that “nutrition and health claims shall not be permitted for foods for infants and young children, except where specifically provided for, in relevant Codex Alimentarius standards or national legislation;”.

UNICEF/WHO recommendation:

So far no nutrition and health claims are permitted under Codex Alimentarius, and so unless they are allowed in Hong Kong, they should be prohibited in this Code.

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Article 8 - Labelling

- (b) the claim is permitted by a recognised international / national authority;
- (c) the relevant claim condition(s) set by the concerned recognised international/ national authority is complied with; and
- (d) the absolute amount of the nutrient claimed either on labels or in advertisement of the designated product must be declared on the container or label.

8.5.2 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 follow-up formula and food products for infants and young children, unless prohibited by existing law –

- (a) the claim is permitted by recognised international/ national authority;
- (b) the claim must be based on current relevant scientific substantiation and the level of proof must be sufficient to substantiate the type of the effect claimed and the relationship with health as recognised by generally accepted scientific review of the data;
- (c) the relevant claim condition(s) and the exact claim statement set by the concerned recognised international/ national authority is complied with; and
- (d) the absolute amount of the nutrient claimed either on the labels or in the advertisement of the designated product must be declared on the container or label.

8.5.3 The following representations are allowed on the container or label of formula milk or food products for infants and young children –

Representations	Examples (non-exhaustive)
(a) Reference to any nutrient content of an ingredient required to be listed under the Food and Drugs (Composition and	▪ Ingredients on a package of biscuits: ... <i>low fat milk</i> ,... <i>iodised salt</i>

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Representations	Examples (non-exhaustive)
Labelling) Regulations, Cap. 132W	
(b) Quantitative or qualitative declaration of any substances specified in paragraph 2 of Schedule 3 to Food and Drugs (Composition and Labelling) Regulations, Cap. 132W	<ul style="list-style-type: none">▪ lactose free/ no lactose▪ gluten free/ no gluten▪ soy free/ no soy
(c) Declaration of non-addition or removal of ingredients	<ul style="list-style-type: none">▪ no added salt/ monosodium glutamate (MSG)/ unsalted▪ no added sugar/ unsweetened▪ non-addition of starch▪ no (partially) hydrogenated oil
(d) Quantitative declaration of energy or nutrients	<ul style="list-style-type: none">▪ 650 mg omega-3 per serving▪ 3 g total fat per 100 g▪ 50 mg vitamin C per package
(e) Descriptions or warning statements for young consumers with particular medical conditions and/or about religious and /or ritual preparations	<ul style="list-style-type: none">▪ for phenylketonuric children,... contains phenylalanine▪ for galactosemic children, ...galactose-free▪ Halal▪ Kosher

8.5.4 The representations permitted under Article 8.5.3(a), (c) and (d) should not place any special emphasis on the high content, low content, presence or absence of energy or a nutrient contained in the product.

8.5.5 Unless otherwise stipulated in Regulations 4 and 4A of and Schedules 2 to 4 to the *Food and Drugs (Composition and Labelling) Regulations, Cap. 132W*, the particulars required under Articles 8.2.1(c) to (k), 8.3.1(b), 8.4.1(b) and 8.4.1(c) should appear in both English and Chinese if both languages are used in the labelling or marking of the designated product.

8.6 Sale of designated products

8.6.1 A manufacturer or distributor should not offer for sale or sell any designated product if the designated product does not satisfy the labelling requirements provided under Article 8.

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Article 9 – Quality Standards

9.1 Quality standards of infant formula

9.1.1 A manufacturer or distributor should not offer for sale or sell infant formula unless the products are formulated industrially in accordance with: –

- (a) *Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants* (CODEX STAN 72-1981);
- (b) *General Standard for Food Additives* (CODEX STAN 192-1995); and
- (c) *Code of Hygienic Practice for Powdered Formulae for Infants and Young Children* (CAC/RCP 66-2008).

9.2 Quality standards of follow-up formula and food products for infants and young children

9.2.1 A manufacturer or distributor should not offer for sale or sell follow-up formula and food products for infants and young children unless the products are formulated industrially in accordance with: –

- (a) the relevant quality standard(s) established by Codex below:
 - (i) *Standard for Follow-up formula* (CODEX STAN 156-1987);
 - (ii) *Standard for Canned Baby Foods* (CODEX STAN 73-1981);
 - (iii) *Standard for Processed Cereal-Based Foods for Infants and Young Children* (CODEX STAN 74-1981);
 - (iv) *General Standard for Food Additives* (CODEX STAN 192-1995);
 - (v) *Code of Hygienic Practice for Powdered Formulae for Infants and Young Children* (CAC/RCP 66-2008);
 - (vi) *Guidelines for Formulated Supplementary Foods for Older Infants and Young Children* (CAC/GL 08-1991); or
- (b) any other relevant quality standard(s) on nutritional composition established by recognised international authorities or national authorities, provided that following

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Article 9 – Quality Standards

such standard(s) will not pose public health risk to the local population.

