

## **CHAPTER 6**

**Environment and Ecology Bureau  
Food and Environmental Hygiene Department**

**Regulatory control of food premises**

**Audit Commission  
Hong Kong  
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*This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.*

Report No. 81 of the Director of Audit contains 8 Chapters which are available on our website (<https://www.aud.gov.hk>).



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# REGULATORY CONTROL OF FOOD PREMISES

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# REGULATORY CONTROL OF FOOD PREMISES

## Executive Summary

1. The Food and Environmental Hygiene Department (FEHD) is the licensing authority of food premises and exercises control through its licensing regime, inspections and enforcement actions in accordance with the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislations (hereinafter collectively referred to as the Ordinance unless otherwise specified). Under the Ordinance, premises are required to be licensed/permitted before operation of food businesses/sale of restricted foods (e.g. sushi and milk). As at 31 March 2023, there were 34,640 valid food business licences and 11,071 valid restricted food permits. The Environmental Hygiene Branch of FEHD is responsible for the licensing and regulatory control of food premises, under which the 3 Regional Licensing Offices (RLOs) are mainly responsible for processing applications for new food business licences and online sale of restricted food permits, and the 19 District Environmental Hygiene Offices (DEHOs) are mainly responsible for conducting inspections of licensed and unlicensed food premises and enforcing the Ordinance and processing applications for other restricted food permits, and renewal and transfer of licences/permits. In 2022-23, the expenditure of the FEHD offices responsible for the work in licensing and regulatory control of food premises, among other duties, amounted to about \$497 million.

2. In 2022, FEHD: (a) conducted 197,778 inspections to licensed/permitted food premises, instituted 3,152 prosecutions against licensed/permitted food premises, and 84 food business licences were suspended or cancelled; and (b) conducted 49,790 inspections to unlicensed food premises and instituted 4,013 prosecutions against unlicensed food premises. FEHD uses the Environmental Hygiene Statistical Information System (EHSIS) for maintaining information for its environmental hygiene services including licensing, and for prosecutions, and the Licensing Management Information System (LMIS) for facilitating the processing of applications and administration of food business licences/permits issued, and providing statistical reports. The Audit Commission (Audit) has recently conducted a review of the work of FEHD on the licensing and regulatory control of food

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premises. The findings are contained in this Audit Report and another one titled “Licensing of food premises” (Chapter 2 of the Director of Audit’s Report No. 81).

### Regulatory control of licensed and permitted food premises

3. ***Risk classification of some licensed food premises under Risk-based Inspection System (RBIS) not timely or properly conducted.*** FEHD conducts regular inspections to licensed/permitted food premises to ensure that licence/permit holders comply with the licensing requirements and conditions as well as the law. FEHD adopts RBIS for conducting inspections to licensed food premises. Under RBIS, the frequencies of inspections are determined by the risk potential of individual food premises. According to FEHD guidelines, the risk type of a food premises is classified according to a host of food safety and hygiene risk factors (with scores assigned), and the risk types of licensed food premises are subject to annual review in every December (paras. 2.2, 2.3 and 2.6). Audit noted the following issues:

- (a) ***Risk types of some food premises incorrectly classified.*** Audit examined three DEHOs’ records (January 2022 to June 2023) for risk classification of 6 licensed food premises with conviction of food safety and hygiene related offences under the Ordinance. For the annual review for 2023, the conviction records/appropriate risk levels of all 6 food premises were not taken into account in the score calculations as required. As a result, the scores of the 6 food premises were incorrectly computed, of which 3 (50%) food premises were incorrectly classified at a lower risk level with longer inspection interval adopted (para. 2.7); and
- (b) ***Annual review of risk types of some food premises not timely conducted.*** According to FEHD guidelines, DEHO staff are required to update and approve the score records of the licensed food premises in LMIS on or before 31 December every year. Of the 34,440 food business licences under RBIS as at 31 December 2022, the records of annual review for 14,611 (42%) licences were only approved on or after 1 January 2023, with delays ranging from 1 day to about 7 months (averaging 22 days) (para. 2.8).

4. ***Room for improvement for first inspections and test buying.*** According to FEHD, DEHOs conduct first inspections to newly licensed food premises. Audit examined three DEHOs’ records of first inspections (January 2022 to July 2023) and



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noted that for 8 newly licensed food premises, there were delays in conducting the first inspections for 3 (38%) food premises (ranging from 1 to 2 working days). For 6 food premises with online sale of restricted food permits newly issued, there were delays in conducting the first inspections for 4 (67%) food premises (ranging from 3 to 126 days, averaging 49 days) and in conducting the first test buying for 3 (50%) food premises (ranging from 41 to 55 days, averaging 46 days) (para. 2.13).

5. ***Room for improvement for routine inspections and regular test buying.*** According to FEHD guidelines, DEHOs conduct routine inspections to licensed/permitted food premises and regular test buying of restricted foods online at specified intervals. Audit examined three DEHOs' records (January 2022 to June 2023) for 50 food premises (paras. 2.15, 2.16, 2.19, 2.20 and 2.21) and noted the following issues:

- (a) ***Scope for improving routine inspections to licensed food premises under RBIS.*** For 30 licensed food premises (involving 147 routine inspections), there were delays in conducting 46 (31%) inspections (ranging from 1 to 49 days, averaging 8 days). For 28 (19%) inspections (involving 12 food premises), the food premises concerned were found closed at the time of inspections, but there were no guidelines on whether unsuccessful inspections could be counted as inspections conducted and whether follow-up actions would be required (para. 2.16);
- (b) ***Delays in conducting routine inspections to some permitted food premises.*** For 10 permitted food premises (involving 36 routine inspections), there were delays in conducting 7 (19%) inspections (ranging from 1 to 22 days, averaging 10 days) (para. 2.19); and
- (c) ***Scope for improving routine inspections, supervisory checks and regular test buying for permitted food premises engaging in online sale of restricted foods.*** For 10 permitted food premises engaging in online sale of restricted foods (involving 30 routine inspections): (i) there were delays in conducting 5 (17%) routine inspections (ranging from 20 to 109 days, averaging 48 days); (ii) supervisory checks were not conducted for 7 (70%) food premises; and (iii) only 1 test buying was conducted (instead of 2 as required under the guidelines) for 3 (30%) food premises. According to FEHD, the non-compliances were mainly caused by special work arrangements during the coronavirus disease (COVID-19) epidemic, and

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special manpower deployment to handle Anti-epidemic Fund-related work (paras. 2.20 and 2.22).

6. ***Some licensed food premises operating unlicensed food business.*** Audit noted that there were public concerns about some food premises operating without proper food business licences. While factory canteens are not allowed to serve members of the public and food factories are not allowed to serve customers for consumption of food on the premises, Audit's research (based on information of popular restaurant finder websites/mobile applications) found that the public could dine at 10 food premises selected for audit examination and FEHD had not identified such irregularities during routine inspections (January 2022 to June 2023) of the food premises concerned. According to FEHD, besides routine inspections, it would deploy different tactics (e.g. agent provocateur operations) to tackle the problem. In Audit's view, as the checking of such irregularities was a requirement under routine inspections, FEHD needs to consider reviewing the measures in detecting licensed food premises operating unlicensed food business (e.g. factory canteens or food factories operating as restaurants) and take follow-up actions as appropriate (paras. 2.25 to 2.28).

7. ***Need to rationalise timeframe for following up critical or serious violations identified during inspections.*** The inspection report of food premises contains a list of inspection items which has been pre-assigned with a fixed-score each (ranging from 3 to 15 point-score). According to FEHD guidelines, irregularities with 7 point-score or above were considered critical or serious violations. Audit noted that there were inconsistencies between FEHD guidelines and the inspection report regarding the timeframes for following up the irregularities with 7 point-score or above (para. 2.29).

8. ***Scope for reviewing Demerit Points System (DPS) and Warning Letter System (WLS).*** FEHD operates DPS, under which a pre-determined number of demerit points will be registered against a licensee/permittee upon conviction of an offence in relation to food safety and environmental hygiene under the Ordinance, and a licence/permit may be suspended or cancelled if sufficient number of points are accumulated. In addition, FEHD has implemented WLS, under which verbal and written warnings may be issued against food premises in breach of licensing requirements or conditions, and a licence/permit may be cancelled if sufficient number of warning letters are accumulated and/or breach of licensing requirements or

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conditions persists (para. 1.13). Audit noted scope for reviewing DPS and WLS, as follows:

- (a) **DPS.** Under DPS, the prescribed demerit points for a particular offence will be doubled and trebled respectively if the same offence is committed for the second and the third time within a period of 12 months. On the other hand, after each suspension, the points pertaining to that suspension will be cancelled and the counting of prescribed demerit points for a particular offence should start afresh. Accordingly, the prescribed demerit points for a particular offence might not be doubled or trebled even if the same offence had been committed for the second or the third time respectively within a period of 12 months, and licensees/permittees with lower or higher demerit points might be imposed the same sanction (paras. 2.34 and 2.44); and
  - (b) **WLS.** Under WLS, while licences/permits might be cancelled if sufficient number of warning letters had been accumulated and there were further breaches of licensing requirements and conditions, suspension of licence/permit was not an available sanction. Furthermore, management information on warnings (e.g. the number of warnings issued) for reviewing the implementation of WLS was not readily available (para. 2.45).
9. ***Need to improve reporting of inspection numbers.*** FEHD reports the number of “inspections to food premises” in its Controlling Officer’s Report (COR) as one of the performance indicators. While FEHD conducted various types of inspections to licensed/permitted food premises (e.g. routine inspections and supervisory inspections), there was no central register for maintaining the details of the inspections and the breakdown of the numbers of inspections by type was not readily available. According to FEHD guidelines, a standard “monthly record of inspections to food premises” (for recording information including the total number of inspections conducted on each day with breakdown by types of food premises and inspections) should be completed by each Health Inspector and the consolidated inspection figures of the respective districts would be input into EHSIS. However, the standard monthly records (January 2022 to June 2023) of three DEHOs examined were not available for audit examination (para. 2.56).

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10. *Need to improve reporting of achievement of performance pledge on inspections to licensed food premises.* FEHD publishes a performance pledge “to inspect licensed food premises in accordance with the risk types of the premises” on its website, with a target of 95%. According to FEHD, the target was met from 2018 to 2022 annually, and the actual performance was calculated based on the total number of inspections actually conducted as a percentage of that to be conducted by all 19 DEHOs. Audit examined the relevant records and noted that: (a) under the current reporting approach, while the performance target had been achieved on an overall basis, the under-performance of some DEHOs could not be reflected; (b) for a DEHO, the number of inspections to be conducted was reported as nil in the period from 2018 to 2021; and (c) as of September 2023, the supporting documents for reporting the number of inspections to be conducted and the number of inspections actually conducted were not available for audit examination (para. 2.57).

11. *Need to improve reporting of the number of licence suspension and cancellation.* FEHD reports the number of “food business licences suspended/cancelled” in its COR as one of the performance indicators. According to FEHD, the particulars of licence suspension and cancellation are recorded in LMIS, which will be shared with EHSIS for reporting in COR. Audit noted that there were discrepancies (ranging from 8% to 26%) between the relevant records in LMIS and EHSIS in the period from 2018 to 2022, and the cases not recorded in EHSIS were also omitted from COR (para. 2.59).

### Regulatory control of unlicensed food premises

12. *Need to review practice in identifying unlicensed food premises.* According to the Ordinance, no person shall carry on a food business without a licence/permit granted by FEHD (hereinafter the term “unlicensed food premises” also refers to food premises operating without permits, and the term “licence” also refers to “permit” when the subject matter is relating to unlicensed food premises). According to FEHD, DEHOs identify unlicensed food premises from various sources, for example, referrals from RLOs in respect of new applications for food business licences and online sale of restricted food permits, and complaints made by the public. Audit examined the records of three DEHOs and noted that most of the unlicensed food premises identified were referred by RLOs. In September 2023, Audit selected 35 food premises which had been operating for at least one year using a risk-based approach. Audit found that while 13 (37%) of 35 food premises were unlicensed based on LMIS records as of October 2023, 9 of them were not included in DEHOs’ lists for taking follow-up actions (paras. 3.2, 3.4 and 3.5).

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13. ***Need to ensure that a consistent basis is adopted by all DEHOs in preparing the District Action Plans (DAPs) and inputting data in EHSIS.*** According to FEHD, DAP is a comprehensive list of all unlicensed food premises identified with active operation (i.e. unlicensed food premises with prosecution actions taken) in the district. The total number of unlicensed food premises reported in EHSIS shall tally with that reported in DAPs. Audit noted discrepancies between the numbers of unlicensed food premises reported in DAPs and EHSIS between January 2022 and June 2023 by three DEHOs. Furthermore, all cases referred by RLOs (not only those identified with active operation) had been included in DAPs and EHSIS prepared by two DEHOs, but not by one DEHO (paras. 3.9 and 3.10).

14. ***Need to maintain list of unlicensed food premises under surveillance.*** DEHOs conduct weekly visits to all unlicensed food premises upon identification, regardless of whether they are with active operation (e.g. those under applications for food business licences/permits but without prosecution actions taken). While unlicensed food premises with active operation should be included in DAPs, there was no requirement for DEHOs to maintain a full list of unlicensed food premises in the district under surveillance (e.g. for conducting weekly visits) in FEHD guidelines (para. 3.14).

15. ***Room for improvement in reporting unlicensed food premises in EHSIS.*** DEHOs input the data on unlicensed food premises in EHSIS based on various sources (e.g. records of prosecutions and summary arrest operations). However, the three DEHOs could not provide the relevant supporting documentation for audit examination. Furthermore, Audit found that in three EHSIS reports prepared between January 2022 and April 2023 by two DEHOs, three unlicensed food premises in each district which were not in operation in the respective calendar month were misclassified as “in operation” (para. 3.16).

16. ***Need to ensure that inspections are conducted timely.*** According to FEHD, DEHOs will conduct first inspections within a specified timeframe from the dates of referrals from RLOs (see para. 12), conduct weekly inspections to unlicensed food premises upon identification, and document the reasons for deviations. Audit selected 30 cases of unlicensed food premises (all were referred by RLOs) identified between January 2021 and April 2023 for examination and found that the concerned DEHOs did not conduct the first inspections within the specified timeframe (i.e. the longest time lapse was 17 days from the date of referral) in 9 (30%) cases, the intervals between inspections were more than a week (ranging from 12 to 70 days, averaging

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24 days) on 26 occasions for 1,190 inspections conducted between January 2021 and August 2023, and the reasons for the above deviations were not documented (paras. 3.19 and 3.20).

17. ***Need to ensure compliance with requirements for using and checking official notebooks.*** According to FEHD guidelines, Health Inspectors shall record in official notebooks the details of all inspections, and Senior Health Inspectors shall conduct random checks on the official notebooks and sign the notebooks after checking on a monthly basis. Audit examined all official notebooks used by the Health Inspectors of three DEHOs in 2022 and noted that some Health Inspectors had not used the official notebooks in some months while they should have conducted inspections in the months. Furthermore, there was no evidence of checking of the official notebooks by some Senior Health Inspectors in some months (paras. 3.22 and 3.24).

18. ***Need to ensure that standard inspection forms are used and checked.*** According to FEHD guidelines, Health Inspectors shall record key inspection information in a standard inspection form, separate inspection forms shall be used for each inspection, and the inspection forms shall be submitted to Senior Health Inspectors for timely review. Audit selected 30 cases of unlicensed food premises identified between January 2021 and April 2023 and examined the relevant records of 1,190 inspections conducted between January 2021 and August 2023. Audit noted that standard inspection forms were not used in 80 (7%) inspections, separate inspection forms were not used in 353 (30%) inspections, and long time was taken for the Senior Health Inspectors to review the inspection forms (the time elapsed between the form preparation dates and the sign dates ranged from 0 to 253 days) (paras. 3.25 and 3.26).

19. ***Room for improvement in administering summary arrest operations.*** Audit examined the records relating to summary arrest operations prepared by DEHOs (i.e. operations to arrest the persons operating the unlicensed food premises in raid) and noted that:

- (a) the average success rates of summary arrest operations (i.e. the number of persons arrested as a percentage of the number of summary arrest operations conducted) decreased from 50% in 2018 to 35% in 2022. Furthermore, the success rates varied among the 19 DEHOs. In 2022, the

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success rates of 6 DEHOs were 0% (2 to 42 summary arrest operations were conducted by each DEHO) and that of other 6 were 100% (1 to 12 summary arrest operations were conducted by each DEHO); and

- (b) FEHD has set out in its guidelines the criteria for including an unlicensed food premises in the list of targets for summary arrest operations. Of 25 unlicensed food premises included in DAPs prepared by three DEHOs for January to April 2023, 12 unlicensed food premises meeting at least one of the criteria have not been included in the lists, and the justifications for not conducting the summary arrest operations were not documented for 7 of the 12 unlicensed food premises (paras. 3.29 and 3.31).

### Other related issues

20. *Need to keep under review implementation of trial scheme for regulating waste disposal arrangement of food premises.* To improve the environmental hygiene and address rodent infestation problem of rear lanes, in November 2022, FEHD launched a trial scheme allowing licensed/permitted food premises to place large-size waste containers in their connected rear lanes under specific conditions for temporary storage of waste until collection by the cleaning workers. As of June 2023, 26 rear lanes in 18 DEHOs (i.e. excluding the Islands District) were covered by the scheme. Audit noted that: (a) the number of target rear lanes covered by the scheme varied among the 18 DEHOs (i.e. 1 rear lane each for 16 DEHOs, 4 rear lanes for a DEHO and 6 rear lanes for the remaining DEHO); (b) 73% of the licensed/permitted food premises located along the 26 rear lanes which were in operation participated in the scheme (the participation rates ranged from 18% to 100% for each rear lane); and (c) for 8 rear lanes visited by Audit in August 2023, there were incidents of non-compliance with rules of the scheme (e.g. wastes were placed outside waste containers) (paras. 4.3, 4.4 and 4.7).

21. *Need to keep under review measures in addressing pet's entrance to food premises.* The Food Business Regulation (Cap. 132X) prohibits the presence of live animal or live birds in food rooms and the presence of dogs on food premises. Audit noted: (a) the increasing number of pet-friendly restaurants; (b) the increasing number of complaints against bringing dogs onto food premises from 2018 to 2023 (up to June); (c) for 12 pet-friendly restaurants (with information in the social media networks showing the presence of dogs on the premises) examined by Audit, while no pet's presence was reported in DEHOs' inspection reports of January to June 2023

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(all inspections were carried out on weekdays during office hours), Audit's site visits to 3 of the 12 restaurants on a weekend in September 2023 found the presence of dogs in 2 restaurants; and (d) while legislations in some cities in the Mainland/overseas countries prohibited the presence of dogs on food premises in general, restricted entry of dogs might be allowed under specific conditions or for specific food business licence type (paras. 4.9 and 4.10).

22. ***Maintenance of prosecution records.*** FEHD arranges for issue of summonses on the related food business operators for contravention of the public health laws. FEHD uses a computer system, namely the Summons Tracking Facility (STF), to record information on prosecution actions taken against food premises, among others (para. 4.15). Audit noted the following issues:

- (a) ***Need to ensure that required information is recorded in STF for cases without prosecution.*** According to FEHD guidelines, if a prosecution is not proceeded for a case (i.e. case without prosecution), relevant officers shall record the reasons, the date of approval and the approving officer in STF. Audit noted that in 2018 to 2022, in 254 (61%) of 417 cases without prosecution, the reasons, the approval dates and the approving officers were not recorded in STF (para. 4.17);
- (b) ***Need to ensure accuracy of STF records.*** Audit noted that prosecutions of 3 cases were not proceeded because they were time-barred (i.e. the six-month time limit for laying of information before the court was exceeded). Upon enquiry, FEHD informed Audit in August and September 2023 that the case officer had incorrectly recorded the reason for not proceeding with prosecution as time-barred in one case. For the remaining two cases, the case officers incorrectly recorded the offence dates in STF and therefore the time-barred dates were incorrectly indicated in the system. When the cases were passed to other officers for applying for summonses, it was noted that the cases had already been time-barred (para. 4.19); and
- (c) ***Need to maintain proper supporting documentation for number of prosecutions reported in COR.*** FEHD reports the number of prosecutions against licensed and unlicensed food premises as indicators in its COR. According to FEHD, the figures reported in COR in a year are based on the number of prosecution records created in STF. Audit analysis of the prosecution records created in STF (based on the licence numbers recorded)



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and the prosecution numbers reported in COR in 2018 to 2022 found discrepancies. FEHD informed Audit in August and September 2023 that the supporting documentation for the number of prosecutions reported in COR was not available, and the classification of licensed or unlicensed food premises based on the licence number recorded in STF contributed to the discrepancies as licence number was not a mandatory field to input in the system (paras. 4.20 and 4.21).

23. ***Implementation of LMIS enhancement projects.*** FEHD has launched two enhancement projects to improve LMIS, one for improving operational efficiency in the food business licensing process (i.e. LMIS 2) and another for providing electronic platforms for facilitating its work on the regulatory control of licensed/permitted food premises (i.e. LMIS 3) (paras. 1.15, 4.33 and 4.35). Audit noted the following issues:

- (a) ***Need to learn from the experience of LMIS 2 project.*** With reference to FEHD's project management plan endorsed in June 2019 for LMIS 2 project, Audit noted that there were delays at various development stages of LMIS 2 (ranging from 14 to 28 months). FEHD informed Audit in August and September 2023 that the delays were mainly due to the outbreak of the COVID-19 epidemic between 2020 and 2022. During the period, some project team members and relating FEHD officers were deployed to support other anti-epidemic projects (e.g. the Anti-epidemic Fund) and the planning of LMIS 3 (paras. 4.33 and 4.34); and
- (b) ***Need to closely monitor the implementation of LMIS 3 project.*** LMIS 3 project was planned to commence in the second quarter of 2020-21 with a project estimate of \$9.8 million. Audit noted that in June 2023, the project management plan was endorsed by FEHD's project steering committee for LMIS 3 project with a revised project estimate of \$18.1 million. FEHD informed Audit in August 2023 that the delay in project commencement was due to the outbreak of the COVID-19 epidemic (see (a) above), and the increase in estimated expenditure for the development of the system was due to revised requirements (e.g. adopting a revised implementation approach by outsourcing the development of electronic inspection functions) (para. 4.36).

