

*Should Hong Kong Introduce a Good Samaritan Food
Donation Law? If so, Why and How?*

1. Introduction

This essay attempts to review the legal rules in Hong Kong on food donation before concluding that there is necessity to introduce a Good Samaritan food donation law as part of its poverty alleviation and waste reduction strategies. Recommendations on technical and practical aspects of the law reform are made with reference to other jurisdictions.

1.1 Background

Food waste has become a crucial but often overlooked issue both globally and locally. In Hong Kong, approximately 3,600 tonnes of food waste is thrown away every day, $\frac{1}{3}$ of which comes from food-related commercial and industrial (C&I) sources.¹ A large portion of food wasted from C&I sources consists of surplus food

¹ Environment Bureau *A Food Waste & Yard Waste Plan for Hong Kong 2014-2022* Environment Bureau Hong Kong 2014, 6

Food waste is defined there as 'any waste, whether raw, cooked, edible and associated with inedible parts generated during food production, distribution, storage, meal preparation or consumption of meals'.

which has lost its commercial value but remains edible, resulting in annual economic loss of over HK\$60 million.²

Meanwhile, there are currently 0.97 million people living in poverty in Hong Kong and many of them also experience food insecurity.³

To the city as a whole, donation and redistribution of its enormous amount of surplus food is therefore a conceivable solution to alleviate poverty and recover valuable food resources. The Government has identified food donation as one of the key strategies of handling food waste.⁴ However, as pointed out by some researchers, it is desirable to have the intrinsic issue of food liability clearly addressed through legislation to stimulate the development of a sustainable food donation system.⁵

1.2 Good Samaritan Food Donation Law

The dictionary simply defines a ‘Good Samaritan’ as ‘a charitable or helpful person (with reference to Luke 10:33)’.⁶

² Oxfam Hong Kong (2014) *Survey on Surplus Food Handling and Donation at Food Companies Executive Summary and Policy Recommendations* http://www.oxfam.org.hk/content/98/content_18215en.pdf (2 February 2017), 3.4

³ HKSAR *Hong Kong Poverty Situation Report 2015* HKSAR 2016, ES. 7

⁴ Legislative Council. Background Brief on the Strategies and Measures to Reduce and Recycle Food Waste in Hong Kong. LC Paper No. CB(1)19/16-17(06), 2

⁵ Above 2, 5.4

⁶ *Oxford English Dictionary* Oxford University Press [c1000] (online)

In Hong Kong, the law does not generally impose a positive duty on its citizens to be Good Samaritans.⁷ However, if a person volunteers assistance to another, he must measure up to a standard of a reasonable person. This means the rescuer will not be liable to make good the injury or damage if he does not act unreasonably or worsen the other's condition.⁸ Under the US legal system, this is also known as the Good Samaritan doctrine.⁹ Essentially, this principle encourages assistance to an imperilled person by providing a shield to the rescuer.

Similarly, Good Samaritan food donation law (GSFDL) has been taken by the House of Lords to describe a statute 'encouraging food donation and limiting food donors' liability for any subsequent problems, along the lines of the Bill Emerson Good Samaritan Food Donation Act in the US'.¹⁰ In this essay, the same description shall be used in the context of Hong Kong.

Apart from GSFDL, there are other forms of legislation with the aim of promoting food donation adopted by various jurisdictions, such as providing fiscal incentives to food donors or even compelling them to donate unsold food.¹¹ Although the focal point of this

⁷ *Smith v Littlewoods Organisation Ltd* (1987) 2AC 241, 247 (HL)

See also DK Srivastava, *The Law of Tort in Hong Kong* (2nd ed) Hong Kong Butterworths 2005, Ch12

⁸ *Ibid.* See also *East Suffolk Rivers Catchment Board v Kent* (1941) AC 74 (HL)

⁹ Brandt, E. Good Samaritan Laws: The Legal Placebo: A Current Analysis, (1983-1984) 17 *Akron L. Rev.* 303

¹⁰ House of Lords, EU Committee. Counting the Cost of Food Waste: EU Food Waste Prevention. HL Paper 154, 10th Report, Session 2013-14, para. 131

¹¹ See Part 3 below

essay is GSFDL, these measures will be discussed in brief as they are also part of the holistic picture.