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Article 10 – Implementation and Monitoring

- 10.1 The manufacturers and distributors, and appropriate non-governmental organisations, professional groups, and consumer organisations should collaborate with the Government to monitor the application of this Code.
- 10.2 Independently of any other measures taken for implementation of this Code, manufacturers and distributors should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.
- 10.3 Non-governmental organisations, professional groups, institutions and individuals concerned should have the responsibility of drawing the attention of manufactures or distributors to activities which are incompatible with the principles and aim of this Code, so that appropriate action can be taken. The Government should also be informed of such activities.
- 10.4 The monitoring plan is illustrated at Annex I.

Comment [SC12]:

UNICEF/WHO observation:

Since we are advocating for a legally enforceable Hong Kong Code, Section 10 and Annex 1 will have to be adapted in order that there is an independent government mechanism in place to monitor compliance with the Code and identify the adjudicating body which hears cases of alleged violations, decides whether or not a violation has taken place and imposes sanctions. It seems that the government departments and procedures under the Regulations and Ordinances listed under Section 14 may provide a basis for the monitoring, implementation and enforcement of a legally enforceable Code.

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Annex I

**Monitoring Compliance of the
Hong Kong Code of Marketing and Quality of Formula Milk and
Related Products, and Food Products
for Infants & Young Children (the Code)**

The Monitoring System

1. A combination of active and passive approaches is adopted to monitor the compliance with the Code by manufacturers and distributors (M&Ds), with the Department of Health (DH) and the Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department (FEHD) working closely together.
2. An Advisory Panel (AP) (with a small membership drawn from the Taskforce and DH being the secretariat with professional support from FEHD) is set up to oversee the monitoring system. It will also be responsible for considering surveillance / survey reports from DH and FEHD and complaints from the public.

Surveillance and Regular Surveys

3. The active approach consists of surveillance and regular surveys to look for non-compliance.
4. DH will conduct regular survey to monitor the promotional activities of M&Ds including advertisements in the media, promotional activities at retail level, sales inducement devices, etc. DH may also carry out studies in collaboration with the Consumer Council or Non-governmental Organisations such as the Baby Friendly Hospital Initiative Hong Kong Association, or commission academic units to conduct studies with specific themes.
5. CFS is responsible for monitoring the labelling requirements and quality standards of formula milk and food products for infants and young children.

Receiving Complaints

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Annex I

6. The passive approach relies on receiving complaints from members of the public. The AP will be responsible for considering complaints from the public
7. To lodge a complaint, members of public will have to submit a complaint form, providing detailed information of the alleged non-compliance, including description of the marketing activities, place or location of the alleged non-compliance with, where appropriate, a copy of the concerned promotional material (e.g. a printed advertisement, a photo of an outdoor advertisement or website). Anonymous complaints will not be followed up.
8. If the complaint is considered to be falling within the scope of the Code, the M&Ds involved will be informed and given a chance to provide a written response within 21 calendar days.
9. FEHD will be responsible for investigating complaints related to labelling and quality of formula milk and food products for infants and young children.
10. The AP may make the following decisions on the complaints, based on information submitted by the complainant and the M&D and such other information as AP considers appropriate:-
 - (a) complaint substantiated, or
 - (b) complaint not substantiated
11. In the case of a substantiated complaint, the AP will issue an advisory letter to the M&D involved and its parent company to inform them of the result and to remind them of the requirements in the Code. If the complaint is not substantiated, the Secretariat will also inform the M&D of the result.
12. In the case of any suspicion of violations of existing laws, the AP will refer the matter to the relevant Government departments for investigation and follow-up actions including legal actions under the existing laws (see paragraph 14).
13. The AP will regularly publish reports on the number of advisory letters issued and the number of M&Ds involved. The names of M&Ds