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### Audit recommendations

24. Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Food and Environmental Hygiene should:

#### *Regulatory control of licensed and permitted food premises*

- (a) take measures to ensure that the annual review and update of risk classification of licensed food premises under RBIS are timely and properly conducted in accordance with FEHD guidelines (para. 2.31(a));
- (b) take measures to ensure that first and routine inspections to licensed/permitted food premises are conducted in accordance with the timeframes and frequencies specified in FEHD guidelines, and enhance FEHD guidelines on unsuccessful routine inspections (para. 2.31(c) and (f));
- (c) take measures to ensure that first and regular test buying of restricted foods online and supervisory checks of permitted food premises engaging in online sale of restricted foods are conducted in accordance with the timeframes and frequencies specified in FEHD guidelines (para. 2.31(d));
- (d) consider reviewing the measures in detecting licensed food premises operating unlicensed food business (e.g. factory canteens or food factories operating as restaurants) and take follow-up actions as appropriate (para. 2.31(i));
- (e) rationalise the timeframe for follow-up actions on critical or serious violations identified during inspections of food premises (para. 2.31(j));
- (f) review the mechanism of suspension and cancellation of food business licences under DPS with a view to enhancing the deterrent effect, particularly for repeated offenders (para. 2.46(d));

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- (g) **compile management information for reviewing the implementation of WLS with a view to identifying room for improvement (para. 2.46(e));**
- (h) **take measures to ensure that monthly records of inspections to food premises are maintained by DEHOs in accordance with FEHD guidelines (para. 2.64(a));**
- (i) **consider reviewing the reporting basis for the performance pledge for inspections to licensed food premises, and take measures to ensure the accuracy and completeness in reporting the achievement of the performance pledge (para. 2.64(b) and (c));**
- (j) **take measures to ensure the accuracy and completeness of the number of food business licences suspended/cancelled reported in FEHD's COR (para. 2.64(e));**

### *Regulatory control of unlicensed food premises*

- (k) **consider reviewing FEHD's practice in identifying unlicensed food premises and take follow-up actions as appropriate (para. 3.7(a));**
- (l) **take measures to ensure that a consistent basis is adopted by all DEHOs in preparing DAPs and inputting data in EHSIS (para. 3.17(a));**
- (m) **consider requiring DEHOs to maintain a full list of unlicensed food premises under their surveillance to facilitate monitoring, enhance surveillance capability and resources planning (para. 3.17(c));**
- (n) **maintain supporting documentation for the data in EHSIS to facilitate checking, and take measures to ensure that unlicensed food premises are accurately classified and reported in EHSIS (para. 3.17(e));**
- (o) **take measures to ensure that inspections are conducted to unlicensed food premises in accordance with the required timeframe/frequency and the reasons for deviations are documented as required (para. 3.27(a));**

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- (p) **take measures to ensure that Health Inspectors and Senior Health Inspectors of all DEHOs comply with the requirements stipulated in FEHD guidelines for using and checking official notebooks respectively (para. 3.27(c) and (d));**
- (q) **take measures to ensure that standard inspection forms are used properly to record details of inspections of unlicensed food premises as required, and the inspections forms are submitted to and reviewed by the Senior Health Inspectors timely (para. 3.27(e));**
- (r) **review the practices of different DEHOs in conducting summary arrest operations with a view to improving the arrangements of the operations (para. 3.36(a));**
- (s) **take measures to ensure that summary arrest operations are conducted in accordance with FEHD guidelines and justifications are documented for not doing so (para. 3.36(d));**

### *Other related issues*

- (t) **keep under review the implementation of the trial scheme for regulating waste disposal arrangement of food premises and take measures to improve the scheme as appropriate, and step up the monitoring of compliance with requirements of the trial scheme and take enforcement actions as appropriate (para. 4.13(a) and (b));**
- (u) **enhance publicity and public awareness of the restrictions over pet's entrance to food premises under the law, review the practice in conducting inspections to pet-friendly restaurants and keep under review the need for reviewing the relevant law on pet's entrance to food premises (para. 4.13(c) to (e));**
- (v) **take measures to ensure that the information on the reasons and approval details are recorded in STF in accordance with FEHD guidelines for cases without prosecution (para. 4.22(b));**

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- (w) **take measures to ensure the accuracy of STF records, in particular the offence date, to prevent recurrence of similar time-barred incidents (para. 4.22(d));**
- (x) **take measures to ensure that documentation is maintained to support the number of prosecutions reported in COR (para. 4.22(e));**
- (y) **closely monitor the implementation of LMIS 3 project (para. 4.37(a));  
and**
- (z) **learn from the experience of LMIS projects in implementing other information technology projects in future (para. 4.37(b)).**

### **Response from the Government**

25. The Director of Food and Environmental Hygiene generally agrees with the audit recommendations.



## **PART 1: INTRODUCTION**

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

### ***Background***

1.2 The Food and Environmental Hygiene Department (FEHD) is responsible for safeguarding public health. One of its core duties is the licensing and regulatory control of food premises. FEHD is the licensing authority of food premises and exercises control through its licensing regime, inspections and enforcement actions in accordance with the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislations (Note 1) (hereinafter collectively referred to as the Ordinance unless otherwise specified). The objective is to ensure that licensees of food premises comply with the licensing conditions, and food safety and environmental hygiene provisions of the Ordinance.

### ***Food business licences and permits***

1.3 ***Food business licences.*** Under the Ordinance, premises used as food premises (Note 2) are required to be licensed before operation of food businesses. Licences are only issued to food premises if they conform to the prescribed safety and hygiene standards laid down by the law, and comply with the government lease conditions, statutory plan restrictions and relevant licensing requirements. Food businesses that are required to be licensed are classified into the following types:

- (a) restaurants involving the sale of meals or non-bottled non-alcoholic drinks (other than Chinese herb tea) for consumption on the premises. They can be further categorised as:

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**Note 1:** *Examples of subsidiary legislations of the Public Health and Municipal Services Ordinance are the Food Business Regulation (Cap. 132X), the Frozen Confections Regulation (Cap. 132AC), the Milk Regulation (Cap. 132AQ) and the Preservatives in Food Regulation (Cap. 132BD).*

**Note 2:** *According to the Food Business Regulation, a food premises means any premises on or from which food business is carried on.*

## **Introduction**

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- (i) general restaurant which is allowed to use any kind of cooking method for food preparation;
  - (ii) light refreshment restaurant which is only allowed to use simple cooking methods (e.g. boiling, stewing, steaming, braising, simple frying) for food preparation; and
  - (iii) marine restaurant for operating the restaurant business on board a vessel;
- (b) bakery involving baking of bread and other bakery products for sale;
  - (c) cold store involving the storage of articles of food under refrigeration in any warehouse;
  - (d) factory canteen involving the sale or supply of meals or non-bottled non-alcoholic drinks (other than Chinese herb tea) for consumption on the premises by persons employed in any factory in the same factory building;
  - (e) food factory involving the preparation of food for sale for human consumption off the premises, such as preparing canned/bottled food or drinks, or operating a take-away food shop;
  - (f) temporary food factory involving the operation of a stall/kiosk of temporary nature for heating up/cooking and sale of pre-prepared food for consumption off the premises in conjunction with a public function of short duration (e.g. exhibition or concert);
  - (g) fresh provision shop involving the sale of fresh, chilled or frozen beef, mutton, pork, reptiles, fish or poultry;
  - (h) frozen confection factory involving the manufacture of any frozen confection (e.g. soft ice-cream);
  - (i) milk factory involving the processing or reconstitution of milk or any milk beverage;



- (j) siu mei and lo mei shop involving the sale by retail of siu mei or lo mei; and
- (k) composite food shop covering the sale and preparation for sale of various specified types of simple or ready-to-eat foods that do not involve complicated preparation (e.g. coffee/tea, sandwich and frozen confections).

According to the Food Business Regulation, the validity period of a licence for temporary food factory (see (f) above) is 7 days or less, and the validity period of a full licence for the remaining types of food businesses is 12 months.

1.4 ***Provisional food business licences.*** To facilitate the setting up of food businesses, FEHD operates a provisional licensing system in which a provisional food business licence is issued to premises that have satisfied all essential health, ventilation, building and fire safety requirements. A provisional food business licence is valid for 6 months, during which time the licensee has to complete all outstanding requirements for the issue of a full licence.

1.5 ***Restricted food permits.*** FEHD issues permits for sale of restricted foods (including online sale — Note 3) under the Food Business Regulation. Examples of restricted foods include non-bottled drinks, frozen confections, milk and milk beverages, sushi and sashimi, and food sold by means of vending machines. The validity period of a restricted food permit is 12 months.

1.6 ***Renewal and transfer.*** Licensees and permittees can submit applications to FEHD for renewal and transfer of the licences and permits upon fulfilling certain conditions (e.g. compliance with fire safety requirements for restaurant licences and factory canteen licences).

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**Note 3:** *The Restricted Food Permit (Online Sale of Restricted Food) enables online sale of restricted foods (e.g. prepackaged fresh, chilled, frozen or deep frozen meat or fish) through the Internet by an operator obtaining food from approved suppliers if there is neither handling (e.g. cutting up, slicing, packing or wrapping) nor storage of the foods for sale at the business premises. For food premises granted with specified food business licences or permits, the operators must comply with relevant licensing conditions if they also carry out online sale of food items permitted. No separate applications for the Restricted Food Permit (Online Sale of Restricted Food) regarding the permitted food items are required.*

## Introduction

1.7 As at 31 March 2023, there were 34,640 valid food business licences and 11,071 valid restricted food permits. Tables 1 and 2 show the number of valid food business licences and restricted food permits as at 31 December in the period from 2018 to 2022 respectively.

**Table 1**  
**Number of valid food business licences**  
**(as at 31 December)**

Licence	2018	2019	2020	2021	2022
	(Number)				
<b><i>Full licence (Note 1)</i></b>					
General restaurant	11,173	11,448	11,799	12,037	12,630
Light refreshment restaurant	3,820	3,927	4,059	4,106	4,280
Marine restaurant	5	5	5	5	6
Food factory	7,671	8,275	8,898	9,668	10,666
Fresh provision shop	2,468	2,557	2,717	2,984	3,243
Bakery	578	575	573	546	529
Factory canteen	479	481	489	487	485
Frozen confection factory	490	504	514	482	457
Siu mei and lo mei shop	356	366	384	403	429
Cold store	57	63	65	68	79
Milk factory	8	8	8	8	8
Composite food shop	3	3	3	2	2
Sub-total	27,108	28,212	29,514	30,796	32,814
<b><i>Provisional licence (Note 2)</i></b>					
Total	29,031	30,117	31,230	33,011	34,615

Source: FEHD records

Note 1: The figures exclude the number of temporary food factory licences (see para. 1.3(f)). According to FEHD, the validity period of the licence is 7 days or less. As such, the number of valid licences fluctuates a lot during the year and the figure as at 31 December is not representative of the overall situation of the year.

Note 2: The majority of the provisional licences issued involved general restaurants, light refreshment restaurants, food factories and fresh provision shops.

Table 2

**Number of valid restricted food permits  
(as at 31 December)**

Permit	2018	2019	2020	2021	2022
	(Number)				
Frozen confections	2,638	2,656	2,752	3,097	3,244
Milk/milk beverage	2,017	2,045	2,066	2,295	2,468
Online sale of restricted food	395	422	804	1,632	1,901
Non-bottled drinks	640	634	662	759	862
Cut fruit	782	798	795	813	808
Food sold by means of a vending machine	102	205	356	388	417
Chinese herb tea	402	417	411	422	413
Shell fish (including hairy crab)/live fish	311	314	321	369	438
Sushi/sashimi	318	286	297	306	313
Others (Note)	347	88	95	119	146
Total	7,952	7,865	8,559	10,200	11,010

Source: FEHD records

Note: Other types of restricted food permits include those for the sale of oyster and meat to be eaten in raw state.

1.8 **Permissions for outside seating accommodation (OSA).** OSA refers to any open area used for alfresco dining business, whether it is situated on Government land or within private property. Open area also includes flat roof of a building, a backyard/open yard of a building where there are no waste/soil pipes or manholes prejudicing the hygienic operation of the OSA, and area underneath or partially covered by projecting structures. When a restaurant licensee/licence applicant wishes to use an open area outside the restaurant premises for alfresco dining, permission from FEHD is required. The validity of the OSA permission is the same as the relevant restaurant licence. As at 31 March 2023, there were 403 valid OSA permissions.

## Introduction

1.9 According to the Food Business Regulation, a licensee shall exhibit the food business licence at a conspicuous place near the entrance of the food premises (see Figure 1 for an example). To facilitate the public to check if a premises are issued with a food business licence/permit, FEHD makes available on its website a list of premises issued with food business licences/permits for public inspection and requires licensees to display a sign indicating that the premises have been licensed (see Figure 2 for an example).

Figure 1

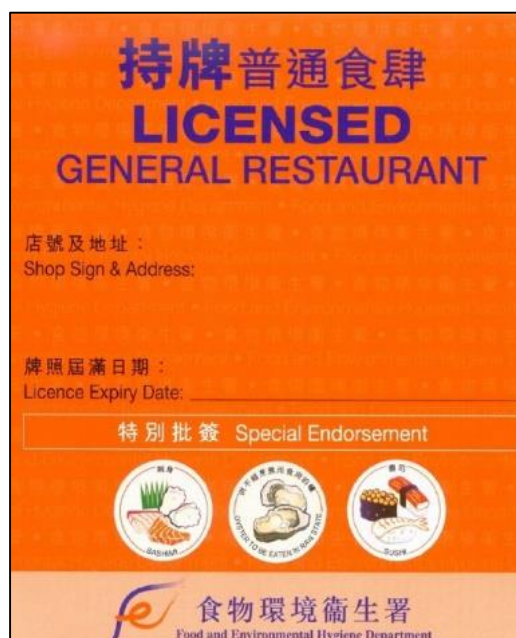
### Example of a food business licence

食物環境衛生署  
Food and Environmental Hygiene Department  
《公眾衛生及市政條例》(第 132 章)  
PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (CAP. 132)  
普通食肆牌照  
GENERAL RESTAURANT LICENCE  
編號 / 許可證號碼  
Licence/Permit No. F77115  
此處所(地址列於本牌照內)已由食物環境衛生署署長(署長)發給以經營普通食肆。持牌人姓名列後。  
The premises at the address shown have been licensed by the Director of Food and Environmental Hygiene (Director) as a general restaurant, the licence being the person whose name appears hereunder.  
牌照的有效期為一年。由 2023/06/01 起至 2024/05/31 止。  
Unless stipulated or controlled by the Director, the licence shall remain in force for one year from 06/01/2023 to 05/31/2024.  
持牌人必須遵守《公眾衛生及市政條例》(第132章)有關條規。有關條規訂定的限制條件一經刊佈，持牌人亦須依從。  
This licence is issued subject to the provisions of the Public Health and Municipal Services Ordinance (Cap.132) and Regulations made thereunder, and to such requirements, conditions or restrictions as are notified to the licensee by the Director.  
除非獲署長書面同意，否則持牌人不得將牌照轉讓予他人。  
Save with the consent in writing of the Director, a person to whom a licence has been granted shall not transfer his licence to any person.  
持牌人必須在持牌處顯眼位置向公眾展示此牌照。  
The licensee shall exhibit this licence at a conspicuous place near the entrance of his premises to which this licence relates.  
處所大小(按圖面繪圖面積計算): 151.26 平方米 SQ.M.  
Size of premises by reference to floor area.  
批發批發(有關於批發詳情，請參閱附件)  
Endorsements/Permissions (For description of codes, please see overleaf) (S, 1)  
費用已收: \$610.00  
Fee Received  
食物環境衛生署署長(代行)  
For Director of Food and Environmental Hygiene  
日期:  
Date: 27/09/2023  
FEHD 1398 (2/2018)

Source: FEHD records

Figure 2

### Example of a sign displayed by a licensed food premises



Source: FEHD records

## Responsible branch/divisions

1.10 **Environmental Hygiene Branch of FEHD.** FEHD's work in licensing and regulatory control of food premises falls within the programme area "Environmental

Hygiene and Related Services” (Note 4). In 2022-23, the expenditure of the FEHD offices responsible for the work in licensing and regulatory control of food premises, among other duties, amounted to about \$497 million (Note 5), and the revenue from the issue of food business licences and permits was about \$5 million (Note 6). The Environmental Hygiene Branch is responsible for planning and directing the provision of environmental hygiene services, including the licensing and regulatory control of food premises. There are five divisions under the branch, namely:

- (a) the Headquarters Division, which is responsible for formulating departmental policies and guidelines on environmental hygiene services, licensing, market management and hawker control, processing applications for review to the appeal boards, and other special duties;
- (b) three Operations Divisions, which are responsible for, among other duties, district environmental hygiene operations on the Hong Kong Island and Islands, in Kowloon and the New Territories. Each Operations Division comprises:
  - (i) a Regional Licensing Office (RLO), which is mainly responsible for processing applications for new food business licences and online

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**Note 4:** *Other work within the programme area “Environmental Hygiene and Related Services” includes provision of public cleansing services, processing of applications for liquor licences and administrative support to the Liquor Licensing Board, management of cremation and burial facilities, regulating private columbaria, abating environmental nuisances relating to dripping air-conditioners and water seepage, and cleaning up illegal refuse deposit blackspots.*

**Note 5:** *The expenditure for the programme area “Environmental Hygiene and Related Services” amounted to about \$6.6 billion in 2022-23. According to FEHD, the expenditure of about \$497 million in 2022-23 also included the expenditure of some other environmental hygiene services of the respective offices. It does not maintain a breakdown of expenditure which only involved the licensing and regulatory control of food premises.*

**Note 6:** *Fees for grant or renewal of food business licences/permits vary depending on the types of licences/permits and/or size of the premises. For example, as at 31 March 2023, fees for grant or renewal of a full licence for a general restaurant not exceeding 100 square metres was \$2,520, and that for a general restaurant exceeding 5,000 square metres was \$125,840. In 2022-23, to ease the operating pressure of food businesses during the coronavirus disease (COVID-19) epidemic, fees for all types of food business licences and permits were waived (except for temporary food factory licence and administration fee/levy such as amendment fee on transfer of licences).*

## Introduction

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sale of restricted food permits, and issuing of and collecting related fees for food business licences/permits; and

- (ii) several District Environmental Hygiene Offices (DEHOs), which are mainly responsible for conducting inspections of licensed and unlicensed food premises and enforcing the Ordinance, and processing applications for restricted food permits other than those for online sale of restricted foods, and renewal and transfer of food business licences/permits.

As at 31 March 2023, there were 3 RLOs and 19 DEHOs under the three Operations Divisions; and

- (c) the Environmental Hygiene Administration Division, which is responsible for providing administrative support to the branch.

An extract of the organisation chart of FEHD as at 31 March 2023 is at Appendix A.

### ***Processing of applications for food business licences and permits***

1.11 According to FEHD, the purpose of licensing food premises is to ensure that the premises are suitable for operating the food businesses, to safeguard public health and food safety, and to ensure the safety of patrons. FEHD will issue a licence only when specific pre-requisites are fulfilled, including compliance with health requirements, government lease conditions, statutory plan restrictions, and specific requirements, including those related to ventilation, building safety, fire safety and gas safety. Applications for food business licences are referred to other relevant government bureaux/departments for comments, including the Buildings Department (BD) on building safety, the Fire Services Department on fire safety and ventilation plan requirements, and the Planning Department on compliance with statutory plan restrictions. The applications are also referred to other government bureaux/departments for comments, such as the Lands Department on government lease condition matters (Note 7) and the Electrical and Mechanical Services

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**Note 7:** *According to FEHD, the applicant for a food business licence/permit should submit a declaration on compliance with government lease conditions for premises located in a private building. The application will be referred to the Lands Department for comments if considered necessary (e.g. application for a factory canteen licence).*

Department on electrical or gas installation matters if applicable. In 2022, FEHD received 10,227 applications for new food business licences and permits.

### ***Regulatory control of food premises***

1.12 ***Inspections to licensed/permitted food premises.*** FEHD performs regular inspections to licensed/permitted food premises to ensure that licence/permit holders comply with the licensing requirements and conditions as well as the law. During inspections, FEHD checks the sanitary conditions of the food premises and the food safety management measures taken in various aspects (such as food, equipment, personal hygiene of food handlers, cleanliness of the premises, pest control and waste treatment). In 2022, FEHD conducted 197,778 inspections to licensed/permitted food premises.

1.13 ***Demerit Points System (DPS) and Warning Letter System (WLS).*** FEHD operates DPS in respect of licensed/permitted food premises, under which a pre-determined number of demerit points (depending on the nature and severity of the offence) will be registered against a licensee/permittee upon conviction of an offence in relation to food safety and environmental hygiene under the Ordinance. A licence/permit may be suspended or cancelled if sufficient number of points are accumulated. In addition, FEHD has implemented WLS, under which verbal and written warnings may be issued against food premises in breach of licensing requirements or conditions. A licence/permit may be cancelled if sufficient number of warning letters are accumulated and/or breach of licensing requirements or conditions persists. In 2022, FEHD instituted 3,152 prosecutions against licensed/permitted food premises, and 84 food business licences were suspended or cancelled.