2. Overview of Food Donation in Hong Kong

2.1 Food Donation Practice

Food donation is a tripartite process conducted in Hong Kong by NGOs through the operation of food banks, redistribution centres, or community kitchens.¹² One way or another, it always involves the collection of food from the donors and redistribution to the needy, and if necessary, the preparation of hot meals.

The Government has been supporting food donation through the Environment and Conservation Fund (ECF) funding of NGOs since 2014. As of October 2015, a total of 10 such projects were approved by the ECF with funding of HK\$15 million.¹³

It was estimated in 2015 that under the current practice, 800 tonnes of surplus food would be redistributed every year.¹⁴ However, there is by far no reliable information on how much surplus food is recovered in reality. It is also not difficult to notice that the estimated *annual* figure of 800 tonnes only constitutes a negligible part of the entire wasted food from C&I sources, which

¹² Above 1, 12

¹³ LCQ1: *Donation of Food Waste by Commercial Organisations*, Information Services Department, Hong Kong 2 December 2015 (online version) <http://www.info.gov.hk/gia/general/201512/02/P201512020428.htm>

¹⁴ HKASR Government 2015 *Policy Address*, para. 174

stands at 1,200 tonnes *daily*.¹⁵ The disparity clearly demonstrates that the current food donation practice has yet to realise its full potential and is in practical need of stimulation.

2.2 Evaluation of Existing Regulatory Framework

Food donation in Hong Kong is currently regulated by the common law on tort or contract and the Government food safety guidelines. There is so far no specific legislation on food donation practice.

2.2.1 Inapplicability of Statutory Duty

Whereas the general food law as laid down in Part V of the Public Health and Municipal Services Ordinance (Cap. 132), the Food Safety Ordinance (Cap. 612) and their subsidiary legislation does provide for general protection for food purchasers, food safety offences and many food safety control measures, these ordinances and regulations do not cover food donation as the practice does not amount to a 'sale' of food and the donees are not 'purchasers'.¹⁶

In addition, a civil claim for breach of statutory duty can only be brought if the legislation expressly provides for it. If the legislation is silent on the point, which is true with a large portion of the

¹⁵ See above 1 and 2

¹⁶ Ss. 50-69, Cap. 132 and s. 2, Cap. 612

general food law, the presumption is that remedy is only available in contract or tort.¹⁷

2.2.2 Difficulty with Common Law Rules

2.2.2.1 Tort

The tort of negligence is the most likely cause of action for an injured food donee. The burden is on him to show that the donor/NGO is negligent in causing the injury by providing food unfit for human consumption.

This is not easy for cases involving food donation. The ordinary elements of duty of care, breach of duty and causation must all be proved. As the relationship of the parties does not readily fall into one of the recognised categories where liability exists, one particular difficulty lies with establishing duty of care. The court may be reluctant to entertain the claim, as the imposition of duty in this circumstance would involve consideration of general public good and potential litigations.¹⁸ The difficulty with the doctrine of *res ipsa loquitur* is well known, therefore it does not avail a potential claimant in this situation either.¹⁹

¹⁷ *Buckley v La Reserve* [1959] Crim. L.R. 451

¹⁸ LexisNexis/Butterworths *Halsbury's Laws of Hong Kong*, [online] dated 2 February 2017, [380.104] and [380.106]

¹⁹ See generally Hong Kong Law Reform Commission, *Report on Civil Liability for Unsafe Products* 1998, Ch. 3

A negligence claim based on safety of donated food is therefore subject to stringent tests, and the outcome is highly fact-specific. In fact, the dearth of reported cases on the issue locally and overseas may just be the evidence of the great difficulty in pursuing such claims amid complicated common law principles.