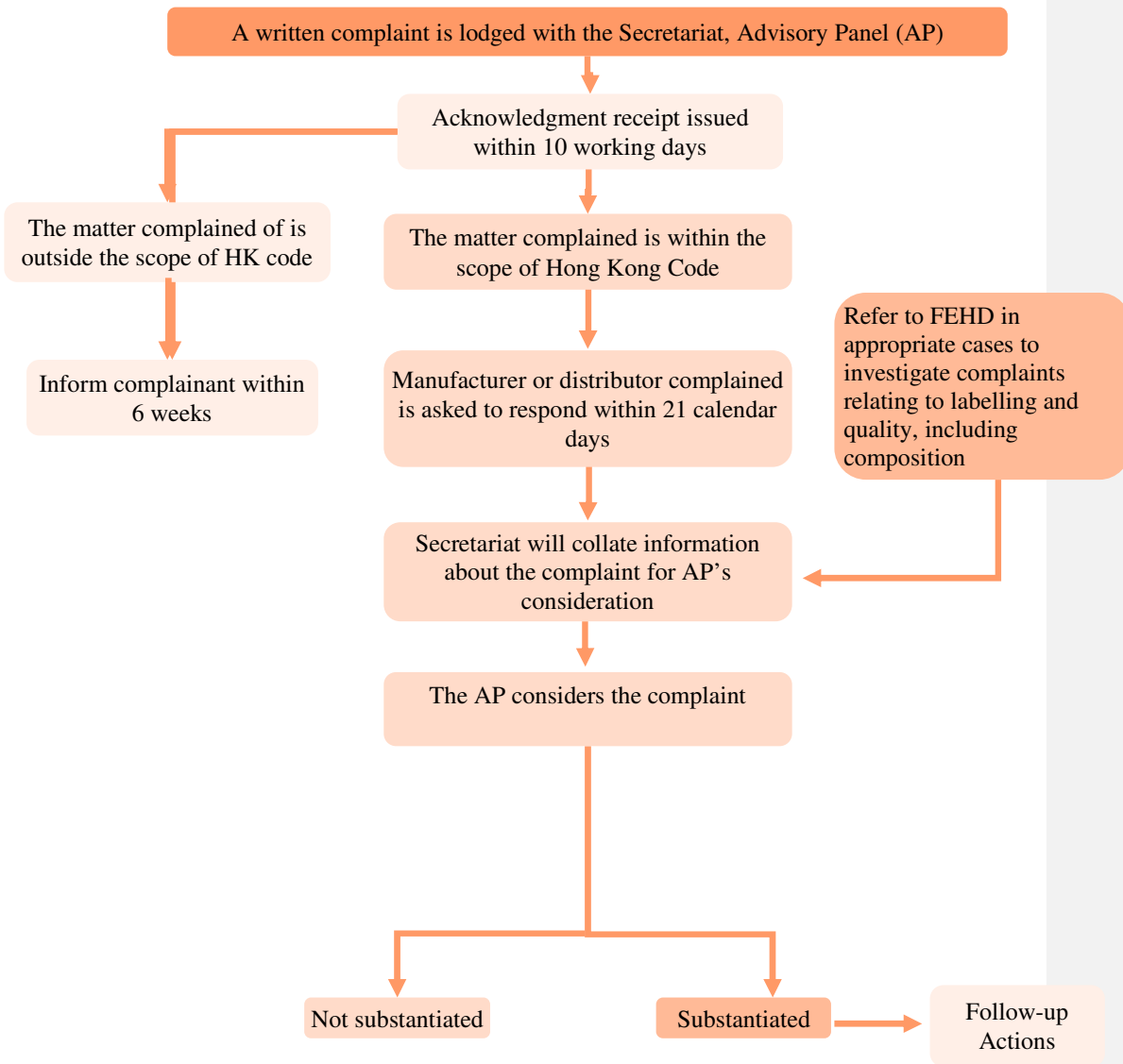
involved will be kept confidential.

Enforcement

14. The relevant Government departments will conduct investigations on suspected violations of the existing laws referred to them by the AP and carry out appropriate follow-up actions, including legal actions under the following statutes: –

- i. *Food and Drugs (Composition and Labelling) Regulations (Cap. 132W)* which regulates the labelling and composition of food
- ii. *Public Health and Municipal Services Ordinance - False labelling and advertisement of food or drugs (Cap.132 Section 61)* which prohibits label or advertisement that falsely describes a food or is calculated to mislead as to the nature, substance or quality of the food.
- iii. *Public Health and Municipal Services Ordinance - Offences in connection with the sale, etc. of unfit food or drugs (Cap. 132 Section 54)* which prohibits the sale of food unfit for human consumption
- iv. *Broadcasting Ordinance (Cap 562) - Generic Code of Practice on Television Advertising Standards - Truthful Presentation (Chapter 3 , para. 9)* which prohibits advertisement containing any descriptions, claims or illustrations which expressly or by implication depart from truth or mislead the public about the product or service advertised or about its suitability for the purpose recommended.

**Complaint Process for
The Hong Kong Code of Marketing and Quality of Formula
Milk and Related Products, Food Products for Infants and
Young Children**



COMPLAINT FORM

Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children

PERSONAL DETAILS

Name Organisation / position: Address Phone (home / office) (mobile) Fax

DETAILS OF COMPLAINT

Date Subject Company HK Code Quote the article of Hong Kong Code relevant to the complaint (you can access the code at <http://www.fhs.gov.hk>)Details Brief description of complaint (attach extra pages if necessary)

Marketing Item
 infant formula follow-up formula (up to 36 months) bottles, teats, pacifiers
 food products for children from 6 months to 36 months
 any other food product marketed as suitable for feeding infants up to the age of 6 monthMarketing Activities
 advertisement inducement (e.g. discount / premium) display
 samples brochure / booklet
 activities (e.g., baby shows, baby clubs)Location / Media
 media (e.g., TV / radio / magazine) retailer (e.g. department store / supermarket)
 medicine store / pharmacy clinics / hospitals
 health professional journalDetails of location / media
 Location / place where the material/s were seen:

Attachment Please attach a copy of the alleged promotional material, if any (e.g. a printed advertisement, a photo of an outdoor advertisement or materials on a website) with this complaint form.

Signature Date

Return this complaint form by post to: 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, Wan Chai, Hong Kong, by email: hkcode@dh.gov.hk, or by fax: Fax: (852) 2574 8977. We will issue acknowledgement of receipt within 10 working days upon receiving your complaint and thereafter assess your complaint and decide on the appropriate action (s). Thank you for taking time to help monitor the compliance of the HK Code by completing and sending this complaint form.