1.14 ***Unlicensed food premises.*** FEHD is responsible for inspecting and taking enforcement actions against unlicensed food premises. Upon detection of suspected operation of an unlicensed food premises, FEHD will conduct inspections to the premises and take prosecution actions under the Ordinance. In 2022, FEHD conducted 49,790 inspections to unlicensed food premises and instituted 4,013 prosecutions against unlicensed food premises (including 3,775 prosecutions against the operation of unlicensed food businesses and 238 prosecutions against other offences such as dirty food premises and washing of utensils in rear lanes).

## Introduction

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### *Use of information technology*

1.15 FEHD mainly uses two information technology systems to support its work on licensing and regulatory control of food premises as follows:

- (a) ***Licensing Management Information System (LMIS)***. Launched in 2006, LMIS facilitates the processing of applications and administration of food business licences/permits issued, and provides statistical reports for management purposes. For example, it records details of licence/permit applications (e.g. name of applicant and business address), monitors the application progress (e.g. date of inspections conducted), and maintains information of the licences/permits issued (e.g. particulars of licensees/permittees and expiry dates). To improve the system, FEHD has launched the following LMIS enhancement projects (Note 8):
  - (i) ***LMIS 2***. According to FEHD, LMIS 2 will improve FEHD's operational efficiency in the food business licensing process (e.g. streamlining work processes, minimising paper files routing, enhancing online application and tracking to facilitate application processing monitoring). The project was rolled out in May 2023 and the project expenditure was about \$8.4 million as at 31 March 2023; and
  - (ii) ***LMIS 3***. According to FEHD, LMIS 3 will provide electronic platforms for various actions on the regulatory control of licensed food premises (e.g. maintenance of inspection records and determination of risk levels for conducting inspections). LMIS 3 project was scheduled for rollout in 2025 with a project estimate of \$18.1 million as of June 2023; and
- (b) ***Online Licence Application Tracking Facility***. FEHD introduced the Online Licence Application Tracking Facility in 2008 to facilitate applicants of food business licences to check the status of their applications through the Internet.

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**Note 8:** *The projects were funded under the Capital Works Reserve Fund Head 710 Computerisation Subhead A007GX (Block Allocation) — New administrative computer systems. The Government Chief Information Officer can authorise expenditure of a project (less than \$20 million) under the block allocation.*



### **Audit review**

1.16 In May 2023, the Audit Commission (Audit) commenced a review to examine the licensing and regulatory control of food premises. The findings of this audit review are contained in two separate Audit Reports, as follows:

- (a) “Regulatory control of food premises” (the subject matter of this Audit Report); and
- (b) “Licensing of food premises” (Chapter 2 of the Director of Audit’s Report No. 81).

1.17 This Audit Report focuses on the following areas:

- (a) regulatory control of licensed and permitted food premises (PART 2);
- (b) regulatory control of unlicensed food premises (PART 3); and
- (c) other related issues (PART 4).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

### **General response from the Government**

1.18 The Secretary for Environment and Ecology expresses gratitude to Audit for the comprehensive review of the regulatory control of food premises by FEHD. He agrees with the audit recommendations, and would provide policy steer and oversight for FEHD to take them forward with focus on better use of information technology, process review and performance management to better safeguard food safety, environmental hygiene and public health.

1.19 The Director of Food and Environmental Hygiene appreciates the work done by Audit in auditing the FEHD’s work in the regulatory control of food premises as well as other related issues. She has said that:

## **Introduction**

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- (a) with an increasing number of food premises and evolving trade practices, FEHD understands that it must make the best use of its resources to perform its regulatory functions. In the past few years, FEHD had deployed considerable resources to the coronavirus disease (COVID-19) related duties, such as enforcing the anti-epidemic regulations in food premises and processing applications under different rounds of the Anti-epidemic Fund. This had inevitably affected FEHD's performance in some aspects of its regulatory functions;
- (b) as the society returns to normalcy, FEHD considers that it is an opportune time to review various processes, procedures, guidelines, etc. concerning the regulatory control of food premises, and make improvements such that its regulatory work can meet the evolving needs of the society. FEHD will fully take into account the Audit's recommendations in this review. In particular, FEHD will review its various guidelines and timeframes so as to enhance their practicability and facilitate compliance; and
- (c) FEHD has been taking forward a number of information and technology initiatives, notably the continuous upgrading of LMIS in order to improve FEHD's operation and the monitoring of cases. It is expected that the future LMIS can, among other functions, strengthen the processing and keeping of data, alert officers for actions, and enable the generation of management reports for monitoring and analysis.

## **Acknowledgement**

1.20 Audit would like to acknowledge with gratitude the full cooperation of the staff of FEHD during the course of the audit review.

## **PART 2: REGULATORY CONTROL OF LICENSED AND PERMITTED FOOD PREMISES**

2.1 This PART examines the regulatory control of licensed and permitted food premises, focusing on:

- (a) inspection of food premises (paras. 2.2 to 2.32);
- (b) DPS and WLS (paras. 2.33 to 2.47);
- (c) licence suspension and cancellation (paras. 2.48 to 2.55); and
- (d) performance reporting (paras. 2.56 to 2.65).

### **Inspection of food premises**

2.2 FEHD conducts various types of inspections to licensed/permitted food premises, including:

- (a) ***Routine inspection.*** Health Inspectors conduct regular inspections to licensed/permitted food premises to ensure that licence/permit holders comply with the licensing requirements and conditions as well as the law;
- (b) ***Supervisory inspection.*** District Environmental Hygiene Superintendents, Chief Health Inspectors and Senior Health Inspectors conduct district inspections (i.e. within their own districts) and District Environmental Hygiene Superintendents conduct cross-district inspections (i.e. in districts other than their own) to check the performance of the last inspecting officers; and
- (c) ***Other types of inspection.*** FEHD also conducts other types of inspections, such as licensing enforcement inspections (e.g. suspension and cancellation of food business licences), thematic blitz operations (e.g. on illegal extension of food business areas), and inspections in connection with complaints on food safety and environmental hygiene.

## Regulatory control of licensed and permitted food premises

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Table 3 shows the number of inspections to licensed/permitted food premises in the period from 2018 to 2023 (up to June).

**Table 3**  
**Number of inspections to licensed/permitted food premises**  
**(January 2018 to June 2023)**

Year	No. of inspections
2018	202,009
2019	192,534
2020	207,149
2021	206,238
2022	197,778
2023 (up to June)	104,746

*Source: FEHD records*

2.3 ***Routine inspection frequency.*** The frequencies of routine inspections to licensed/permitted food premises are as follows:

- (a) ***Licensed food premises.*** The inspection frequencies to licensed food premises are as follows:
  - (i) FEHD adopts a Risk-based Inspection System (RBIS) for conducting inspections to licensed food premises (except fresh provision shops selling live poultry and eligible food premises with ISO 22000 certification (Note 9) — see (ii) and (iii) below). Under RBIS, the frequencies of inspections are determined by the risk potential of individual food premises. Food premises are classified

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**Note 9:** *ISO 22000 is the certification or registration by an accredited body in respect of a licensed food premises to plan, implement, operate, maintain and update a food safety management system aimed at providing products that are safe for the consumer and demonstrate compliance with applicable statutory and regulatory food safety requirements in accordance with the requirements specified by the International Organization for Standardization.*

## **Regulatory control of licensed and permitted food premises**

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as low risk (Type I), medium risk (Type II) and high risk (Type III) (Note 10), and should be inspected once every 20 weeks, 10 weeks and 4 weeks respectively;

- (ii) for fresh provision shops selling live poultry, inspection should be conducted weekly; and
  - (iii) for food premises which have fully implemented the food safety management system under ISO 22000, obtained the ISO 22000 certification, and have been approved by FEHD to join a revised inspection regime, inspection should be conducted once every 5 months; and
- (b) ***Permitted food premises.*** The inspection frequency to permitted food premises for:
- (i) sale of restricted foods (except shell fish (hairy crab) and online sale — see (ii) and (iii) below) is once every 3 months;
  - (ii) sale of shell fish (hairy crab) is once a month (as this kind of business is seasonal in nature); and
  - (iii) online sale of restricted foods is once every 6 months.

2.4 ***Inspection to canteens and clubs.*** Apart from licensed/permitted food premises, FEHD also conducts inspections to canteens (other than factory canteens —

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**Note 10:** *According to FEHD, of the 34,615 food business licences as at 31 December 2022, 34,440 licences were under RBIS, 132 licences were with ISO 22000 certification and 43 licences were fresh provision shops selling live poultry. Of the 34,440 licences under RBIS, 29,206 (85%), 1,539 (4%) and 3,695 (11%) licences were classified under Types I, II and III respectively.*

## **Regulatory control of licensed and permitted food premises**

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Note 11) and clubs with catering services (Note 12). The inspection frequency for canteens and clubs is once every 10 weeks. FEHD conducted 4,708 and 2,488 inspections in 2022 and 2023 (up to June) respectively to canteens and clubs.

2.5 According to FEHD, there was no central register for maintaining the details of inspections to food premises (e.g. date, time, inspection type, food business licence/permit type and results) (see also para. 2.56). Audit examined the records of three DEHOs (i.e. Central/Western, Kwun Tong and Sha Tin — Note 13) to review their operations with a view to identifying room for improvement.

### ***Risk classification of some licensed food premises under RBIS not timely or properly conducted***

2.6 According to FEHD, the risk classification of licensed food premises under RBIS (see para. 2.3(a)(i)) aims at preventing food safety problems and prioritising allocation of inspection resources. According to FEHD guidelines:

- (a) the risk type of a food premises is classified according to a host of food safety and hygiene risk factors (e.g. the type of food sold, the method the food is processed and the past track records of the food premises). Each set of risk factors is assigned with a specific number of scores and all individual scores associated with that particular licensed food premises are added up together to achieve an overall score to determine the specific risk type;

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**Note 11:** *Canteens (other than factory canteens — see para. 1.3(d)), which are for the exclusive use of the pupils of schools and persons employed in the workplace, are not required to obtain food business licences according to the Food Business Regulation.*

**Note 12:** *The Office of Licensing Authority under the Home Affairs Department is responsible for the issue and renewal of certificates of compliance for clubs under the Clubs (Safety of Premises) Ordinance (Cap. 376) to ensure that the clubs comply with the building and fire safety requirements.*

**Note 13:** *Audit visited one DEHO from each of the three Operations Divisions (see para. 1.10(b)) with the largest number of valid food business licenses and permits as at 31 December 2022 under their purview (i.e. Central/Western, Kwun Tong and Sha Tin DEHOs) to review their operations. As at 31 December 2022, there were a total of 7,575 valid food business licences and 2,408 permits under the purview of the three DEHOs.*

## **Regulatory control of licensed and permitted food premises**

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- (b) the risk types of licensed food premises are subject to annual review in every December and the review results will be applicable with effect from 1 January of the following year; and
- (c) downgrading of risk types should be applied under certain circumstances. For example, licensed food premises will be immediately downgraded (e.g. from Type I to Type II) upon conviction for contravention of food safety and hygiene related offences under the Ordinance.

2.7 ***Risk types of some food premises incorrectly classified.*** Audit selected 15 licensed food premises from the three DEHOs' lists of licensed food premises under RBIS and examined the relevant records (January 2022 to June 2023) for risk classification of licensed food premises (see also Note 13 to para. 2.5). Audit noted that prosecution had been instituted against 6 food premises for contravention of food safety and hygiene related offences under the Ordinance. Of the 6 food premises:

- (a) while the risk type of 1 (17%) food premises was immediately downgraded upon conviction, the same had not been done for the remaining 5 (83%) food premises in 2022 (with delays ranging from 6 to 11 months, averaging 7 months); and
- (b) for the annual review for determining the risk type (and the corresponding inspection frequency) for 2023, the conviction records/appropriate risk levels (see (a) above) of all 6 food premises were not taken into account in the score calculations as required. As a result, the scores of the 6 food premises were incorrectly computed, of which 3 (50%) food premises were incorrectly classified at a lower risk level with longer inspection interval adopted.

2.8 ***Annual review of risk types of some food premises not timely conducted.*** According to FEHD guidelines, DEHO staff are required to update and approve the score records of the licensed food premises in LMIS on or before 31 December every year. Audit examined the records of the annual review for 2023 which were created or approved late (i.e. records created or approved on or after 1 January 2023) and noted that:

## **Regulatory control of licensed and permitted food premises**

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- (a) of the 34,440 food business licences under RBIS as at 31 December 2022 (see Note 10 to para. 2.3(a)(i)), the records of annual review for 14,611 (42%) licences were only approved on or after 1 January 2023, with delays ranging from 1 day to about 7 months (averaging 22 days);
  - (b) of the 14,611 licences with delays in approval of the annual review records, the related records for 4,221 (29%) licences were only created by the case officers for supervisors' approval on or after 1 January 2023, with delays ranging from 1 day to about 7 months (averaging 41 days); and
  - (c) according to FEHD, email notifications would be sent regularly (in December and the following January each year) to alert the case officers and their supervisors by listing out cases with the required annual review yet to be conducted or approved in LMIS. However, such list was not available after January for follow up and monitoring purpose.
- 2.9 Upon enquiry, FEHD informed Audit in August and October 2023 that:
- (a) in actual practices of DEHOs, the relevant inspection forms, inspection packages (Note 14) and physical files were prepared and ready for inspection as at 1 January of the following year. Only some of the relevant records in LMIS had not been prepared or completed before 1 January of the following year; and
  - (b) a function for the input and calculation of scores in LMIS, including the generation of management reports, would be considered in developing LMIS 3 (which was underway and expected to launch in 2025) (see also paras. 2.62(a)(i) and 2.63).
- 2.10 In Audit's view, FEHD needs to take measures to ensure that the annual review and update of risk classification of licensed food premises under RBIS are timely and properly conducted in accordance with its guidelines.

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**Note 14:** *According to FEHD, all licensed food premises under RBIS are grouped into inspection packages so that each package can be completely inspected by a Health Inspector in about 3 hours to 3.5 hours under normal circumstances.*



***Scope for improving completeness of lists of canteens for inspections***

2.11 FEHD conducts regular inspections to canteens (see para. 2.4) to check the environmental hygiene conditions of the premises, and the food hygiene and safety measures implemented by operators. According to FEHD, canteens are mainly identified during district work of Health Inspectors or complaint investigations, or from reports from the operators of canteens to the respective DEHOs. A Health Inspector will then conduct a site inspection and ascertain whether the premises runs as a genuine canteen under the Food Business Regulation. If affirmative, the canteens will be included in the respective DEHO's list of canteens for conducting routine inspections.

2.12 As of August 2023, 149 canteens were included in the list of canteens of the three DEHOs. Audit conducted a media research on school canteens in the districts under the three DEHOs' purview in August 2023 and found that 6 canteens were not included in the DEHOs' lists. In Audit's view, to ensure that the hygiene and food safety standards are met by canteens, FEHD needs to explore further measures to improve the completeness of the list of canteens for routine inspections.

***Room for improvement for first inspections and test buying***

2.13 According to FEHD, DEHOs conduct first inspections to newly licensed food premises. Audit selected 20 food premises (including 8 licensed food premises, 6 permitted food premises and 6 permitted food premises engaging in online sale of restricted foods) from the three DEHOs' lists of licensed/permitted food premises (see also Note 13 to para. 2.5), examined the relevant first inspection records (January 2022 to July 2023) and noted the following:

- (a) ***Delays in conducting first inspections to some licensed food premises.***  
According to FEHD guidelines, for newly licensed food premises, the first inspections should be conducted within 3 working days upon issue of licences for high risk ready-to-eat food (e.g. sashimi, sushi and buffet type foods) and within 5 working days for other types of licensed food premises. Audit noted that there were delays in conducting the first inspections for 3 (38%) out of the 8 newly licensed food premises (ranging from 1 to 2 working days);

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- (b) ***Timeframe for conducting first inspection to permitted food premises not clearly specified.*** Audit noted that there were no specific guidelines on the arrangement of first inspection to newly permitted food premises (except online sale of restricted food permits (see (c) below) and shell fish (hairy crab) permits). For 6 food premises with permits newly issued, there were large variations in the first inspection dates (ranging from 11 to 64 working days after the permit issue dates, averaging 33 working days). Upon enquiry, FEHD informed Audit in October 2023 that the timeframe for the first inspection to a newly permitted food premises was the same as that for the routine inspections (i.e. three months), and hence, the first inspection should be carried out in three months from the issue of permit. However, Audit noted that such timeframe for the first inspection was not clearly specified in FEHD guidelines; and
- (c) ***Delays in conducting first inspections and test buying for some permitted food premises engaging in online sale of restricted foods.*** For online sale of restricted foods, according to FEHD guidelines:
- (i) online checking and inspection to the registered business address of the shop should be conducted within a specified timeframe (Note 15) upon receipt of the licensing file from RLOs (i.e. first inspection). Audit noted that for the 6 food premises with online sale of restricted food permits newly issued, there were delays in conducting the first inspections for 4 (67%) food premises (ranging from 3 to 126 days, averaging 49 days); and
  - (ii) upon notification of the issue of online sale of restricted food permit from RLOs, test buying of the restricted food item from the website approved for sale of restricted foods should be arranged within a specified timeframe (i.e. first test buying). Audit noted that for the 6 food premises, there were delays in conducting the first test buying for 3 (50%) food premises (ranging from 41 to 55 days, averaging 46 days).

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**Note 15:** *In preparing this Audit Report, FEHD informed Audit that the disclosure of some of the timeframes relating to the regulatory control of food business licences/permits might have adverse implications to the delivery of FEHD's services. Taking into account FEHD's concerns, the relevant timeframes are referred to as a specified timeframe as appropriate.*

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2.14 In Audit's view, FEHD needs to take measures to ensure that first inspections to licensed/permitted food premises and first test buying of restricted foods online are conducted in accordance with the timeframes specified in its guidelines. FEHD also needs to enhance its guidelines to clearly specify the timeframe for conducting first inspection to newly permitted food premises.

### ***Room for improvement for routine inspections and regular test buying***

2.15 According to FEHD, DEHOs conduct routine inspections to licensed/permitted food premises and regular test buying of restricted foods online. Audit selected 50 food premises (including 30 licensed food premises, 10 permitted food premises and 10 permitted food premises engaging in online sale of restricted foods) from the three DEHOs' lists of licensed/permitted food premises (see also Note 13 to para. 2.5) to examine the relevant work with a view to identifying room for improvement. The audit findings are summarised in paragraphs 2.16 to 2.23.

2.16 ***Scope for improving routine inspections to licensed food premises under RBIS.*** According to FEHD guidelines, under RBIS, licensed food premises classified as Types I, II and III are inspected once every 20 weeks, 10 weeks and 4 weeks respectively (see para. 2.3(a)(i)). Audit examined the inspection records (January 2022 to June 2023) for the 30 licensed food premises (see para. 2.15) (involving 147 routine inspections) and noted that:

- (a) there were delays in conducting 46 (31%) inspections (involving 18 licensed food premises), ranging from 1 to 49 days (averaging 8 days);
- (b) for 28 (19%) inspections (involving 12 food premises), the food premises concerned were found closed at the time of inspections. If unsuccessful inspections were included, the number of inspections to 2 (7%) of the 30 food premises would not meet the required inspection frequencies (Note 16). Otherwise, the number of inspections to 10 (33%) food premises would not meet the requirement; and

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**Note 16:** *According to FEHD, due to the COVID-19 epidemic, inspections under RBIS were suspended from 15 February to 14 April 2022. The required inspection frequencies were adjusted accordingly.*

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- (c) there were no guidelines on whether unsuccessful inspections could be counted as inspections conducted and whether follow-up actions would be required (e.g. for food premises repeatedly found closed during inspections — Note 17).

2.17 Upon enquiry, FEHD informed Audit in October 2023 that:

- (a) the delays in conducting the inspections were mainly caused by special work arrangements during the COVID-19 epidemic, special manpower deployment to handle various anti-epidemic duties, disease control measures as well as manpower shortage due to staff subject to quarantine and isolation orders; and
- (b) the supervising Senior Health Inspectors would make judgement if a re-inspection to a closed premises would be required (e.g. the premises had been found closed in repeated routine inspections which might imply winding up of business and cancellation of licence would need to be considered).

2.18 In Audit's view, FEHD needs to take measures to ensure that routine inspections to licensed food premises are conducted in accordance with the timeframes and frequencies specified in its guidelines. FEHD also needs to enhance its guidelines on unsuccessful routine inspections (e.g. whether such inspections can be counted as inspections conducted and the follow-up actions required for food premises repeatedly found closed during inspections).

2.19 *Delays in conducting routine inspections to some permitted food premises.* According to FEHD guidelines, the inspection frequency for permitted food premises for sale of restricted foods is once every 3 months (except shell fish (hairy crab) permit and online sale — see para. 2.3(b)). Audit examined the inspection records (January 2022 to June 2023) for the 10 permitted food premises (see para. 2.15) (involving 36 routine inspections), and noted that while the number of inspections met

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**Note 17:** *For the 12 food premises found closed at the time of inspections (see para. 2.16(b)), some food premises were repeatedly found closed. For example, a food premises was found closed during 4 (67%) of the 6 inspections conducted in 2022.*

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the required frequencies, there were delays in conducting 7 (19%) inspections (involving 5 food premises), ranging from 1 to 22 days (averaging 10 days). In Audit's view, FEHD needs to take measures to ensure that routine inspections to permitted food premises are conducted in accordance with the timeframes specified in its guidelines.