2.2.2.2 Contract

Some NGOs in Hong Kong have entered into food donation agreements with their donors to deal with food safety issues.²⁰ Normally, a food donation agreement will contain an express disclaimer of all warranties and bar the donee or any third party from bringing legal action either in contract or tort.²¹

If there is a valid contract, the parties' position as to food liability will be governed by the terms of such contract to such extent permitted by law. Under Hong Kong law, liability for death or personal injury resulting from negligence can never be excluded by contract,²² and liability for other types of loss or damage can only be excluded if it is reasonable.²³ Whereas these provisions may be considered an advancement of consumer protection, they also create areas of doubt when it comes to the interpretation of food donation agreements.

²⁰ Above 12

²¹ See Green Production Guide (2014) *Sample Food Donation Agreement* http://www.greenproductionguide.com/wp-content/uploads/2014/07/Food-Donation-Agreement_2014.pdf (2 February 2017)

But note that there is no uniformed agreement in Hong Kong.

²² S. 7 (1), Control of Exemption Clauses Ordinance (Cap. 71)

²³ *Ibid*, s. 7 (2)

It is therefore uncertain whether food donors/NGOs can effectively limit their liability by contract to the desired extent. Practically, this grey area may induce food donors to take a risk-averse approach and decide not to take part in food donation.

2.2.3 Imperfections of Guidelines and Non-legal Measures

To ensure food safety in the donation process, the Government has issued a set of Food Safety Guidelines for Food Recovery (the Guidelines) since August 2013, where it sets out the food safety principles which should be applied to food donated to charities regardless of food types and sources.²⁴ Besides, it is compulsory for ECF funding applicants of food donation projects to attend the Government's trade talk and workshop to facilitate their understanding of the Guidelines.²⁵

Nonetheless, as the Guidelines do not have the force of law and there is no enforcement mechanism, it remains unclear how effective it is in practice.²⁶ More importantly, it is also unclear whether compliance with the Guidelines will relieve a donor/NGO of potential liabilities. The possibility that they might still be held liable despite compliance may be sufficient to hold back the food donors.

²⁴ Centre for Food Safety *Food Safety Guidelines for Food Recovery* Centre for Food Safety Hong Kong 2014

²⁵ Above 13

²⁶ Woo, H., *Food Waste in Hong Kong - a Study on Source Reduction*. Thesis (MSc), HKU, 2014, 25

2.3 Key Area for Reform: Liability

The above discussion has shown the most significant deficiency of the regulatory framework lies with unclear demarcation of liability, which leads to the donors' unwillingness to donate food as well as the difficulty in seeking redress for the donees. In fact, 90.4% of the food companies in Hong Kong do not donate surplus food because they are concerned about product liability.²⁷

There is therefore necessity to reform the law to accommodate the special needs of participants in food donation and encourage charitable behaviour in our community.

In practice, it is arguably more appropriate to deal with the issue of liability through legislative process than case law. As most of the rules on tort and contract consist of case law and the courts are bound by previous decisions, any development of such rules will likely be incremental. It is also important to note that under our democratic system, LegCo is arguably in a better position than the court to make decisions on complicated public policy issues such as encouragement of food donation.

3. Perception of GSFDL in Other Jurisdictions

²⁷ Above 2, 3.5

The preceding part of this essay has outlined the Hong Kong law on food donation and its shortcomings. This part examines GSFDL²⁸ as a solution to the problems by reviewing the experience of other jurisdictions.