**2.20 *Routine inspections and supervisory checks of some permitted food premises engaging in online sale of restricted foods not meeting required frequencies or timeframes.*** According to FEHD guidelines, online checking and inspection to the business address of an online shop by a Health Inspector (i.e. routine inspection) as well as independent check by a Senior Health Inspector (i.e. supervisory check) should be conducted within specified timeframes (see Note 15 to para. 2.13(c)(i)). Audit examined the inspection records (January 2022 to June 2023) for the 10 permitted food premises engaging in online sale of restricted foods (see para. 2.15) (involving 30 routine inspections) and noted that:

- (a) while the number of routine inspections met the required frequencies, there were delays in conducting 5 (17%) routine inspections (involving 5 food premises), ranging from 20 to 109 days (averaging 48 days); and
- (b) supervisory checks were not conducted for 7 (70%) of the 10 food premises. For 1 food premises with supervisory checks conducted, there was a delay of 5 days in conducting one of the two supervisory checks.

In Audit's view, FEHD needs to take measures to ensure that routine inspections and supervisory checks of permitted food premises engaging in online sale of restricted foods are conducted in accordance with the timeframes and frequencies specified in its guidelines.

**2.21 *Scope for improving regular test buying of restricted foods online.*** According to FEHD guidelines, for online sale of restricted foods:

- (a) regular test buying should be arranged at a specified interval (see Note 15 to para. 2.13(c)(i)); and

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- (b) a Senior Health Inspector should arrange and randomly designate a Health Inspector not involved in daily monitoring of the target premises (Note 18) for selection of test buying food items. After endorsement of the selection proposal, the Health Inspector involved in daily monitoring will execute the test buying (e.g. placing order and storage/disposal of the food items).

2.22 Audit examined the three DEHOs' test buying records (January 2022 to June 2023) for the 10 permitted food premises engaging in online sale of restricted foods (see para. 2.15) and noted that:

- (a) for 3 (30%) food premises, only 1 test buying was conducted instead of 2 as required under the guidelines; and
- (b) for 2 (20%) food premises, the selections of test buying food items and executions of the test buying were conducted by the same Health Inspector (instead of by different staff as required).

Upon enquiry, FEHD informed Audit in October 2023 that the above non-compliances were mainly caused by special work arrangements during the COVID-19 epidemic, special manpower deployment to handle Anti-epidemic Fund-related work, disease control measures as well as manpower shortage due to staff subject to quarantine and isolation orders.

2.23 In Audit's view, FEHD needs to take measures to ensure that regular test buying of restricted foods online is conducted in accordance with the frequencies specified in its guidelines. FEHD also needs to take measures to ensure that selection of test buying food items and execution of the test buying are conducted by different staff as required by its guidelines.

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**Note 18:** *Upon issue of an online sale of restricted food permit, the food premises will be assigned to a Health Inspector for daily monitoring (e.g. conducting online checking and inspection).*

***Need to enhance guidelines on follow-up actions for unsuccessful test buying***

2.24 Audit examined the three DEHOs' test buying records (January 2022 to June 2023) for the 12 permitted food premises engaging in online sale of restricted foods (Note 19) and noted that:

- (a) for 5 food premises, the test buying could not be successfully conducted (e.g. selected food item was temporarily out of stock). For example, in one case, the test buying was re-performed 5 days (remained unsuccessful) and 142 days (successful) later. For another case, the test buying was only re-performed about 10 months later (successful); and
- (b) there were no specific guidelines on the follow-up actions required in case the test buying could not be successfully conducted (e.g. when the selected food item is repeatedly out of stock).

In Audit's view, to ensure consistency of practice, FEHD needs to enhance its guidelines to clearly specify the follow-up actions required in case the test buying could not be successfully conducted (e.g. when selected food item is repeatedly out of stock).

***Some licensed food premises operating unlicensed food business***

2.25 Under the Ordinance, premises used as food premises are required to be licensed before operation of the food business (see para. 1.3). For example, a restaurant licence must be obtained for the food business which involves the sale of meals for consumption on the premises. Audit noted that there were public concerns about some food premises operating without proper food business licences, for example:

- (a) factory canteens, which should only serve employees working in the same factory building, served members of the public as well; and

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**Note 19:** *The relevant food premises were also selected for examination of first/routine inspections (see paras. 2.13 and 2.15).*

## **Regulatory control of licensed and permitted food premises**

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- (b) food factories, which should only involve the preparation of food for sale for human consumption off the premises, served customers for consumption on the premises.

2.26 Based on the information of popular restaurant finder websites/mobile applications, Audit selected 10 popular food premises (with information indicating that the public could dine at the premises) in the districts under the three DEHOs' purview. Audit examination of the three DEHOs' routine inspection reports (January 2022 to June 2023) for the 10 premises (including 4 factory canteens and 6 food factories) revealed that:

- (a) for the 4 factory canteens, 15 inspections had been conducted (including 7 unsuccessful inspections where the food premises were closed). In the inspection reports, there was an item for checking whether "serving only factory employees of the same building in which the factory canteen situates, and precautionary measures have been taken to prevent from accepting customers other than factory employees of the same factory building" (Note 20). Audit noted that for the 8 successful inspections, no irregularity of this item had been reported in the inspection reports; and
- (b) for the 6 food factories, 19 inspections had been conducted (including 7 unsuccessful inspections where the food premises were closed). The checking of whether the food premises served customers for food consumption on the premises was not an inspection item in the inspection reports and there was no mention of whether there were dine-in customers.

2.27 Upon enquiry, FEHD informed Audit in October 2023 that:

- (a) for the 6 food factories (see para. 2.26(b)), there were no dine-in customers detected during the inspections as there was no such record in the inspection reports. If there was no mention of irregularity of an item on the inspection report, it meant that the item was in order;

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**Note 20:** *FEHD has specified guidelines on checking this inspection item.*



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- (b) for checking whether a licensed food factory was conducting business as an unlicensed restaurant, a lot of evidence and investigation would be required. Prosecution actions could only be instituted if sufficient evidence was collected; and
- (c) besides routine inspections, it would deploy different tactics to detect irregularities on food premises. When situation warranted, agent provocateur would be deployed to collect sufficient evidence. From time to time, FEHD would mount special operations including covert surveillance or agent provocateur operations to tackle the problem. From January to August 2023, FEHD had instigated 40 prosecutions against licensed factory canteens for running unlicensed restaurant business (Note 21).

2.28 While factory canteens are not allowed to serve members of the public and food factories are not allowed to serve customers for consumption of food on the premises, Audit's research (based on information of popular restaurant finder websites/mobile applications) found that the public could dine at the 10 food premises selected for audit examination and FEHD had not identified such irregularities during routine inspections of the food premises concerned (see para. 2.26) (Note 22). According to FEHD, besides routine inspections, it would deploy different tactics to tackle the problem (see para. 2.27(c)). In Audit's view, as the checking of such irregularities was a requirement under routine inspections, FEHD needs to consider reviewing the measures in detecting licensed food premises operating unlicensed food business (e.g. factory canteens or food factories operating as restaurants) and take follow-up actions as appropriate.

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**Note 21:** *According to FEHD, as at 12 October 2023, the number of prosecutions against licensed food factories for running unlicensed restaurant business was not readily available.*

**Note 22:** *The 20 successful inspections to the 10 food premises concerned were conducted on weekdays from 10 am to 5 pm (including 6 inspections conducted during lunch hours from 12 noon to 2 pm).*

### *Room for improvement in following up irregularities identified during inspections*

2.29 *Need to rationalise timeframe for following up critical or serious violations identified during inspections.* The inspection report of food premises contains a list of inspection items which has been pre-assigned with a fixed-score each (ranging from 3 to 15 point-score, depending on the relative health significance of the item). Different standard inspection reports are designed for recording inspection results of designated types of food premises. The inspection reports for restaurants/factory canteens/bakeries/food factories included 45 inspection items. Audit noted that:

- (a) according to FEHD guidelines, irregularities with 7 point-score or above (i.e. 23 items) were considered critical or serious violations which should be rectified/followed up immediately or within a short period of time as appropriate, and other irregularities (i.e. 22 items) might be followed up until the next inspection or as soon as possible as circumstances permit; and
- (b) according to the inspection report, the irregularities of only 5 items (with 10 or 15 point-score) were required to be followed up within four days and other irregularities (i.e. 40 items) might be followed up as soon as possible as circumstances permit or no later than next inspection.

As such, there were inconsistencies between FEHD guidelines and the inspection report, in particular, regarding the timeframes for following up the irregularities of 18 items with 7 point-score or above. In Audit's view, FEHD needs to rationalise the timeframe for follow-up actions on critical or serious violations identified during inspections of food premises.

2.30 *Follow-up actions and rectification of irregularities not clearly documented in some inspection reports.* According to FEHD guidelines, the inspecting officer should record the details of all inspection findings/irregularities, corrective actions required, advice/warning given and any legal action or prosecution contemplated in the inspection reports. For the three DEHOs' inspection reports for the 30 licensed food premises (involving 147 routine inspections) examined by Audit

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(see para. 2.16), irregularities with 7 point-score or above (Note 23 ) (see para. 2.29(a)) were found in 28 inspections (involving 19 food premises):

- (a) in 23 (82%) inspection reports, while it was recorded that verbal warnings had been given, there was no documentation on whether the irregularities had been rectified and whether further follow-up actions were required (no follow-up inspection was conducted for all 23 inspections); and
- (b) in 1 (4%) inspection report, while it was indicated that the irregularities had been rectified, there was no documentation on whether any warning had been given or legal action had been contemplated.

In Audit's view, FEHD needs to take measures to ensure that irregularities identified during inspections are rectified in a timely manner and follow-up actions are documented in inspection reports.

### **Audit recommendations**

**2.31 Audit has *recommended* that the Director of Food and Environmental Hygiene should:**

- (a) **take measures to ensure that the annual review and update of risk classification of licensed food premises under RBIS are timely and properly conducted in accordance with FEHD guidelines;**
- (b) **explore further measures to improve the completeness of the list of canteens for routine inspections;**
- (c) **take measures to ensure that first and routine inspections to licensed/permitted food premises are conducted in accordance with the timeframes and frequencies specified in FEHD guidelines;**
- (d) **take measures to ensure that first and regular test buying of restricted foods online, and supervisory checks of permitted food premises**

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**Note 23:** *Examples of irregularities with 7 point-score or above included uncovered food put on the floor, waste containers not properly covered and broken door in kitchen.*

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**engaging in online sale of restricted foods are conducted in accordance with the timeframes and frequencies specified in FEHD guidelines;**

- (e) enhance FEHD guidelines to clearly specify the timeframe for conducting first inspection to newly permitted food premises;**
- (f) enhance FEHD guidelines on unsuccessful routine inspections (e.g. whether such inspections can be counted as inspections conducted and the follow-up actions required for food premises repeatedly found closed during inspections);**
- (g) take measures to ensure that selection of test buying food items and execution of the test buying are conducted by different staff as required by FEHD guidelines;**
- (h) enhance FEHD guidelines to clearly specify the follow-up actions required in case the test buying could not be successfully conducted (e.g. when selected food item is repeatedly out of stock);**
- (i) consider reviewing the measures in detecting licensed food premises operating unlicensed food business (e.g. factory canteens or food factories operating as restaurants) and take follow-up actions as appropriate;**
- (j) rationalise the timeframe for follow-up actions on critical or serious violations identified during inspections of food premises; and**
- (k) take measures to ensure that irregularities identified during inspections are rectified in a timely manner and follow-up actions are documented in inspection reports.**

## **Response from the Government**

2.32 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that:

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- (a) continuous upgrading is being carried out to the information and technology system for processing and management of licences and permits, i.e. LMIS, in order to improve FEHD's operation and the monitoring of cases. It is expected that the future LMIS can, among other functions, strengthen the processing and keeping of data, alert officers for actions, and enable the generation of management reports for monitoring and analysis; and
- (b) FEHD will review its various guidelines and timeframes so as to enhance their practicability and facilitate compliance.

### **Demerit Points System and Warning Letter System**

2.33 FEHD may instigate prosecutions against food business operators for breaching the public health laws. In 2022, FEHD instigated 3,152 prosecutions against licensed/permitted food premises (Note 24). In addition to prosecution, FEHD may impose administrative sanctions on licensees (Note 25) of the food premises under DPS for convicted offences under the Ordinance and/or under WLS for breaches of licensing requirements or conditions.

2.34 **DPS.** Under DPS:

- (a) a pre-determined number of demerit points ranging from 5 to 15 (depending on the nature and severity of the offence) will be registered against a

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**Note 24:** *According to FEHD, in 2022, the prosecutions mainly involved the following offences:*

- (a) *obstruction of public places (under section 4A of the Summary Offences Ordinance (Cap. 228)) (1,483 prosecutions);*
- (b) *contravention of Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) (759 prosecutions); and*
- (c) *unauthorised extension of food business outside the licensed area (under section 34C of the Food Business Regulation) (304 prosecutions).*

**Note 25:** *DPS and WLS apply both to food business licences and permits for sale of restricted foods. For simplicity, in this Audit Report, the terms "licence" and "licensee" also refer to "permit" and "permittee" when DPS and WLS apply to permits.*

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licensee upon conviction of an offence in relation to food safety and environmental hygiene under the Ordinance;

- (b) a licence will be suspended for 7 days (first suspension) if 15 points are accumulated within a period of 12 months. The licence will be suspended for 14 days if another 15 points are accumulated within 12 months from the date of the last offence which led to the first suspension (second suspension). The licence will be cancelled if another 15 points are accumulated within 12 months from the date of the last offence leading to the second suspension;
- (c) the prescribed demerit points for a particular offence will be doubled and trebled respectively if the same offence is committed for the second and the third time within a period of 12 months; and
- (d) after each suspension, the points pertaining to that suspension will be cancelled and the counting of prescribed demerit points for a particular offence should start afresh. If no point is recorded against the licensee for a period of 12 months, all demerit points and suspension records registered prior to that 12 months will be cancelled for the purpose of DPS.

### **2.35 WLS. Under WLS:**

- (a) upon detection of any breaches of licensing conditions by an FEHD officer, a verbal warning will be issued to the licensee requiring rectification. If the licensee has rectified the irregularity upon a follow-up inspection, FEHD will issue a reminding letter to remind the licensee that the verbal warning will be valid for six months from the date of issue; and
- (b) if the licensee fails to make rectification upon a follow-up inspection or the same irregularity recurs at the premises within six months from the date of the verbal warning, FEHD will issue a warning letter (valid for six months) to the licensee requiring rectification. FEHD will consider cancelling the licence if the licensee has been issued with three written warning letters within six months resulting from the breach of one or more licensing requirements or conditions and subsequent breaches are detected thereafter.

***Need to improve registration of demerit points and warnings***

2.36 According to FEHD, there was no central register for maintaining the details of demerit points registered and warnings issued. Audit examined the three DEHOs' (see para. 2.5) records (January 2022 to June 2023) and found that such information was manually recorded in a summary record sheet kept in individual case files. The summary record sheet included information such as prosecution instituted (e.g. offence date, result and number of demerit points registered) and warnings issued. Audit also noted the following:

- (a) the summary record sheets were not standardised. For example, while the summary record sheets used by two DEHOs included the records of verbal warning issued, the summary record sheet used by the remaining DEHO did not;
  
- (b) Audit selected 10 food premises with conviction of offences relating to food safety and environmental hygiene under the Ordinance and/or breaching the licensing conditions (Note 26), examined the relevant records and found that:
  - (i) of the 7 food premises convicted of offences relating to food safety and environmental hygiene under the Ordinance, while demerit points were registered under DPS, the number of demerit points was not recorded in the summary record sheet of 1 food premises; and
  
  - (ii) of the 4 food premises breaching the licensing conditions, 2 food premises were issued with a total of three warning letters which were all not registered in the summary record sheets. For another food premises issued with three warning letters, two letters were wrongly dated and one letter was not registered in the summary record sheet;
  
- (c) the manual process was error prone (see also para. 2.7); and

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**Note 26:** *Of the 10 food premises, 1 food premises was convicted of offences in relation to food safety and environmental hygiene under the Ordinance and in breach of licensing conditions.*

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- (d) management information for monitoring purpose (e.g. warning letters issued by types of breaches and by types of licences/permits) was not readily available. According to FEHD, it would request the respective DEHOs to submit returns in case such information was required.

2.37 Upon enquiry, FEHD informed Audit in August and October 2023 that:

- (a) the summary record sheet was not required under the departmental guidelines. It was the DEHOs' practice to prepare such records; and
- (b) the functions for recording demerit points, warnings and enforcement actions taken for non-compliance cases would be included in LMIS 3 (see also paras. 2.62(a)(iv) and 2.63).

2.38 Audit noted that there was no central register for maintaining the details of demerit points registered and warnings issued, and such information was recorded in the summary record sheets by DEHOs to facilitate monitoring. In Audit's view, before the launch of LMIS 3, FEHD needs to consider taking measures to enhance the recording of demerit points registered and warnings issued for monitoring purpose.

### ***Need to enhance monitoring of illegal extension of food business areas***

2.39 When a restaurant licensee/licence applicant wishes to use the open area outside the restaurant for alfresco dining, permission from FEHD (i.e. OSA permission — see para. 1.8) is required. If licensed food premises carry on businesses beyond the confines of their licensed premises without permissions, the key statutory provisions and licensing condition governing the matters are as follows:

- (a) ***Section 34C of the Food Business Regulation.*** FEHD may institute prosecutions against licensees under section 34C of the Food Business Regulation for the offence of carrying on a food business otherwise than at the place delineated on the plan (hereinafter referred to as section 34C offence). For convictions under the offence, 10 demerit points will be registered under DPS;



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- (b) ***Section 4A of the Summary Offences Ordinance.*** FEHD may institute prosecutions against licensees/operators under section 4A of the Summary Offences Ordinance for obstruction of public places (hereinafter referred to as section 4A offence). As section 4A offence is not instituted under the Public Health and Municipal Services Ordinance and does not constitute a breach of licensing condition, sanctions under DPS or WLS are not applicable; and
  
- (c) ***Licensing condition on “no encroachment”.*** FEHD may issue verbal and/or written warnings under WLS against licensees for encroaching on Government land or common passageways either in front, at side or at rear of the food premises.

According to FEHD, in 2022, 304 and 473 prosecutions had been instigated against illegal extension of food business areas (i.e. illegal OSA) under section 34C offence and section 4A offence respectively.

2.40 According to FEHD guidelines, for enforcement action taken under section 4A offence, the Health Inspector should evaluate, recommend and document whether follow-up actions are warranted under WLS for breaching the “no encroachment” licensing condition for endorsement by the supervisor. Audit selected 10 food premises with convictions under section 4A offence (involving 30 convictions, ranging from 1 to 6 convictions (averaging 3 convictions) for each food premises) from the three DEHOs’ list of prosecutions (January 2022 to June 2023). Audit examination of the relevant records revealed that for all 10 food premises, there were no records on assessment and recommendation on whether follow-up actions were warranted under WLS for breaching the “no encroachment” licensing condition and no action under WLS (e.g. issuing verbal/written warning) had been taken.

2.41 Upon enquiry, FEHD informed Audit in October 2023 that the existing guidelines were not meant to evaluate every prosecution case under section 4A offence, and FEHD would amend the guidelines accordingly to reflect the original meaning. In Audit’s view, for section 4A offence, FEHD needs to consider conducting a comprehensive review of the guidelines for assessing follow-up actions under the “no encroachment” licensing condition to enhance the deterrent effect. In view of the fact that some food premises have been repeatedly convicted of section 4A offence, FEHD also needs to review the need for imposing sanctions under

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DPS and WLS for section 4A offence with a view to enhancing the deterrent effect, particularly for repeated offenders.

### ***Scope for reviewing DPS and WLS***

2.42 **DPS.** In June 2013, some Legislative Council Members noted cases of food businesses with records of repeated offences and enquired whether the Government had considered reviewing DPS to enhance the deterrent effect (e.g. extending the duration of licence suspension). The Government advised that under DPS, the prescribed demerit points for a particular offence would be doubled and trebled respectively if the same offence was committed for the second and the third time within a period of 12 months, and considered it should be sufficient as an effective deterrent.

2.43 Under DPS, the prescribed demerit points for a particular offence are 5, 10 or 15. According to FEHD guidelines, the counting of demerit points for a particular offence should start afresh after each suspension without taking into consideration of doubling or trebling the prescribed demerit points even though the same offence has been committed for the second and the third time within a period of 12 months. Accordingly, Audit noted that:

- (a) for offences attracting 5 or 10 demerit points, when the same offence was committed for the second time within a period of 12 months, the prescribed demerit points would be doubled leading to a licence suspension. As suspension had been imposed, the prescribed demerit points should not be trebled even though the same offence had been committed for the third time within 12 months in accordance with FEHD guidelines (see Table 4 for two examples). As shown in the table, while Shop A and Shop B had been registered with a total of 30 demerit points and 60 demerit points respectively, the same sanction (i.e. suspended twice) was imposed; and

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**Table 4**

**Examples of calculation of demerit points under DPS**

Particulars	Shop A (Note 1)	Shop B (Note 2)
	No. of demerit points	
First offence (a)	5	10
Same offence for the second time (Note 3) (b)	10 (doubled)	20 (doubled)
First suspension (c) = (a) + (b)	15	30
Same offence for the third time (Note 3) (d)	5 (started afresh after suspension)	10 (started afresh after suspension)
Same offence for the fourth time (Note 3) (e)	10 (doubled)	20 (doubled)
Second suspension (f) = (d) + (e)	15	30
Total (g) = (c) + (f)	30	60

*Source: Audit analysis of FEHD records*

*Note 1: The licensee of Shop A had been convicted for cleansing or storing equipment or utensils in open space (with 5 prescribed demerit points) four times with the offences committed between July 2020 and August 2021.*

*Note 2: The licensee of Shop B had been convicted for extending the business area illegally (with 10 prescribed demerit points) four times with the offences committed between December 2020 and November 2021.*

*Note 3: The same offence was committed within 12 months from the date of the last offence.*

- (b) for offences attracting 15 demerit points, the licence would be suspended for 7 days after the first conviction of the offence. If the first suspension had been imposed and the same offence was committed for the second time within 12 months, the prescribed demerit points would not be doubled as the counting of demerit points would start afresh after each licence suspension. After the second conviction of the offence, 15 demerit points would be registered and the licence would be suspended for the second time (i.e. 14 days).

2.44 As shown in paragraph 2.43, the prescribed demerit points for a particular offence might not be doubled or trebled even if the same offence had been committed for the second or the third time respectively within a period of 12 months, and the

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fact that licensees with lower and higher demerit points were imposed the same sanction might undermine the deterrent effect of DPS. In Audit's view, FEHD needs to review the mechanism of suspension and cancellation of food business licences under DPS with a view to enhancing the deterrent effect, particularly for repeated offenders.

2.45 **WLS.** Under WLS, FEHD may issue verbal and written warnings against food premises in breach of licensing conditions. Audit noted that:

- (a) while licences might be cancelled if sufficient number of warning letters had been accumulated and there were further breaches of licensing requirements and conditions, licence suspension was not an available sanction under WLS;
- (b) management information for warnings issued under WLS (e.g. the number of warnings issued) was not readily available (see para. 2.36(d)). Audit noted that, in the period from 2018 to 2023 (up to June), only 1 licence had been cancelled under WLS due to issue of warning letters. According to FEHD, 12 licences had also been immediately cancelled due to selling meat from an unapproved source (see para. 2.48) during the period; and
- (c) the last review of WLS was conducted by FEHD in 2015.

The lack of management information rendered it difficult to review the implementation of WLS, including the compliance situation of licensing conditions. In Audit's view, FEHD needs to compile management information (e.g. number of warnings issued) for reviewing the implementation of WLS with a view to identifying room for improvement.

## **Audit recommendations**

2.46 **Audit has *recommended* that the Director of Food and Environmental Hygiene should:**

- (a) **consider taking measures to enhance the recording of demerit points registered and warnings issued for monitoring purpose;**

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- (b) **for section 4A offence, consider conducting a comprehensive review of the guidelines for assessing follow-up actions under the “no encroachment” licensing condition to enhance the deterrent effect;**
- (c) **review the need for imposing sanctions under DPS and WLS for section 4A offence with a view to enhancing the deterrent effect, particularly for repeated offenders;**
- (d) **review the mechanism of suspension and cancellation of food business licences under DPS with a view to enhancing the deterrent effect, particularly for repeated offenders; and**
- (e) **compile management information for reviewing the implementation of WLS with a view to identifying room for improvement.**

### **Response from the Government**

2.47 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that:

- (a) continuous upgrading is being carried out to the information and technology system for processing and management of licences and permits, i.e. LMIS, in order to improve FEHD’s operation and monitoring of cases. It is expected that the future LMIS can, among other functions, strengthen the processing and keeping of data, alert officers for actions, and enable the generation of management reports for monitoring and analysis; and
- (b) with policy steer of the Environment and Ecology Bureau, FEHD will keep under review the operation of DPS and WLS for better deterrent effects.

### **Licence suspension and cancellation**

2.48 According to FEHD, the licences of food premises may be suspended or cancelled under DPS, cancelled under WLS or immediately cancelled for breach of legislation of serious nature (e.g. selling meat from an unapproved source). In 2022 and 2023 (up to June), 75 and 39 food business licences were suspended respectively, and 9 and 4 food business licences were cancelled respectively.

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2.49 A licensee dissatisfied with FEHD's decision to suspend or cancel the licence may:

- (a) make a representation to FEHD, as an administrative procedure, in seven days, or in four days for a serious breach;
- (b) appeal to the Licensing Appeals Board (LIAB — Note 27) against FEHD's decision within 14 days; and
- (c) in case LIAB upholds or varies FEHD's decision, appeal to the Municipal Services Appeals Board (MSAB — Note 28) within 14 days.

If an appeal is made, FEHD may in its discretion, suspend the operation of the decision of licence suspension or cancellation, pending determination of the appeal. According to FEHD, in the period from 2018 to 2023 (up to June), there were 31 and 6 cases in relation to suspension/cancellation of food business licences appealed to LIAB and MSAB respectively.

### ***Scope for reviewing assessment criteria for not suspending execution of licence suspension/cancellation decision***

2.50 According to FEHD:

- (a) for recalcitrant offenders, it upholds its decisions of licence suspension or cancellation even though the appeal results are pending. The approach has

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**Note 27:** *LIAB is a statutory body set up under the Public Health and Municipal Services Ordinance to consider appeals against decisions made by the relevant licensing authorities (e.g. FEHD) in relation to licensing matters under the Ordinance. The Board consists of a Chairman, a Vice-Chairman and not less than 13 other members (who are not public officers) appointed by the Chief Executive of the Hong Kong Special Administrative Region.*

**Note 28:** *MSAB is a statutory body established under the Municipal Services Appeals Board Ordinance (Cap. 220) to hear and determine any appeal to the Board from LIAB or an administrative decision from which an appeal lies to the Board under any Ordinance, such as suspension of a restaurant licence. The Chief Executive may appoint a Chairman, one or more persons as Vice-chairmen and a panel of persons (who are not public officers) as members of the Board. The Board consists of the Chairman or a Vice-chairman and 2 members of the panel.*

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to a certain extent helped curb attempts of licensees to abuse the appeal mechanism; and

- (b) to tackle very notorious food premises for illegal OSA and breaching serious licensing conditions, FEHD has set out guidelines on the considerations for not suspending execution of licence suspension or cancellation.

2.51 In the period from 2018 to 2023 (up to June), 6 cases of appeal in relation to food business licence suspension or cancellation were submitted to MSAB. Audit noted that 1 case was related to illegal OSA and the remaining 5 cases were non-OSA cases. Audit examined the records of a non-OSA case (i.e. the only case under the purview of the three DEHOs) and noted that:

- (a) the licensee of a food business licence had been convicted twice for operating another type of unlicensed food business, and FEHD intended to suspend the licence for 7 days in December 2019. The licensee made appeals which were dismissed by both LIAB (in June 2020) and MSAB (in November 2020) (Note 29). The suspension was not executed until MSAB's decision and the licence of the food premises was suspended for 7 days in December 2020 (i.e. one year after the original execution day). The licensee surrendered the licence in January 2021 and the licence was cancelled in February 2021; and
- (b) up to November 2020 (decision by MSAB), the licensee concerned repeatedly committed the same offence (leading to the suspension in December 2020) for 9 times and section 34C offence twice. According to FEHD, the case did not fulfil the assessment criteria for not suspending the execution of licence suspension pending the appeal results.

2.52 Upon enquiry, FEHD informed Audit in October 2023 that:

- (a) with reference to the figures of cases appealed to LIAB in the period from 2019 to 2022 (i.e. four years), the trend of these cases was decreasing; and

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**Note 29:** *The hearings of LIAB and MSAB had been rescheduled twice and once respectively due to the COVID-19 epidemic.*

## **Regulatory control of licensed and permitted food premises**

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- (b) the approach of upholding FEHD's decisions of licence suspension or cancellation even though the appeal results were pending was applicable since 2012 and effectively tackled the problem of illegal OSA and breaches warranting immediate licence cancellation (such as selling frozen meat/chilled meat as fresh meat). Each application would be considered on its own merits and the right of the licensees should be well protected under the appeal mechanism.

2.53 As shown in paragraphs 2.51(b) and 2.52(b), the consideration for not suspending the execution of licence suspension/cancellation was only applicable to cases involving illegal OSA and breaches warranting immediate licence cancellation. In Audit's view, in order to curb attempts of licensees to abuse the appeal mechanism, FEHD needs to consider reviewing the assessment criteria for considering not suspending the execution of licence suspension/cancellation pending the appeal results so that warranted cases are covered.

### **Audit recommendation**

2.54 **Audit has *recommended* that the Director of Food and Environmental Hygiene should consider reviewing the assessment criteria for considering not suspending the execution of licence suspension/cancellation pending the appeal results so that warranted cases are covered.**

### **Response from the Government**

2.55 The Director of Food and Environmental Hygiene generally agrees with the audit recommendation. She has said that besides OSA cases, FEHD also does not suspend the execution of licence suspension/cancellation in cases with public health significance, such as those involving sale of meat from unapproved source.

### **Performance reporting**

#### ***Need to improve reporting of inspection numbers***

2.56 FEHD reports the number of "inspections to food premises" in its Controlling Officer's Report (COR) as one of the performance indicators. According



## **Regulatory control of licensed and permitted food premises**

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to FEHD, DEHOs input the numbers of inspections to licensed/permitted food premises, other food premises (i.e. canteens and clubs with catering) and unlicensed/unpermitted food premises into the Environmental Hygiene Statistical Information System (EHSIS — Note 30) monthly. The system will then collate returns for reporting in COR. Audit examination revealed that:

- (a) ***Breakdown of inspection number to licensed/permitted food premises not readily available.*** FEHD conducts various types of inspections to licensed/permitted food premises, including routine inspections, supervisory inspections and other types of inspections (e.g. for complaints) (see para. 2.2). According to FEHD, it also conducts inspections for checking compliance with the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation. However, as there was no central register for maintaining the details of the inspections (e.g. inspection type and food business licence/permit type), the breakdown of the numbers of inspections by type was not readily available. In August 2023, FEHD informed Audit that such information could be captured in the e-inspection system after the launch of LMIS 3 (see also paras. 2.62(b) and 2.63); and
  
- (b) ***Monthly record of inspections not maintained as required.*** According to FEHD guidelines, a standard “monthly record of inspections to food premises” (for recording information including the total number of inspections conducted on each day with breakdown by types of food premises and inspections) should be completed by each Health Inspector and the consolidated inspection figures of the respective districts would be input into EHSIS. The inspection figures entered into the monthly records should relate to the source records (e.g. inspection forms) to enable later verification of the accuracy of the figures. However, the standard monthly records of inspections (January 2022 to June 2023) of all three DEHOs were not available for audit examination. Audit noted that:
  - (i) for two DEHOs, the officers manually counted the number of inspections conducted and input the consolidated number in EHSIS. However, the supporting documentation was not available; and

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**Note 30:** *EHSIS maintains statistical management information for FEHD’s environmental hygiene services including licensing, and for prosecutions and administrative returns.*

## **Regulatory control of licensed and permitted food premises**

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- (ii) the remaining DEHO maintained breakdown of monthly inspection figure (instead of daily figure as required) of each Health Inspector. For the period from January 2022 to June 2023, the DEHO reported a total of 16,812 inspections to licensed/permitted food premises in EHSIS. However, according to the records of monthly breakdown, the numbers of inspections to permitted food premises were omitted from the reported figures in EHSIS in 17 of the 18 months (1,155 inspections were not reported (about 7% of reported figure)).

In Audit's view, FEHD needs to take measures to ensure that monthly records of inspections to food premises are maintained by DEHOs in accordance with its guidelines and the inspection numbers are accurately recorded in EHSIS.

### ***Need to improve reporting of achievement of performance pledge on inspections to licensed food premises***

2.57 FEHD publishes a performance pledge “to inspect licensed food premises in accordance with the risk types of the premises” on its website, with a target of 95%. According to FEHD, the actual performance in 2018, 2019, 2020, 2021 and 2022 were 100%, 100%, 98%, 100% and 99% respectively, i.e. meeting the target. Audit examined the relevant records and noted the following issues:

- (a) ***Scope for reviewing reporting basis of achievement.*** According to FEHD, DEHOs report the number of inspections to be conducted and actually conducted in EHSIS quarterly. The actual performance in a quarter is calculated based on the total number of inspections actually conducted as a percentage of that to be conducted by all 19 DEHOs. Audit noted that under this approach, while the performance target had been achieved on an overall basis, the under-performance of some DEHOs could not be reflected (see Table 5). Besides, while the performance pledge was “to inspect licensed food premises in accordance with the risk types of the premises”, the existing reporting basis did not take into account whether each licensed food premises was inspected in accordance with the required frequency for the risk type classified under RBIS (see para. 2.3(a)(i));

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**Table 5**

**Performance in inspecting licensed food premises  
(2022)**

Quarter	No. of inspections		Actual performance (c) = (b) ÷ (a) × 100%	Actual performance reported (Note 1) (d)	Range of actual performance of individual DEHO (e)
	To be conducted (a)	Actually conducted (b)			
First	18,661	18,661	100.0%	100%	96% to 101%
Second	28,529	28,090	98.5%	98%	82% to 111%
Third	29,281	29,804	101.8%	100%	92% to 117%
Fourth	29,177	29,071	99.6%	99%	94% to 106%
Overall (Note 2)				99%	82% to 117%

*Source: Audit analysis of FEHD records*

*Note 1: According to FEHD, if the actual performance in a quarter exceeded 100%, it would be reported as 100%.*

*Note 2: The overall actual performance reported for 2022 was a simple average of the actual performance in the four quarters in a year.*

- (b) ***Number of inspections to be conducted for a DEHO omitted in calculating actual performance.*** For a DEHO, in the period from 2018 to 2021, while the number of inspections actually conducted (ranging from 3,858 to 6,895 inspections per year) was included in the calculation of actual performance, the number of inspections to be conducted was reported as nil for all four years (Note 31); and
- (c) ***Supporting documentation for verification of accuracy of reported figures not available.*** As of September 2023, the supporting documents for reporting the number of inspections to be conducted and the number of inspections actually conducted were not available for audit examination. For the five-year period from 2018 to 2022, Audit noted that 7 DEHOs had

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**Note 31:** *As an illustration, based on FEHD's formula and assuming that the number of inspections to be conducted and the actual number of inspections conducted was the same (i.e. performance achievement of 100%), the overall actual performance for 2018, 2020 and 2021 would be revised downward by 1% to 2%.*

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reported an achievement of 100% in all 20 quarterly submissions (i.e. the numbers of inspections conducted was equal to the numbers of inspections to be conducted) and 1 DEHO had reported an achievement of 100% in 19 submissions.

2.58 In Audit's view, FEHD needs to consider reviewing the reporting basis for the performance pledge for inspections to licensed food premises. FEHD also needs to take measures to ensure the accuracy and completeness in reporting the achievement of the performance pledge, including maintaining documentation to support the achievement reported. Furthermore, Audit noted that FEHD had not set performance pledge for inspections of permitted food premises. FEHD needs to consider the need for setting such performance pledge.

### ***Need to improve reporting of the number of licence suspension and cancellation***

2.59 ***Some licence suspensions/cancellations omitted from reporting in COR.*** FEHD reports the number of "food business licences suspended/cancelled" in its COR as one of the performance indicators. According to FEHD, the particulars of licence suspension and cancellation are recorded in LMIS, which will be shared with EHSIS for reporting in COR. Audit examined the related records in LMIS and EHSIS in the period from 2018 to 2022 and noted that there were discrepancies between the records (see Table 6). As FEHD reported the number of food business licences suspended/cancelled in its COR based on the statistics in EHSIS, the cases not recorded in the system were also omitted from COR.

**Table 6**

**Number of food business licences suspended/cancelled  
recorded in LMIS and EHSIS  
(2018 to 2022)**

Year	No. of licences suspended/cancelled		Variance	
	LMIS (a)	EHSIS (COR) (b)	No. (c) = (a) – (b)	% (d) = (c) ÷ (a) × 100%
2018	121	99	22	18%
2019	127	101	26	20%
2020	105	78	27	26%
2021	72	60	12	17%
2022	91	84	7	8%

*Source: Audit analysis of FEHD records*

2.60 Upon enquiry, FEHD informed Audit in October 2023 that the differences between the number of licence suspension and cancellation recorded in LMIS and EHSIS were due to the delays in input or endorsement of the cancellation/suspension cases in LMIS, and therefore the cases had not been included when data was drawn from LMIS to EHSIS automatically for compiling the EHSIS report and the statistics for COR. In Audit’s view, FEHD needs to take measures to ensure the accuracy and completeness of the number of food business licences suspended/cancelled reported in its COR.

2.61 ***Need to follow guidelines in issuing press releases for licence suspension and cancellation.*** According to FEHD guidelines, press releases should be issued in respect of licensed food premises whose licences are subject to suspension for 14 days or cancellation, while no press release will be issued for cases involving suspension of licences for 7 days. Audit selected 10 food premises (involving 11 licence suspension cases) with licence suspended in the period from 2018 to 2023 (up to June) under the purview of the three DEHOs. Of the 11 licence suspension cases, press release was not issued in a case with license suspension for 14 days, while press release was issued in another case with license suspension for 7 days. In Audit’s view, FEHD needs to take measures to ensure that its guidelines on issuing press releases for suspension and cancellation of food business licences are complied with.

## **Regulatory control of licensed and permitted food premises**

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### ***Need to ensure that LMIS 3 incorporates capabilities to address issues in regulatory control of licensed/permitted food premises***

2.62 According to FEHD, there was no central register for maintaining the details of the inspections to food premises (see para. 2.5), the demerit points registered and warnings issued (see para. 2.36). Audit noted that:

- (a) management information for monitoring inspections and enforcement actions was not readily available or regularly compiled, for example:
  - (i) the accuracy and timeliness in risk classification of licensed food premises under RBIS (see paras. 2.7 and 2.8);
  - (ii) the timeliness in conducting first and routine inspections to licensed/permitted food premises and compliance with the required frequencies (see paras. 2.13 to 2.23);
  - (iii) the timeliness in following up irregularities found during inspections (see para. 2.30); and
  - (iv) demerit points and warnings given (see para. 2.36); and
- (b) while the total numbers of inspections were reported in COR (see para. 2.56) and the achievement of the performance pledge on inspections to licensed food premises was published on FEHD's website (see para. 2.57), the related breakdowns were not available.

2.63 According to FEHD, LMIS 3 (expected to launch in 2025) will provide electronic platforms for facilitating its work on the regulatory control of licensed/permitted food premises (see para. 4.35). In Audit's view, FEHD needs to ensure that the capabilities are incorporated in LMIS 3 to address the issues relating to regulatory control of licensed/permitted food premises identified in this Audit Report as far as practicable.

## **Audit recommendations**

2.64 **Audit has *recommended* that the Director of Food and Environmental Hygiene should:**

- (a) **take measures to ensure that monthly records of inspections to food premises are maintained by DEHOs in accordance with FEHD guidelines and the inspection numbers are accurately recorded in EHSIS;**
- (b) **consider reviewing the reporting basis for the performance pledge for inspections to licensed food premises;**
- (c) **take measures to ensure the accuracy and completeness in reporting the achievement of the performance pledge, including maintaining documentation to support the achievement reported;**
- (d) **consider the need for setting performance pledge for inspections of permitted food premises;**
- (e) **take measures to ensure the accuracy and completeness of the number of food business licences suspended/cancelled reported in FEHD's COR;**
- (f) **take measures to ensure that FEHD guidelines on issuing press releases for suspension and cancellation of food business licences are complied with; and**
- (g) **ensure that the capabilities are incorporated in LMIS 3 to address the issues relating to regulatory control of licensed/permitted food premises identified in this Audit Report as far as practicable.**

## **Response from the Government**

2.65 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that:

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- (a) continuous upgrading is being carried out to the information and technology system for processing and management of licences and permits, i.e. LMIS, in order to improve FEHD's operation and monitoring of cases. It is expected that the future LMIS can, among other functions, strengthen the processing and keeping of data, alert officers for actions, and enable the generation of management reports for monitoring and analysis; and
  
- (b) FEHD will review its various guidelines and timeframes so as to enhance their practicability and facilitate compliance.



## **PART 3: REGULATORY CONTROL OF UNLICENSED FOOD PREMISES**

3.1 This PART examines the regulatory control of unlicensed food premises, focusing on the following areas:

- (a) identification and monitoring of unlicensed food premises (paras. 3.2 to 3.8);
- (b) maintenance of unlicensed food premises records (paras. 3.9 to 3.18);
- (c) inspection of unlicensed food premises (paras. 3.19 to 3.28); and
- (d) summary arrest and closure order (paras. 3.29 to 3.37).

### **Identification and monitoring of unlicensed food premises**

3.2 According to the Ordinance, no person shall carry on a food business without a licence/permit granted by FEHD (Note 32). According to FEHD, DEHOs identify unlicensed food premises (Note 33) from the following sources:

- (a) referrals from RLOs in respect of new applications for food business licences and online sale of restricted food permits;
- (b) complaints made by the public;
- (c) referrals from other government departments;

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**Note 32:** *According to the Food Business Regulation, a person carrying on a food business without a licence/permit from FEHD is liable on conviction to a maximum fine of \$50,000 and to imprisonment for six months, and to an additional fine of \$900 each day where the offence is a continuing offence.*

**Note 33:** *For simplicity, in this Audit Report, the term “unlicensed food premises” also refers to food premises operating without permits, and the term “licence” also refers to “permit” when the subject matter is relating to unlicensed food premises.*

## Regulatory control of unlicensed food premises

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- (d) findings of DEHO staff during routine inspections; and
- (e) new applications for restricted food permits received by DEHOs other than those for online sale of restricted foods and expired provisional food business licences.