3.1 US

The US became the first country in the world to enact GSFDL when its Congress passed the Bill Emerson Good Samaritan Food Donation Act (BEA) in 1996. The BEA's primary purpose is to encourage food donation to non-profit organizations (NPOs) for distribution to needy individuals.²⁹ The purpose is achieved by absolving good faith food donors and NPOs of any civil or criminal liability for injuries related to the consumption of donated food.³⁰

The scope of protection is very wide under the BEA. The statute covers almost all persons or entities, including NPOs, that donate, glean, receive or distribute donations.³¹ The protected activities cover all types of food recovery identified by the US Department of Agriculture.³²

However, the BEA imposes certain requirements before the immunity can apply: the donated items must be either apparently

²⁸ As defined in 1.2 above

²⁹ House of Representatives. Bill Emerson Food Donation Act, Report 104-661, 1996

³⁰ University of Arkansas (2013) *Food Recovery - A Legal Guide* <https://law.uark.edu/documents/2013/06/Legal-Guide-To-Food-Recovery.pdf> (2 February 2017)

³¹ 42 U.S.C. § 1791 (b)

³² Ibid

wholesome food or apparently fit grocery products, donated in good faith to an NPO, which must donate the items to needy individuals.³³ For the sake of clarity, specific guidelines have been laid down as to what ‘apparently wholesome/fit’ means.³⁴ Protection under the BEA extends to cover items which may not comply with *all* quality or labelling requirements, such as product with missing labels or broken packaging. However, in this situation, the donor and the NPO must follow identified steps to ensure that the item is safe for consumption.³⁵

The BEA has also set clear and reasonable boundaries. It does not offer exemption to anyone’s liability arising from acts or omissions constituting intentional misconduct or gross negligence.³⁶ Under the statute, the elements of both concepts are clearly set out.³⁷

However, it is important to note that the BEA does not create any new liabilities in relation to donated food, nor does it modify any other food safety laws. The legislative intent was merely to establish gross negligence as the liability ‘floor’ and guarantee a minimum level of protection to food donees.³⁸

3.2 UK

³³ Ibid

³⁴ Ibid

³⁵ 42 U.S.C. § 1791 (e)

³⁶ Ibid, (c)

³⁷ Above 31

³⁸ Above 30, E

Similar to Hong Kong, the UK does not have specific legislation on food donation. In 2014, the House of Lords rejected the introduction of GSFDL due to 'the potential for perverse consequences'.³⁹

The Food Waste (Reduction) Bill 2015-16 (FWB) had been perceived as the UK adopting a more forceful approach on food waste, as it required large supermarkets, manufacturers and distributors to enter into formal agreements with food redistribution organisations for the purposes of donating unsold in-date food and requiring the Secretary of State to establish a scheme which incentivises and encourages observation of the food waste reduction hierarchy.⁴⁰ Unfortunately, the FWB was dropped as a Private Member's Bill. The British Government also stated that it is not in favour of the compulsory food donation scheme as envisaged by the FWB but prefers a voluntary approach.⁴¹

3.3 EU

Italy is the only EU member state to have enacted GSFDL.⁴² Under the Italian GSFDL, food banks are identified as the final consumers of donated food; therefore, food donors owe their

³⁹ See 4.5 below

⁴⁰ S. 2, Food Waste (Reduction) Bill 2015-16

⁴¹ PQ 29941 [On Food: Waste] 10 March 2016

⁴² Law of 25 June 2003, n. 155

liability only to food banks rather than individual food donees.⁴³ This effectively removes the donor's liability and thus encourages food donation. However, it remains unclear how accurately does the presumption that food banks are the final consumers of donated food reflect the reality. It is also unclear how such a model would deal with issues such as intentional misconduct or gross negligence on the part of food donors.

France took a more paternalistic approach on food waste than enacting GSFDL. Since February 2016, a new French law requires large supermarkets to enter into a food donation agreement with charities to transfer foodstuffs free of charge.⁴⁴ The law was generally welcomed by charities but also found draconian by some.⁴⁵ For better or worse, such legislative intervention clearly indicates the severity of challenges posed by food waste.