Upon identification of unlicensed food premises, DEHOs will put the premises under surveillance for weekly visits and taking enforcement actions as appropriate (Note 34).

3.3 FEHD maintains information on the number of unlicensed food premises by the end of every month in EHSIS (see Note 30 to para. 2.56) with breakdowns of the number into unlicensed food premises under/not under application for licences and unlicensed food premises found in operation/not in operation during FEHD's inspections in that calendar month. Table 7 shows the number of unlicensed food premises reported in EHSIS as at 31 December in 2018 to 2022 and as at 30 June 2023.

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**Note 34:** *According to FEHD, when Health Inspectors of DEHOs noted unlicensed food business activities during an inspection, they will collect evidence and inform the proprietor or person-in-charge of the unlicensed food premises of the offence committed and FEHD's intention of issuing summons relating to the offence.*

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**Table 7**

**Number of unlicensed food premises reported in EHSIS  
(2018 to 2023 (up to June))**

Number of unlicensed food premises		As at 31 December					As at 30 June
		2018	2019	2020	2021	2022	2023
Under application for licences	In operation (Note 1)	177 (36%)	238 (41%)	228 (31%)	428 (27%)	271 (20%)	274 (23%)
	Not in operation (Note 2)	220 (44%)	257 (44%)	422 (56%)	1,111 (70%)	1,021 (77%)	868 (74%)
Not under application for licences	In operation (Note 1)	26 (5%)	15 (2%)	15 (2%)	10 (1%)	8 (1%)	7 (1%)
	Not in operation (Note 2)	75 (15%)	74 (13%)	82 (11%)	40 (2%)	20 (2%)	29 (2%)
Subtotal	In operation (Note 1)	203 (41%)	253 (43%)	243 (33%)	438 (28%)	279 (21%)	281 (24%)
	Not in operation (Note 2)	295 (59%)	331 (57%)	504 (67%)	1,151 (72%)	1,041 (79%)	897 (76%)
Total		498 (100%)	584 (100%)	747 (100%)	1,589 (100%)	1,320 (100%)	1,178 (100%)

*Source: Audit analysis of FEHD records*

*Note 1: Unlicensed food premises in operation were those found in operation during FEHD's inspections in that calendar month.*

*Note 2: Unlicensed food premises not in operation were those found not in operation during FEHD's inspections in that calendar month.*

*Remarks: According to FEHD, the increase in the number of unlicensed food premises reported in EHSIS since 2021 was mainly due to the increase in the number of applications for food business licences/permits, which was market-driven. FEHD had already taken appropriate follow-up actions (e.g. conducting inspections and taking enforcement actions) on these premises according to the prevailing guidelines.*

### *Need to review practice in identifying unlicensed food premises*

3.4 According to FEHD, the breakdown of the sources of information on unlicensed food premises was not readily available (see para. 3.2). Audit examined the records of three DEHOs (i.e. Wan Chai, Mong Kok and Sha Tin DEHOs — Note 35) and noted that most of the unlicensed food premises identified were referred by RLOs (see para. 3.2(a)). As shown in Table 7 in paragraph 3.3, most of the unlicensed food premises reported in EHSIS were under application for licences (e.g. 97% (23% in operation and 74% not in operation) as at 30 June 2023).

3.5 In September 2023, Audit selected 35 food premises (Note 36) which had been operating for at least one year and matched them against the lists of unlicensed food premises identified with active operation maintained by the respective DEHOs (see para. 3.9(a)) between January and August 2023. Audit found that while 13 (37%) food premises were unlicensed based on LMIS records as of October 2023, 9 of them were neither included in DEHOs' lists of unlicensed food premises identified with active operation (see Note 37 to para. 3.9(a)) nor in other records for taking follow-up actions. Audit considers that FEHD needs to consider reviewing its practice in identifying unlicensed food premises and take follow-up actions as appropriate.

### *Need to closely monitor the number of unlicensed food premises*

3.6 As shown in Table 7 in paragraph 3.3, the number of unlicensed food premises reported in EHSIS increased by 680 (137%) from 498 as at 31 December 2018 to 1,178 as at 30 June 2023, and the number of unlicensed food premises in operation (see Note 1 to Table 7) increased by 78 (38%) from 203 to 281

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**Note 35:** *Audit visited one DEHO from each of the three Operations Divisions (see para. 1.10(b)) with the largest average number of unlicensed food premises reported in EHSIS under their purview in 2022 to review their operations.*

**Note 36:** *Audit mainly used a risk-based approach in selecting the samples for examination, focusing on:*

- (a) restaurants promoting their businesses on the Internet (e.g. social media);*
- (b) restaurants featuring on finder websites/mobile applications; and*
- (c) food premises located in areas where unlicensed food business activities were reported by the media.*

in the same period. Audit further analysis of the number of unlicensed food premises in operation under the purview of 19 DEHOs found that such numbers increased in the period for 12 DEHOs (ranging from 1 to 24). Audit considers that FEHD needs to closely monitor the number of unlicensed food premises, including the characteristics of unlicensed food business activities in the districts with a view to formulating appropriate measures to address the issues.

### **Audit recommendations**

**3.7 Audit has *recommended* that the Director of Food and Environmental Hygiene should:**

- (a) consider reviewing FEHD's practice in identifying unlicensed food premises and take follow-up actions as appropriate; and**
- (b) closely monitor the number of unlicensed food premises, including the characteristics of unlicensed food business activities in the districts with a view to formulating appropriate measures to address the issues.**

### **Response from the Government**

**3.8** The Director of Food and Environmental Hygiene generally agrees with the audit recommendations.

### **Maintenance of unlicensed food premises records**

**3.9** According to FEHD guidelines, DEHOs shall prepare the following records of unlicensed food premises for multilevel monitoring and taking appropriate follow-up actions:

- (a) *District Action Plan (DAP)*.** According to FEHD, DAP is a comprehensive list of all unlicensed food premises identified with active operation

## Regulatory control of unlicensed food premises

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(Note 37) in the district. DEHOs shall prepare DAPs regularly and submit them to FEHD senior management bi-monthly for reviewing the status of the unlicensed food premises in the districts. The unlicensed food premises in DAPs are categorised according to various risk factors such as whether the premises are licensable or with outright objection for licensing. If DEHOs no longer consider the unlicensed food premises as active, they will remove them from the list;

- (b) ***List of targets for summary arrest operations.*** As a deterrent against unlicensed food business activities, FEHD may conduct summary arrest operations (see para. 3.29) if certain criteria are met. The list of targets for summary arrest operations comprises details of unlicensed food premises on which summary arrest operations are to be conducted. DEHOs shall maintain and update the list regularly (see Note 15 to para. 2.13(c)(i)) for record and monitoring purposes; and
  
- (c) ***Number of unlicensed food premises in EHSIS.*** DEHOs are required to report monthly in EHSIS the number of unlicensed food premises by the end of each month (with breakdowns of the number into unlicensed food premises under/not under application for licences and unlicensed food premises found in operation/not in operation during FEHD's inspections in that calendar month — see para. 3.3). The total number of unlicensed food premises reported in EHSIS shall tally with that reported in DAPs.

### ***Need to ensure that a consistent basis is adopted by all DEHOs in preparing DAPs and inputting data in EHSIS***

3.10 DEHOs submit DAPs bi-monthly and input data in EHSIS monthly. According to FEHD, the total number of unlicensed food premises reported in EHSIS shall tally with that reported in DAPs (see para. 3.9(c)). Audit examined the number of unlicensed food premises reported in DAPs and EHSIS between January 2022 and June 2023 by three DEHOs (see para. 3.4) and noted that:

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**Note 37:** *Upon enquiry, FEHD informed Audit in September 2023 that unlicensed food premises with active operation referred to unlicensed food premises with prosecution actions taken.*

## **Regulatory control of unlicensed food premises**

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- (a) there were discrepancies between the numbers reported in the DAPs and EHSIS in the period (see Table 8);
- (b) all cases referred by RLOs (see para. 3.2(a)) had been included in DAPs and EHSIS prepared by Mong Kok and Sha Tin DEHOs, but not by Wan Chai DEHO; and
- (c) DEHOs under Operations Divisions 1 and 3 (i.e. DEHOs on Hong Kong Island and Islands, and in the New Territories) and DEHOs under Operations Division 2 (i.e. DEHOs in Kowloon) (see para. 1.10(b)) prepared and submitted DAPs in even and odd-numbered months respectively.

## Regulatory control of unlicensed food premises

Table 8

Number of unlicensed food premises reported in  
DAPs and EHSIS of Wan Chai, Mong Kok and Sha Tin DEHOs  
(January 2022 to June 2023)

Report cut-off date (month end)		Number of unlicensed food premises reported					
		Wan Chai DEHO		Mong Kok DEHO		Sha Tin DEHO	
		DAP	EHSIS	DAP	EHSIS	DAP	EHSIS
2022	January	N.A.	136	72	85	N.A.	175
	February	24	137	N.A.	73	158	158
	March	N.A.	139	77	77	N.A.	199
	April	26	142	N.A.	82	165	164
	May	N.A.	148	96	115	N.A.	178
	June	26	150	N.A.	118	165	165
	July	N.A.	153	102	109	N.A.	174
	August	24	155	N.A.	98	143	143
	September	N.A.	160	94	111	N.A.	139
	October	25	166	N.A.	112	132	132
	November	N.A.	168	93	124	N.A.	151
	December	23	172	N.A.	111	139	139
2023	January	N.A.	177	90	118	N.A.	133
	February	23	178	N.A.	120	148	148
	March	N.A.	182	85	85	N.A.	171
	April	18	184	N.A.	89	161	161
	May	N.A.	191	70	70	N.A.	166
	June	27	128	N.A.	73	155	164

Legend:  Discrepancies were found between the numbers of unlicensed food premises reported in DAPs and EHSIS

Source: *Audit analysis of FEHD records*

Remarks: *Mong Kok DEHO submitted DAPs in odd-numbered months while Sha Tin and Wan Chai DEHOs submitted DAPs in even-numbered months.*



## **Regulatory control of unlicensed food premises**

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3.11 In response to Audit's enquiry about the discrepancies reported in Table 8 in paragraph 3.10 and FEHD's practice in maintaining records on unlicensed food premises, FEHD informed Audit in August and September 2023 that:

- (a) DEHOs under Operations Divisions 2 (except Kwun Tong DEHO) and 3 included all cases referred by RLOs (see para. 3.2(a)) in DAPs and EHSIS, but DEHOs under Operations Division 1 and Kwun Tong DEHO did not; and
- (b) Wan Chai DEHO had mistakenly included the number of unlicensed food premises to be removed from DAP (see para. 3.9(a)) and carried forward such numbers from previous months in EHSIS. As a result, the reported numbers in EHSIS were overstated.

3.12 The audit findings in paragraphs 3.10 and 3.11 revealed the different practices adopted by DEHOs in preparing DAPs and inputting data in EHSIS, and the inadequacies in the process. Audit considers that FEHD needs to take measures to ensure that a consistent basis is adopted by all DEHOs in preparing DAPs and inputting data in EHSIS. To facilitate comparison and monitoring, FEHD also needs to consider aligning the reporting period for DAPs among the three Operations Divisions.

### ***Need to maintain list of unlicensed food premises under surveillance***

3.13 According to FEHD guidelines, DAP is a comprehensive list of all unlicensed food premises identified with active operation (i.e. unlicensed food premises with prosecution actions taken) in the district (see para. 3.9(a)).

3.14 Audit noted that DEHOs conduct weekly visits to all unlicensed food premises upon identification (see para. 3.2), regardless of whether they are with active operation (e.g. those under applications for food business licences/permits but without prosecution actions taken). However, according to FEHD guidelines, only unlicensed food premises with active operation shall be included in DAPs. In other words, there was no requirement for DEHOs to maintain a full list of unlicensed food premises in the district under surveillance (e.g. for conducting weekly visits). To facilitate monitoring, enhance surveillance capability and resources planning, Audit considers that FEHD needs to consider requiring DEHOs to maintain such list.

## Regulatory control of unlicensed food premises

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### *Room for improvement in preparing DAPs*

3.15 Audit examined six DAPs submitted between June 2022 and May 2023 by each of the three DEHOs (see para. 3.4) and noted that:

- (a) ***Duplicated/incomplete information in DAPs.*** DAPs prepared by two DEHOs contained 8 (6%) (out of 139 entries) and 35 (4%) (out of 888 entries) duplicated entries (e.g. two entries were found with the same file reference but different addresses) or entries with incomplete information (e.g. file reference was not recorded) respectively;
- (b) ***Progress of closure order applications not accurately recorded in DAPs.*** The progress of closure order applications for three cases of unlicensed food premises were not accurately recorded in DAPs as follows:
  - (i) in two cases, while officers reported in the DAP of April 2023 that “request for building plan of the premises from BD (Note 38) was made and reply is pending”, the file records showed that BD had already provided the building plans to FEHD in May 2022 and April 2023; and
  - (ii) in another case, while it was reported in the DAP of April 2023 that “request for building plan of the premises from BD is in progress”, there was no record on the case file showing such request was sent to BD; and
- (c) ***DAP not updated.*** Of the 115 unlicensed food premises reported in a DAP of a DEHO, 74 (64%) unlicensed food premises no longer considered as active had been put in the DAP for more than two months (up to 10 months).

Audit considers that FEHD needs to take measures to ensure that information included in DAPs of all DEHOs are accurate, complete and up-to-date.

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**Note 38:** *According to FEHD, building plans certified by BD of the concerned premises shall be obtained for application for closure orders.*

***Room for improvement in reporting unlicensed food premises in EHSIS***

3.16 Audit reviewed two EHSIS reports prepared between January 2022 and April 2023 by each of the three DEHOs (see para. 3.4) and noted that:

- (a) ***Supporting documentation not maintained.*** According to the three DEHOs, they input the data on unlicensed food premises in EHSIS based on various sources, for example, records of prosecutions and summary arrest operations. However, they could not provide the relevant supporting documentation for audit examination; and
- (b) ***Misclassification of unlicensed food premises.*** Audit found that in 2 and 1 EHSIS reports prepared by Mong Kok and Sha Tin DEHOs respectively, 3 unlicensed food premises in each district which were not in operation in the respective calendar month were misclassified as “in operation”.

Audit considers that FEHD needs to maintain supporting documentation for the data in EHSIS to facilitate checking, and take measures to ensure that unlicensed food premises are accurately classified and reported in EHSIS.

**Audit recommendations**

3.17 **Audit has recommended that the Director of Food and Environmental Hygiene should:**

- (a) **take measures to ensure that a consistent basis is adopted by all DEHOs in preparing DAPs and inputting data in EHSIS;**
- (b) **consider aligning the reporting period for DAPs among the three Operations Divisions to facilitate comparison and monitoring;**
- (c) **consider requiring DEHOs to maintain a full list of unlicensed food premises under their surveillance to facilitate monitoring, enhance surveillance capability and resources planning;**

## **Regulatory control of unlicensed food premises**

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- (d) **take measures to ensure that information included in DAPs of all DEHOs are accurate, complete and up-to-date; and**
- (e) **maintain supporting documentation for the data in EHSIS to facilitate checking, and take measures to ensure that unlicensed food premises are accurately classified and reported in EHSIS.**

## **Response from the Government**

3.18 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that:

- (a) DAP and the upgraded LMIS together can be envisaged to generate a full list of unlicensed food premises for more effective monitoring;
- (b) as regards DAPs, they are district-based and the current reporting period is designed to facilitate monitoring by the Operations Divisions concerned; and
- (c) FEHD will take into account the audit recommendations in paragraph 3.17 and consider if there is further room for improvement.

## **Inspection of unlicensed food premises**

3.19 According to FEHD:

- (a) upon receiving referrals from RLOs (see para. 3.2(a)), DEHOs will conduct first inspections within a specified timeframe (see Note 15 to para. 2.13(c)(i));
- (b) for complaints on alleged unlicensed food premises made by the public and referrals from other government departments (see para. 3.2(b) and (c)),

## **Regulatory control of unlicensed food premises**

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DEHOs will conduct inspections for providing a substantive reply within 30 days (Note 39);

- (c) upon identification of unlicensed food premises, DEHOs will put the premises under surveillance for weekly visits (i.e. conduct weekly inspections); and
- (d) reasons for deviations from the abovementioned timeframe/frequency for inspections shall be properly documented.

### ***Need to ensure that inspections are conducted timely***

3.20 Audit selected 30 cases of unlicensed food premises identified between January 2021 and April 2023 from the three DEHOs' DAPs (see para. 3.4) for examination and found that:

- (a) while all 30 cases were referred by RLOs (see para. 3.2(a)), in 9 (30%) cases, the concerned DEHOs did not conduct the first inspections within the specified timeframe (i.e. the longest time lapse was 17 days from the date of referral) (see para. 3.19(a));
- (b) for 1,190 inspections (Note 40) conducted for the 30 cases between January 2021 and August 2023, on 26 occasions (involving 15 cases), the intervals between inspections were more than a week (ranging from 12 to 70 days, averaging 24 days) (see para. 3.19(c)); and
- (c) for all cases mentioned in (a) and (b) above, the reasons for the deviations from the timeframe/frequency for inspections were not documented (see para. 3.19(d)).

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**Note 39:** *According to FEHD guidelines, upon receiving public complaints or referrals from other government departments, interim and substantive replies shall be provided in 10 and 30 days respectively.*

**Note 40:** *Some of the inspections were conducted during non-office hours.*

## Regulatory control of unlicensed food premises

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Audit considers that FEHD needs to take measures to ensure that inspections are conducted to unlicensed food premises in accordance with the required timeframe/frequency and the reasons for deviations are documented as required.

### *Need to ensure that complaints are replied timely*

3.21 According to FEHD guidelines, all complaints must be dealt with promptly. Audit analysed the database (extracted from FEHD's Complaints Management Information System — Note 41) on complaints relating to unlicensed food premises received between January 2018 and June 2023 and noted that:

- (a) of the 18,504 complaint cases received in the period, while substantive replies shall be made 30 days upon receipt of the complaints (see Note 39 to para. 3.19(b)), in 7,514 (41%) cases, the time taken in giving the substantive replies was more than 30 days (ranging from 31 to 295 days (averaging 56 days) from the dates of receipt); and
- (b) the dates of interim replies were not readily available. Hence, Audit could not analyse whether the 10-day interim reply requirement (see Note 39 to para. 3.19(b)) had been met (Note 42).

In October 2023, FEHD informed Audit that the delays in giving substantive replies for some complaint cases were due to their complicated nature and hence longer time was required for investigations. As such, these cases should not be regarded as delays. As all complaints shall be dealt with promptly, Audit considers that FEHD needs to take measures to ensure that complaints against unlicensed food premises are replied timely in accordance with its guidelines.

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**Note 41:** *FEHD uses the Complaints Management Information System to record information in connection with all complaints (including complaints relating to unlicensed food premises). Information available in individual case records in the System includes complaint receipt date, subject of the complaint, name and contacts of complainant, and interim and substantive reply dates.*

**Note 42:** *According to FEHD, weekly and monthly reports are generated by the Complaint Management Information System and automatically sent to the relevant FEHD officers at district management level for monitoring of overdue cases and complaint handling.*

***Need to ensure compliance with requirements for using official notebooks***

3.22 According to FEHD guidelines, Health Inspectors shall record in official notebooks the details of all inspections. The purpose of using official notebook is to enable officers to record essential particulars of all matters arising from and associated with the daily execution of the official duties for future reference. Audit examined all official notebooks used by the Health Inspectors of three DEHOs (see para. 3.4) in 2022 and noted that some Health Inspectors had not used the official notebooks in some months while they should have conducted inspections in the months (see Table 9).

**Table 9**

**Use of official notebooks by Health Inspectors of Wan Chai, Mong Kok and Sha Tin DEHOs (2022)**

	<b>Wan Chai DEHO</b>	<b>Mong Kok DEHO</b>	<b>Sha Tin DEHO</b>
Number of Health Inspectors	24	18	21
Total number of duty months (Note) (a)	268 (100%)	210 (100%)	240 (100%)
Total number of months that the official notebooks were used (b)	175 (65%)	127 (60%)	100 (42%)
Total number of months that the official notebooks were not used (c) = (a) - (b)	93 (35%)	83 (40%)	140 (58%)

*Source:* Audit analysis of FEHD records

*Note:* Duty month refers to the total number of working months of all Health Inspectors of the DEHOs excluding the months that they were not on duty (e.g. on leave or on transfer).

3.23 Audit considers that FEHD needs to take measures to ensure that Health Inspectors of all DEHOs comply with the requirements stipulated in its guidelines for using official notebooks.

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### *Need to ensure compliance with requirements for checking official notebooks*

3.24 According to FEHD guidelines, each Senior Health Inspector shall conduct random checks on the official notebooks of the Health Inspectors under his/her supervision and sign the notebooks after checking on a monthly basis. Audit examined all official notebooks used by the Health Inspectors of three DEHOs (see para. 3.4) in 2022 and found that while each Senior Health Inspector should have checked the notebook of at least one Health Inspector every month, there was no evidence of checking by some Senior Health Inspectors in some months (see Table 10). Audit considers that FEHD needs to take measures to ensure that Senior Health Inspectors of all DEHOs comply with the requirements stipulated in its guidelines for checking official notebooks.

**Table 10**

**Checking of official notebooks by Senior Health Inspectors  
of Wan Chai, Mong Kok and Sha Tin DEHOs  
(2022)**

	<b>Wan Chai DEHO</b>	<b>Mong Kok DEHO</b>	<b>Sha Tin DEHO</b>
(a) Number of Senior Health Inspectors	4	3	4
(b) Number of Senior Health Inspectors with no evidence of checking official notebooks	2	0	1
(c) Number of Senior Health Inspectors conducted checking of official notebooks for at least one month	2	3	3
(d) Number of months where the Senior Health Inspectors in (c) had conducted checking	9 and 10	2, 10 and 12	1, 1 and 3

Source: *Audit analysis of FEHD records*



***Need to ensure that standard inspection forms are used and checked***

3.25 According to FEHD guidelines:

- (a) Health Inspectors shall record key inspection information, including the date and time of inspection, and details on premises' conditions in a standard inspection form. Separate inspection forms shall also be used for each inspection; and
- (b) the inspection forms shall be submitted to Senior Health Inspectors for timely review, and Senior Health Inspectors shall sign the forms after review.

3.26 Audit selected 30 cases of unlicensed food premises identified between January 2021 and April 2023 from the three DEHOs' DAPs (see para. 3.4) and examined the relevant records of 1,190 inspections conducted between January 2021 and August 2023 (see para. 3.20(b)). Audit noted that:

- (a) ***Latest version of standard inspection form was not always used.*** The standard inspection form was last updated in 2016. In 345 (29%) inspections (involving 12 cases), the latest version of the standard inspection form was not used;
- (b) ***Standard inspection form was not always used.*** The standard inspection forms were not used in 80 (7%) inspections (involving 7 cases). According to FEHD, details of the inspections had been documented in records kept by the Health Inspectors;
- (c) ***Separate inspection forms were not always used.*** In 353 (30%) inspections (involving 13 cases), separate inspection forms were not used to record individual inspections. For example, in one case, 6 inspections were recorded in a single form;
- (d) ***Dates of submission to Senior Health Inspectors were not always recorded.*** As the dates of submission of the inspection forms to Senior Health Inspectors were not always recorded, Audit could not ascertain whether the forms were submitted timely; and

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- (e) ***Long time taken to review inspection forms.*** Of the 852 inspection forms prepared for the 30 cases, only 583 (68%) were signed by the Senior Health Inspectors as evidence of reviewing. Of the 583 signed inspection forms, only 420 forms were signed with date, and the time elapsed between the form preparation dates and the sign dates ranged from 0 to 253 days (averaging 40 days).

Audit considers that FEHD needs to take measures to ensure that standard inspection forms are used properly to record details of inspections of unlicensed food premises as required, and the inspections forms are submitted to and reviewed by the Senior Health Inspectors timely.

### **Audit recommendations**

3.27 **Audit has *recommended* that the Director of Food and Environmental Hygiene should take measures to ensure that:**

- (a) **inspections are conducted to unlicensed food premises in accordance with the required timeframe/frequency and the reasons for deviations are documented as required;**
- (b) **complaints against unlicensed food premises are replied timely in accordance with FEHD guidelines;**
- (c) **Health Inspectors of all DEHOs comply with the requirements stipulated in FEHD guidelines for using official notebooks;**
- (d) **Senior Health Inspectors of all DEHOs comply with the requirements stipulated in FEHD guidelines for checking official notebooks; and**
- (e) **standard inspection forms are used properly to record details of inspections of unlicensed food premises as required, and the inspections forms are submitted to and reviewed by the Senior Health Inspectors timely.**

## **Response from the Government**

3.28 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that FEHD will review its various guidelines and timeframes so as to enhance their practicability and facilitate compliance.

## **Summary arrest and closure order**

3.29 *Summary arrest.* As a deterrent against unlicensed food business activities, FEHD may conduct summary arrest operations if certain criteria are met. In summary arrest operations, Health Inspectors arrest the persons operating the unlicensed food premises in raid and take them to a nearby police station for taking further enforcement actions (e.g. taking cautioned statements). According to FEHD, regardless of whether a summary arrest operation is conducted, unlicensed food premises are still subject to regular prosecutions.

3.30 *Closure order.* FEHD may apply to the court for closure orders to close unlicensed food premises if certain criteria are met. Upon execution of a closure order, the premises are physically blocked off and sealed, and gas, electricity and water supplies are disconnected. The closure order will remain in force until the court rescinds it on application by FEHD or any person having an interest in the premises in respect of the order is made.

## ***Room for improvement in administering summary arrest operations***

3.31 FEHD maintains data on summary arrest operations in EHSIS. Audit examined the relevant data in EHSIS, the lists of targets for summary arrest operations (see para. 3.9(b)) and other records relating to summary arrest operations prepared by three DEHOs (see para. 3.4) and noted that:

- (a) *Decrease in average success rates of summary arrest operations.* According to EHSIS, in 2018 to 2022, FEHD conducted 131 to 189 summary arrest operations every year and the number of persons arrested ranged from 64 to 75. Audit noted that the average success rates

## Regulatory control of unlicensed food premises

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of summary arrest operations (Note 43) decreased from 50% in 2018 to 35% in 2022. Furthermore, the success rates varied among the 19 DEHOs. In 2022, the success rates of 6 DEHOs were 0% (2 to 42 summary arrest operations were conducted by each DEHO) and that of other 6 were 100% (1 to 12 summary arrest operations were conducted by each DEHO). Audit considers that FEHD needs to review the practices of different DEHOs (in particular those with low success rates) in conducting summary arrest operations with a view to improving the arrangements of the operations. Furthermore, to enhance the deterrent effect, FEHD also needs to consider publicising the conduct of summary arrest operations on its website as appropriate;

- (b) ***List of targets for summary arrest operations not maintained.*** According to FEHD guidelines, DEHOs are required to maintain and update regularly the list of targets for summary arrest operations for record and monitoring purposes (see para. 3.9(b)). Of the three DEHOs, upon enquiry, Sha Tin DEHO informed Audit in July 2023 that it has not maintained the list. Audit considers that FEHD needs to take measures to ensure that all DEHOs comply with the relevant requirement; and
  
- (c) ***Summary arrest operations not conducted for unlicensed food premises meeting the criteria.*** FEHD has set out in its guidelines the criteria for including an unlicensed food premises in the list of targets for summary arrest operations. Audit examined records of 25 unlicensed food premises included in DAPs prepared by the three DEHOs for January to April 2023 and found that 12 unlicensed food premises meeting at least one of the criteria have not been included in the lists, and the justifications for not conducting the summary arrest operations were not documented for 7 of the 12 unlicensed food premises. Upon enquiry, FEHD informed Audit in August 2023 that it had taken other factors into account when including unlicensed food premises in the list, for example, operational plan and manpower deployment. Audit considers that FEHD needs to take measures to ensure that summary arrest operations are conducted in accordance with its guidelines and justifications are documented for not doing so.

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**Note 43:** *Average success rate represents the number of persons arrested as a percentage of the number of summary arrest operations conducted.*

***Need to improve management information on premises with persistent unlicensed food business operations***

3.32 Audit noted that for premises under food business licence application involving in unlicensed food business activities, if the application was withdrawn and a new application relating to the same premises was submitted by the same proprietor, the premises concerned would be recorded as a new unlicensed food premises case in a DAP and the old case would be removed from it. In this connection, records of the actions taken in relation to the old case would not be shown in the new case in the DAP. As such, the track records of the unlicensed food premises concerned were not reflected in the DAP.

3.33 According to FEHD, the track records of unlicensed food premises are one of the considerations for the conduct of summary arrest operation and application for closure order. The inadequacies of DAP mentioned in paragraph 3.32 were not entirely satisfactory. To facilitate the management in determining the appropriate actions (e.g. summary arrest operation or application for closure order) for tackling persistent unlicensed food business operations, there is a need for FEHD to review the practice in reporting unlicensed food premises (with the same proprietor) in DAPs with a view to providing more management information for reference.

***Need to ensure that prosecution is instituted against unlicensed food premises in accordance with required frequencies***

3.34 According to FEHD guidelines, unlicensed food premises is subject to regular prosecutions (see Note 15 to para. 2.13(c)(i)). For unlicensed food premises meeting the criteria of application for closure orders, more frequent prosecutions shall be instituted. Audit examined 25 unlicensed food premises meeting the criteria of application for closure orders included in the three DEHOs' DAPs (see para. 3.4) between January to April 2023 and found that in 10 cases, more frequent prosecutions had not been instituted as required. Audit considers that FEHD needs to take measures to ensure that all DEHOs institute prosecutions on unlicensed food premises meeting the criteria of application for closure orders in accordance with the frequency stipulated in its guidelines.

### *Need to ensure that published information on execution of closure orders is up-to-date*

3.35 FEHD publishes on its website a list of unlicensed food premises that have been ordered to close by the court under the Ordinance (i.e. cases in which the closure orders were executed). According to the list on FEHD website as at 21 September 2023, all closure orders had been rescinded (see para. 3.30). However, audit examination of records regarding closure orders in force found that one closure order was still in force as of September 2023. Audit considers that FEHD needs to take measures to ensure that published information on execution of closure orders on its website is up-to-date.

### **Audit recommendations**

3.36 **Audit has recommended that the Director of Food and Environmental Hygiene should:**

- (a) **review the practices of different DEHOs in conducting summary arrest operations with a view to improving the arrangements of the operations;**
- (b) **consider publicising the conduct of summary arrest operations on FEHD website as appropriate;**
- (c) **take measures to ensure that all DEHOs comply with the relevant requirement on maintaining and updating the list of targets for summary arrest operations;**
- (d) **take measures to ensure that summary arrest operations are conducted in accordance with FEHD guidelines and justifications are documented for not doing so;**
- (e) **review the practice in reporting unlicensed food premises in DAPs with a view to providing more management information on premises with persistent unlicensed food business operations by the same proprietor for determining the appropriate actions;**

- (f) **take measures to ensure that all DEHOs institute prosecutions on unlicensed food premises meeting the criteria of application for closure orders in accordance with the frequency stipulated in FEHD guidelines; and**
  
- (g) **take measures to ensure that published information on execution of closure orders on FEHD website is up-to-date.**

### **Response from the Government**

3.37 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that FEHD will review its various guidelines and timeframes so as to enhance their practicability and facilitate compliance.

## **PART 4: OTHER RELATED ISSUES**

4.1 This PART examines other issues relating to the regulatory control of food premises, focusing on the following areas:

- (a) environmental hygiene of food premises (paras. 4.2 to 4.14);
- (b) maintenance of prosecution records (paras. 4.15 to 4.23);
- (c) Hygiene Manager and Hygiene Supervisor Scheme (paras. 4.24 to 4.27);
- (d) guidelines on regulatory control of food premises (paras. 4.28 to 4.31); and
- (e) implementation of LMIS enhancement projects (paras. 4.32 to 4.38).

### **Environmental hygiene of food premises**

#### ***Need to keep under review implementation of trial scheme for regulating waste disposal arrangement of food premises***

4.2 According to FEHD, trade waste generated by food premises, especially restaurants, generally includes a large amount of food remnants. If not handled properly, it will lead to bad smells and provide a food source and hiding place for rodents. It is a nuisance to the public and may cause food safety and environmental hygiene problems. The food business has the responsibility to properly dispose of the waste it generates. Nonetheless, many food premises place their waste outdoors, especially after business hours.

4.3 To improve the environmental hygiene and address rodent infestation problem of rear lanes, in November 2022, FEHD launched a trial scheme (involving nine rear lanes under the purview of nine DEHOs), allowing licensed/permitted food



premises to place large-size waste containers (Note 44) in their connected rear lanes under specific conditions for temporary storage of waste until collection by the cleaning workers hired by the food premises. According to FEHD's review of January 2023, the overall environmental hygiene conditions and rodent infestation in these rear lanes had significantly improved. In April 2023, FEHD extended the trial scheme to cover all districts (except the Islands District).

4.4 *Need to keep under review coverage of rear lanes and participation of food premises.* According to FEHD, the principle of the trial scheme is to regulate food businesses in using the target rear lane (a public place) for the storage of waste. One major consideration is to improve the rodent infestation situation which might have been caused by improper storage of food waste by the nearby food premises. Each DEHO will decide the rear lanes to be included in the scheme. The considering factors include whether the problems in the rear lane are caused by licensed/permitted food premises, whether the rear lane is in the vicinity of refuse collection point, and whether the rear lane has sufficient space for placing waste containers. As of June 2023, 26 rear lanes in 18 DEHOs were covered by the scheme. Audit noted that:

- (a) the number of target rear lanes covered by the scheme varied among the 18 DEHOs (i.e. 1 rear lane each for 16 DEHOs, 4 rear lanes for a DEHO and 6 rear lanes for the remaining DEHO);
- (b) of the 325 licensed/permitted food premises located along the 26 rear lanes, 5 food premises were not in operation. Of the 320 food premises in operation, 232 (73%) participated in the scheme (the participation rates ranged from 18% to 100% for each rear lane); and

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**Note 44:** *Under section 22 of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK), the occupier of any premises in which there is any trade waste which exceeds 100 litres in quantity shall, before any such waste is disposed of, inform the Director of Food and Environmental Hygiene of any arrangement made by him for the disposal of the waste, and the Director may approve the arrangement or direct the occupier to dispose of the waste in such manner as he may direct.*

## Other related issues

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- (c) there were 66 problematic rear lanes of hygiene black spots under the Government Programme on Tackling Hygiene Black Spots (Note 45) as of June 2023. However, only 4 problematic rear lanes were covered under the trial scheme. According to FEHD, the problematic rear lanes under the Programme also involved various issues including chokage of underground sewage, obstruction by abandoned motor cycles, which were outside FEHD's jurisdiction.

4.5 According to FEHD's review of July 2023 for the extended trial scheme:

- (a) the overall hygienic conditions and rodent infestation in the target rear lanes had been greatly improved; and
- (b) recommendations on the trial scheme included regularisation of the scheme in each district subject to manpower deployment, appropriateness of adoption and operational needs, and upgrading the set of promotional materials and template letters to bilingual versions.

4.6 According to FEHD, the trial scheme for regulating waste disposal arrangement of food premises helps improve the overall hygienic conditions in the target rear lanes. However, Audit noted that the coverage of the rear lanes in the scheme was limited and the participation rate of food premises in some rear lanes was not high (see para. 4.4). In Audit's view, FEHD needs to keep under review the implementation of the trial scheme and take measures to improve the scheme as appropriate (e.g. extending the coverage, taking into account hygiene black spots in selecting rear lanes and enhancing the promotion of the scheme).

4.7 *Need to step up monitoring of compliance with requirements of trial scheme.* According to FEHD, only the licensed/permitted food premises participating in the trial scheme and strictly following the rules defined by FEHD will be allowed

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**Note 45:** *The Government Programme on Tackling Hygiene Black Spots was launched in mid-August 2022 by the District Matters Co-ordination Task Force (led by the Deputy Chief Secretary for Administration). Under the Programme, government departments strengthen their work on tackling the hygiene and street management black spots in various districts over the territory to protect public health, create a liveable living environment for the public and enhance the image of Hong Kong.*

to make use of the rear lane for storage of waste in a controlled manner. Otherwise, enforcement actions will be taken. Audit conducted site visits to 8 rear lanes covered in the trial scheme (under the purview of three DEHOs, i.e. Mong Kok, Sha Tin and Wan Chai) in August 2023 and noted the following incidents of non-compliance:

- (a) ***Some waste containers without labels.*** According to the rules of the trial scheme, only specified waste container is allowed to be stationed in the rear lane, and stickers of shop sign of the participating food premises should be stuck on each waste container. However, Audit found some waste containers without labels (see Photograph 1(a) for an example) in 7 rear lanes. Upon enquiry, FEHD informed Audit in October 2023 that most probably those waste containers did not belong to licensed/permitted food premises and were not regulated under the scheme;
- (b) ***Wastes placed outside waste containers.*** According to the rules of the trial scheme, leaking from the specified waste container or littering on the lane is not allowed, and the external surface of the container should be reasonably clean without persistent dirt. However, Audit found that wastes were placed on top of some waste containers or on the ground, or some waste containers had apparent dirt on the surface in 8 rear lanes;
- (c) ***Waste containers not properly covered.*** According to the rules of the trial scheme, the specified waste containers should be properly covered by close fitting lids to prevent access of pests and animals. However, Audit found some waste containers without covers (see Photograph 1(b) for an example) or not properly covered in 4 rear lanes; and
- (d) ***Some waste not bagged.*** According to the rules of the trial scheme, all waste must be bagged and properly tied up before putting into the specified waste container. However, Audit found that some waste in the waste containers was not put in bag in a rear lane.

**Photographs 1(a) and (b)**

**Examples of non-compliances with requirements of trial scheme**

**(a) Waste containers without labels**



**(b) Waste container without cover**



*Source: Photographs taken by Audit staff in August 2023*

4.8 In Audit's view, FEHD needs to step up the monitoring of compliance with requirements of the trial scheme for regulating waste disposal arrangement of food premises and take enforcement actions as appropriate, including taking follow-up actions on the non-compliant cases identified by Audit as appropriate.

***Need to keep under review measures in addressing pet's entrance to food premises***

4.9 According to FEHD, recently, pet-friendly restaurants have become an operation tactics adopted by food premises to solicit business. Regarding pet's entrance to food premises, the Food Business Regulation stipulates that:

- (a) no person engaged in any food business shall knowingly suffer or permit in any food room (i.e. any room used for handling of open food or cleaning of equipment) the presence of live birds or animals; and

- (b) no person shall bring any dog onto any food premises and no person engaged in any food business shall knowingly suffer or permit the presence of any dog on any food premises, except for a dog serving as a guide for a blind person or in connection with the exercise of a lawful power.

According to FEHD, in the period from 2018 to 2023 (up to June), a total of 2 and 14 prosecutions had been instigated under the Food Business Regulation for presence of live animal or live birds in food rooms and permitting the presence of dog on food premises respectively.

4.10 Regarding entrance of pets to food premises, Audit noted the following:

- (a) ***Increasing number of pet-friendly restaurants.*** In early 2023, FEHD compiled a list of 199 pet-friendly restaurants for monitoring. For three DEHOs (i.e. Central/Western, Mong Kok and Sha Tin), a total of 65 pet-friendly restaurants were included in the list. Audit noted that there had been a lot of promotions in social media networks on pet-friendly restaurants. In August 2023, Audit conducted a media research on pet-friendly restaurants in the districts under the three DEHOs' purview and found an additional 112 pet-friendly restaurants (with information in the social media suggesting dogs were welcomed);
- (b) ***Increasing number of complaints against bringing dogs onto food premises.*** According to FEHD, it conducts investigation on complaints against bringing dogs onto food premises. The number of such complaints received in the period from 2018 to 2023 (up to June) is shown in Table 11;

Table 11

**Number of complaints against bringing dogs onto food premises  
(January 2018 to June 2023)**

Year	No. of complaints
2018	90
2019	80
2020	58
2021	364
2022	222
2023 (up to June)	101

Source: FEHD records

- (c) *Need to review practice in conducting inspections to pet-friendly restaurants.* FEHD conducts inspections to licensed food premises, including pet-friendly restaurants. In the inspection report, there is an item for checking compliance with “no live birds or animals in food rooms and no dogs allowed on premises”. Audit selected 12 pet-friendly restaurants (with information in the social media networks showing the presence of dogs on the premises) in the districts under the purview of the three DEHOs (see (a) above) and noted that from January to June 2023, FEHD conducted 23 inspections (including 4 unsuccessful inspections where the food premises were closed) and no pet’s presence was reported in the inspection reports. All inspections were carried out on weekdays during office hours (i.e. from 9 am to 5:30 pm). On the other hand, Audit’s site visits to 3 of the 12 restaurants on a weekend in September 2023 found the presence of dogs in 2 restaurants; and
- (d) *Mainland/overseas experience.* Audit’s research found that while legislations in some cities in the Mainland/overseas countries prohibited the presence of dogs on food premises in general, restricted entry of dogs might be allowed under specific conditions (e.g. outside sitting area) or for specific food business licence type (e.g. pet café).

4.11 In response to enquiries of the Legislative Council Members, the Government advised in January 2012 and June 2016 that:

- (a) provisions stipulated under the Food Business Regulation aimed to safeguard food safety and public health. Animals could be a source of contamination of food and equipment as their hair, body and excreta might carry pathogens and parasites. Co-existence of humans and animals at the same premises would increase the risk of transmission of communicable diseases. Domesticated dogs were used to making close contacts with humans. Allowing dogs to enter food premises would pose higher health risk to customers therein, especially those who were physically weaker or more susceptible to infection; and
- (b) Hong Kong was a metropolitan city. There were diverse views among members of the public on whether pets should be allowed in public places (including food premises). The Government had to strike an appropriate balance between overall public interest and protection of animal welfare.

4.12 Audit noted that the law on prohibiting the presence of dogs on food premises was introduced in 1994 in order to prevent possible transmission of disease from dogs to humans. In view of the increasing number of complaints and promotion of pet-friendly restaurants including those welcoming dogs, there is a need for FEHD to:

- (a) enhance publicity and public awareness of the restrictions over pet's entrance to food premises under the law;
- (b) review the practice in conducting inspections to pet-friendly restaurants and take follow-up actions as appropriate (e.g. conducting inspections during weekends or public holidays); and
- (c) keep under review the need for reviewing the relevant law on pet's entrance to food premises, taking into account Mainland/overseas experience, public views and the changing circumstances.

## **Audit recommendations**

4.13 **Audit has *recommended* that the Director of Food and Environmental Hygiene should:**

## **Other related issues**

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- (a) **keep under review the implementation of the trial scheme for regulating waste disposal arrangement of food premises and take measures to improve the scheme as appropriate (e.g. extending the coverage, taking into account hygiene black spots in selecting rear lanes and enhancing the promotion of the scheme);**
- (b) **step up the monitoring of compliance with requirements of the trial scheme for regulating waste disposal arrangement of food premises and take enforcement actions as appropriate, including taking follow-up actions on the non-compliant cases identified by Audit as appropriate;**
- (c) **enhance publicity and public awareness of the restrictions over pet's entrance to food premises under the law;**
- (d) **review the practice in conducting inspections to pet-friendly restaurants and take follow-up actions as appropriate (e.g. conducting inspections during weekends or public holidays); and**
- (e) **keep under review the need for reviewing the relevant law on pet's entrance to food premises, taking into account Mainland/overseas experience, public views and the changing circumstances.**

## **Response from the Government**

4.14 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that with policy steer of the Environment and Ecology Bureau, FEHD will keep under review the need for reviewing the relevant law with reference to public views, experience in other places and changing circumstances.

## **Maintenance of prosecution records**

4.15 FEHD may instigate prosecutions against food business operators for contravention of the public health laws. For warranted cases, FEHD will arrange for issue of summonses on the related food business operators. FEHD uses a computer system, namely the Summons Tracking Facility (STF), to record information on prosecution actions taken against food premises, among others. One of the key



functions of STF is to enable the relevant officers to track and monitor the progress of actions at various stages (e.g. preparation of prosecution reports, submission of documents to the court for issue of a summons and court hearing). E-mail notifications are sent to the relevant officers to remind them for taking appropriate follow-up actions accordingly.

***Need to timely create STF records***

4.16 According to FEHD guidelines, for cases which FEHD intends to institute prosecutions (i.e. prosecution cases), a STF record shall be created for each offence within a specified timeframe (see Note 15 to para. 2.13(c)(i)) from the incident date (Note 46). Audit analysis of the STF records created in 2018 to 2022 found that 6% to 7% of STF records each year were not created within the specified timeframe (i.e. the longest time lapse was 126 days from the incident date). Since e-mail notifications are sent to remind the relevant officers for taking appropriate follow-up actions, delays in creating STF records may undermine the effectiveness of the notification system. Audit considers that FEHD needs to take measures to ensure that STF records are created in a timely manner.

***Need to ensure that required information is recorded in STF for cases without prosecution***

4.17 According to FEHD guidelines, if a prosecution is not proceeded for a case (i.e. case without prosecution), relevant officers shall record the reasons, the date of approval and the approving officer in STF. Audit noted that in 2018 to 2022, there were a total of 417 (ranging from 36 to 214 each year) cases without prosecution. Of these 417 cases:

- (a) in 254 (61%) cases (ranging from 5 to 187 cases each year), the reasons, the approval dates and the approving officers were not recorded in STF; and

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**Note 46:** *Incident date is the date on which the responsible person of a food premises was informed that a prosecution would be instituted. According to FEHD, incident date may not be the same date as the offence date. For example, when FEHD officer noted during an inspection that the food premises layout had been changed, the inspection date was taken as the incident date while the date of last inspection where the layout had not yet been changed was taken as the offence date.*

## Other related issues

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- (b) in 2 cases (1 in 2020 and 1 in 2021), while the reasons were recorded, the approval dates and the approving officers were not recorded in STF.

Audit considers that FEHD needs to take measures to ensure that the information on the reasons and approval details are recorded in STF in accordance with its guidelines for cases without prosecution.

### *Need to ensure that approval is obtained from appropriate officers for cases without prosecution*

4.18 Audit examined the 417 cases recorded in STF without prosecution (see para. 4.17), and 30 cases of Wan Chai, Mong Kok and Sha Tin DEHOs. Audit noted that:

- (a) in 11 (3%) of the 417 cases, the authority levels of the approving officers recorded in STF did not comply with FEHD guidelines; and
- (b) of the 30 cases, in 2 cases of Mong Kok DEHO, the authority levels of the approving officers recorded in STF did not comply with FEHD guidelines (see (a) above) and the approval records for not proceeding with prosecutions were also not found in the case files.

Audit considers that FEHD needs to take measures to ensure that for cases without prosecution, approval is obtained from the appropriate officers in accordance with its guidelines, and proper documentation on the approval is maintained.

*Need to ensure accuracy of STF records*

4.19 Audit examined the reasons recorded in STF for 163 cases without prosecution in 2018 to 2022 (417 less 254 — see para. 4.17) and noted that the major reasons included insufficient evidence and issue/renewal of licences. Audit further noted that prosecutions of 3 of the 163 cases were not proceeded because they were time-barred (Note 47). Upon enquiry, FEHD informed Audit in August and September 2023 that:

- (a) in one case, the case officer had incorrectly recorded the reason for not proceeding with prosecution as time-barred while the reason should be issue of licence; and
- (b) in the remaining two cases, the case officers incorrectly recorded the offence dates in STF. As a result, the time-barred dates were incorrectly indicated in the system. When the cases were passed to other officers for applying for summonses, it was noted that the cases had already been time-barred.

Audit considers that FEHD needs to take measures to ensure the accuracy of STF records, in particular the offence date, to prevent recurrence of similar time-barred incidents.

*Need to maintain proper supporting documentation for number of prosecutions reported in COR*

4.20 FEHD reports the number of prosecutions against licensed and unlicensed food premises as indicators in its COR. According to FEHD, the figures reported in COR in a year are based on the number of prosecution records created in STF. Audit analysis of the prosecution records created in STF and the prosecution numbers reported in COR in 2018 to 2022 found that there were discrepancies as follows:

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**Note 47:** *According to section 26 of the Magistrates Ordinance (Cap. 227), the time limit for laying of information before the court in respect of all offences within the purview of FEHD is six months from the date of offence (i.e. time-barred after six months).*

## Other related issues

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- (a) for licensed food premises, the number of prosecutions reported in COR was greater than that recorded in STF (i.e. STF records with licence numbers) each year (discrepancies ranging from 1,772 to 2,534 each year); and
- (b) for unlicensed food premises, the number of prosecutions reported in COR was less than that recorded in STF (i.e. STF records without licence numbers) each year (discrepancies ranging from 1,997 to 2,786 each year).

4.21 In response to Audit's enquiry about the discrepancies found in paragraph 4.20, FEHD informed Audit in August and September 2023 that:

- (a) the supporting documentation for the number of prosecutions reported in COR was not available;
- (b) the number of prosecution records created in STF had been adjusted for reporting in COR. For example, incorrectly created and duplicated records were deleted;
- (c) the licence number was not recorded in STF in some cases as it was not a mandatory field to input in the system. Therefore, the classification of licensed or unlicensed food premises based on the licence number recorded in STF contributed to the discrepancies; and
- (d) the reporting period for figures in COR is 1 January to 31 December of the year. A STF record created after the first working day of a year for offence in the previous year would not be counted in the figures reported in COR (e.g. a STF record with offence date on 30 December 2022 and created on 3 January 2023 was not included in the figures reported in COR for 2022).

While noting FEHD's explanations, the relevant supporting documentation was not available for examination. To facilitate checking of figures reported in COR, Audit considers that FEHD needs to take measures to ensure that documentation is maintained to support the number of prosecutions reported in COR.

## **Audit recommendations**

4.22 **Audit has *recommended* that the Director of Food and Environmental Hygiene should:**

- (a) **take measures to ensure that STF records are created in a timely manner;**
- (b) **take measures to ensure that the information on the reasons and approval details are recorded in STF in accordance with FEHD guidelines for cases without prosecution;**
- (c) **take measures to ensure that for cases without prosecution, approval is obtained from the appropriate officers in accordance with FEHD guidelines, and proper documentation on the approval is maintained;**
- (d) **take measures to ensure the accuracy of STF records, in particular the offence date, to prevent recurrence of similar time-barred incidents; and**
- (e) **take measures to ensure that documentation is maintained to support the number of prosecutions reported in COR.**

## **Response from the Government**

4.23 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that:

- (a) a new information and technology system (i.e. the Prosecution Management Information System), which has just been rolled out in October 2023 to replace STF, will effectively improve record keeping and reporting; and
- (b) FEHD will take into account the audit recommendations in paragraph 4.22 and consider if there is further room for improvement.

## **Hygiene Manager and Hygiene Supervisor Scheme**

4.24 To strengthen food safety supervision in licensed food premises, in May 2005, FEHD introduced the Hygiene Manager (HM) and Hygiene Supervisor (HS) Scheme. Under the Scheme, all large food establishments and food establishments producing high risk foods are required to appoint an HM and an HS, and all other food establishments are required to appoint an HM or an HS (Note 48). The appointment of HM and/or HS for food premises is one of the licensing conditions (Note 49).

### ***Need to ensure that HM and/or HS are appointed as required***

4.25 According to FEHD, during routine inspections (see para. 2.2(a)), FEHD will check whether HM and/or HS are appointed as required in food premises and their particulars against FEHD records. If non-compliance is noted, FEHD will give verbal warning or issue warning letter under WLS as appropriate (see para. 1.13). Audit noted that in 2018 to 2022, 320 to 674 non-compliant cases were identified during routine inspections each year regarding the appointment of HM and/or HS for licensed food premises (see Table 12). Audit considers that FEHD needs to take measures to ensure that HM and/or HS are appointed for licensed food premises as required under the HM and HS Scheme.

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**Note 48:** *FEHD has published guidelines on its website setting out the types of food establishments requiring HM and/or HS.*

**Note 49:** *FEHD has published duty lists of HM and HS on its website. Duties of the HM and HS, among others, are as follows:*

- (a) for HM, to identify key areas of risk in various food operations for early remedial actions, ensure compliance with the relevant regulations and licensing conditions, and monitor the health conditions of food handlers; and*
- (b) for HS, to advise food handlers on the proper food handling practices and ensure their observance, and conduct daily checks on the personal, environmental and food hygiene conditions of the food establishment.*

Table 12

**Appointment of HM and/or HS for licensed food premises  
(2018 to 2022)**

<b>Year</b>	<b>Licensed food premises as at 31 December (Note) (No.)</b>	<b>Non-compliance with relevant licensing conditions (No.)</b>
2018	29,031	432
2019	30,117	674
2020	31,230	379
2021	33,011	320
2022	34,615	402

*Source: Audit analysis of FEHD records*

*Note: According to FEHD, the breakdown of the number of licensed food premises requiring HM and/or HS for 2018 to 2022 was not readily available. As of July 2023, the numbers of licensed food premises requiring HM and HS, only HM, and only HS were 5,984, 422 and 28,043 respectively.*

## **Audit recommendation**

4.26 **Audit has recommended that the Director of Food and Environmental Hygiene should take measures to ensure that HM and/or HS are appointed for licensed food premises as required under the HM and HS Scheme.**

## **Response from the Government**

4.27 The Director of Food and Environmental Hygiene generally agrees with the audit recommendation.

## **Guidelines on regulatory control of food premises**

### ***Need to review guidelines on regulatory control of food premises***

4.28 FEHD has issued operational manual to its staff for the regulatory control of food premises. Besides, FEHD has issued circular memoranda to promulgate updates of the guidelines (Note 50) from time to time. For example:

- (a) for inspection of licensed premises, 40 circular memoranda (involving a total of 203 pages) had been issued to promulgate updates of the guidelines in the period from 2002 to 2022; and
- (b) for regulatory control of unlicensed premises, 25 circular memoranda (involving a total of 120 pages) had been issued to promulgate updates of the guidelines in the period from 2005 to 2023 (up to June).

4.29 Audit noted that consolidated guidelines incorporating all the updates over the years were not available. Accordingly, in order to find the most up-to-date guidelines in respect of a particular matter, FEHD staff would need to search from various parts of the operational manual and circular memoranda. According to FEHD, the consolidated guidelines were underway. In addition, Audit also noted ambiguities in the circular memoranda, which may lead to inconsistent practice. For example, according to FEHD guidelines, DAP is a comprehensive list of all unlicensed food premises identified with active operation. However, the meaning of “with active operation” was not defined in the guidelines. Upon enquiry, FEHD informed Audit in September 2023 that unlicensed food premises with active operation referred to unlicensed food premises with prosecution actions taken (see para. 3.9(a)). Due to the ambiguities, some DEHOs included all cases referred by RLOs in DAPs while others did not (see para. 3.11(a)). In Audit’s view, FEHD needs to conduct a review of its guidelines on regulatory control of food premises with a view to facilitating understanding of the relevant requirements by its staff and ensuring consistency in applying the guidelines.

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**Note 50:** *For simplicity, FEHD operational manual and circular memoranda have been referred to as FEHD guidelines in this Audit Report.*



## **Audit recommendation**

4.30 **Audit has *recommended* that the Director of Food and Environmental Hygiene should conduct a review of FEHD guidelines on regulatory control of food premises with a view to facilitating understanding of the relevant requirements by FEHD staff and ensuring consistency in applying the guidelines.**

## **Response from the Government**

4.31 The Director of Food and Environmental Hygiene generally agrees with the audit recommendation. She has said that FEHD will review its various guidelines and timeframes so as to enhance their practicability and facilitate compliance.

## **Implementation of the Licensing Management Information System enhancement projects**

4.32 Launched in 2006, LMIS facilitates the processing of food business licence/permit applications and administration of licences/permits issued, and provides statistical reports for management purposes (see para. 1.15(a)). According to a business process reengineering study conducted in 2014-15, the major system software of LMIS has reached the end of the life support services and LMIS can hardly meet the current information technology standards. As a result, FEHD has launched two enhancement projects (i.e. LMIS 2 and LMIS 3 — see para. 1.15(a)(i) and (ii) respectively).

### ***Need to learn from the experience of LMIS 2 project***

4.33 According to FEHD, LMIS 2 will improve operational efficiency in the food business licensing process, including:

- (a) streamlining work processes and enabling electronic processing of licence/permit applications;
- (b) establishing a comprehensive database to support processing licence/permit applications; and

## Other related issues

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- (c) improving efficiency in retrieval of case information for tracking of application progress, and providing management information for monitoring and resources planning.

With reference to the project management plan endorsed in June 2019 by FEHD's project steering committee for LMIS 2 project, Audit noted that there were delays at various development stages of LMIS 2 including delays in acquisition of hardware and software from March 2020 to May 2021 (i.e. 14 months), delays in system development from November 2020 to January 2023 (i.e. 26 months), and delays in rollout of the system from January 2021 to May 2023 (i.e. 28 months).

4.34 Upon enquiry, in August and September 2023, FEHD informed Audit that:

- (a) the delays were mainly due to the outbreak of the COVID-19 epidemic between 2020 and 2022. During the period, some project team members and relating FEHD officers were deployed to support other anti-epidemic projects (e.g. the Anti-epidemic Fund) and the planning of LMIS 3; and
- (b) between June and August 2023, the system developing team of LMIS 2 was conducting minor enhancement work to the system. Upon completion, the team would continue to monitor the operation of the system for another three months. The project evaluation report will be issued afterwards.

Audit considers that FEHD needs to learn from the experience of LMIS 2 project in implementing other information technology projects in future.

### ***Need to closely monitor the implementation of LMIS 3 project***

4.35 According to FEHD, LMIS 3 will provide electronic platforms for facilitating its work on the regulatory control of licensed/permitted food premises, including:

- (a) capturing inspection results at the time of inspection by using mobile devices, and registering demerit points and warning letters issued;
- (b) determining the risk levels of licensed food premises according to previous inspection results, and assigning inspection tasks to Health Inspectors; and

- (c) improving efficiency in retrieval of case information, and providing management information relating to the regulatory control of licensed/permitted food premises and resources planning.

4.36 In November 2019, LMIS 3 project was planned to commence in the second quarter of 2020-21 with a project estimate of \$9.8 million. Audit noted that in June 2023, the project management plan was endorsed by FEHD's project steering committee for LMIS 3 project with a revised project estimate of \$18.1 million (i.e. increased by \$8.3 million (85%) from \$9.8 million). Upon enquiry, FEHD informed Audit in August 2023 that:

- (a) the delay in project commencement was due to the outbreak of the COVID-19 epidemic between 2020 and 2022. During the period, some experienced project team members resigned or was deployed to support other anti-epidemic projects (e.g. the Anti-epidemic Fund); and
- (b) the increase in estimated expenditure for the development of the system was due to revised requirements, for example, adopting a revised implementation approach by outsourcing the development of electronic inspection functions, and the revised requirements in handling transactions relating to licensing.

Audit considers that FEHD needs to closely monitor the implementation of LMIS 3 project (e.g. deploy sufficient manpower) with a view to ensuring that the project is completed on time and within budget. FEHD also needs to learn from the experience of LMIS 3 project (e.g. determination of the implementation approach and user requirements) in implementing other information technology projects in future.

## **Audit recommendations**

4.37 **Audit has *recommended* that the Director of Food and Environmental Hygiene should:**

- (a) **closely monitor the implementation of LMIS 3 project with a view to ensuring that the project is completed on time and within budget; and**

## **Other related issues**

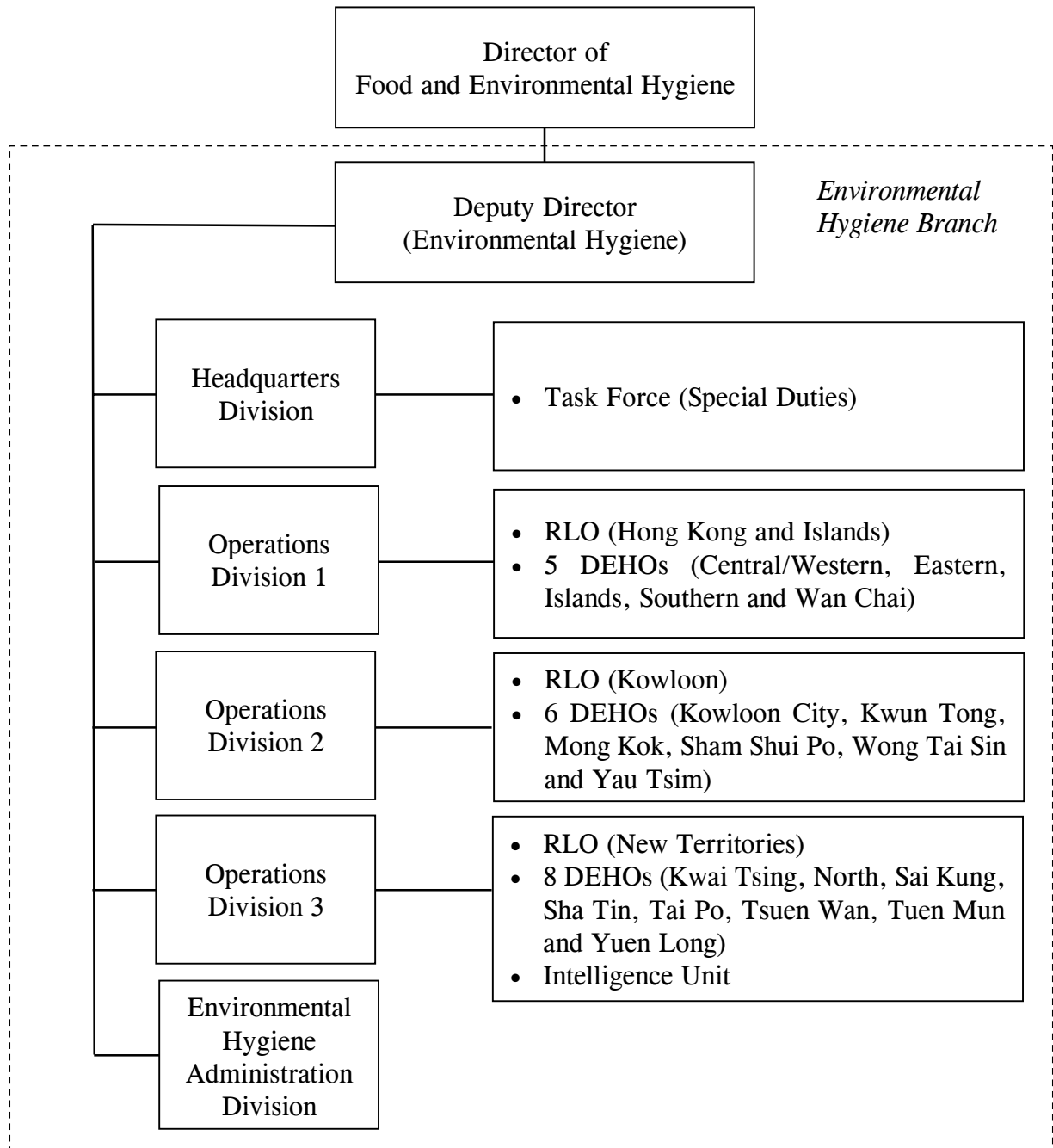
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- (b) **learn from the experience of LMIS projects in implementing other information technology projects in future.**

## **Response from the Government**

4.38 The Director of Food and Environmental Hygiene generally agrees with the audit recommendations. She has said that a Project Assurance Team and a Project Supervisory Committee have been formed to closely monitor the LMIS projects and review the experience learnt for the benefit of future projects.

**Food and Environmental Hygiene Department:  
Organisation chart (extract)  
(31 March 2023)**



Source: FEHD records

Remarks: Only the branch/divisions/offices/unit responsible for the licensing and regulatory control of food premises are shown.

**Acronyms and abbreviations**

Audit	Audit Commission
BD	Buildings Department
COR	Controlling Officer's Report
DAP	District Action Plan
DEHO	District Environmental Hygiene Office
DPS	Demerit Points System
EHSIS	Environmental Hygiene Statistical Information System
FEHD	Food and Environmental Hygiene Department
HM	Hygiene Manager
HS	Hygiene Supervisor
LIAB	Licensing Appeals Board
LMIS	Licensing Management Information System
MSAB	Municipal Services Appeals Board
OSA	Outside seating accommodation
RBIS	Risk-based Inspection System
RLO	Regional Licensing Office
STF	Summons Tracking Facility
WLS	Warning Letter System