4. Arguments For and Against GSFDL

In its reply to a question raised in LegCo after the French legislation came into force, the Hong Kong Government stated that it has no plan to propose a GSFDL *at this stage* [emphasis

⁴³ EESC (2014) *Comparative Study on EU Member States' Legislation and Practices on Food Donation* http://www.eesc.europa.eu/resources/docs/comparative-study-on-eu-member-states-legislation-and-practices-on-food-donation_finalreport_010714.pdf (2 February 2017)

⁴⁴ House of Commons Library. Briefing Paper on Food Waste. Number CBP07552, 30 August 2016

⁴⁵ Chrisafis, A., 'French Law Forbids Food Waste by Supermarkets', *The Guardian*, 4 February 2016 (online version) <https://www.theguardian.com/world/2016/feb/04/french-law-forbids-food-waste-by-supermarkets>

added].⁴⁶ This conclusion was based on the perceived priority of ensuring food safety over introducing legislation to encourage food donation. Undoubtedly, food safety is a crucial component of an effective food donation scheme with or without a GSFDL. However, it seems illogical to suggest that due care on food safety should be pursued to the exclusion of enacting GSFDL even *at this stage*, as the two are not in conflict. The merits of GSFDL can, and should, be assessed in relation to its own aim and function within the waste reduction and poverty alleviation strategies.

This part examines the potential benefits and drawbacks of GSFDL on the above basis, before concluding that its introduction is necessary and practical in Hong Kong.

4.1 Clarify Liability Issue

The most significant advantage of enacting a GSFDL in Hong Kong is that it would disentangle the complexity of the liability issue under existing regime, which will greatly stimulate the development food donation. As outlined in Part 2 above, the common law rules governing food liability have, to some extent, become archaic and ineffective in addressing the concerns from all three parties to food donation, thus impeding the development of a sustainable food donation scheme.

⁴⁶ Above 13

In this regard, a statute in the form of GSFDL would be advantageous in two ways.

Firstly, it assures *bona fide* food donors and NGOs that they would not become subject to meritless claims for their action, therefore, encourages voluntary donation.

Secondly, in the unfortunate event that a food donee was injured by consuming donated food, he would be assisted by a GSFDL to know how precisely is he able to seek remedy under the law, as the statute will also set a liability floor to ensure minimum protection to food consumers. As the practice in the US suggests, the threshold for minimum protection may be 'intentional misconduct' and 'gross negligence'. Both concepts are clearly defined in the BEA.

4.2 Assessing GSFDL's Effectiveness

GSFDL has been successfully implemented in the US for 20 years. After the enactment of GSFDL in the US, the amount of food donated increased conspicuously.⁴⁷ As of 2013, there had never been a single lawsuit in the US regarding liability for donated food.⁴⁸

⁴⁷ Rekha B., 'Food Industry's Efficiency Poses Dilemma for Charity', *WALL ST. J.*, 18 December 1998, B4

⁴⁸ Haley, J. & Civita, N., The Legal Guide to the Bill Emerson Food Donation Act, (2013) *ALN* 3, 3

Apart from the tangible social benefits it produces, a more meaningful indicator of a GSFDL's effectiveness is how the legislation changes potential food donors' decision-making process. In the US, the business sector responded positively to the BEA, and it was thought to have 'usefully removed an excuse that was often cited by potential food donors'.⁴⁹

In light of the risk-averse approach currently taken by many C&I food donors in Hong Kong,⁵⁰ the same argument also applies to justify the necessity for GSFDL. It should be noted, however, the decision on whether or not to donate surplus food is still entirely voluntary under GSFDL, therefore it is in consistency with the Hong Kong Government's policy of encouraging, but not compelling, food donation from the business sector.⁵¹ The enactment of GSFDL would not in any way affect Hong Kong's position as a prominent free economy, as the decision to donate surplus food is more of a moral rather than economic one under such a statute.

Additionally, the enactment of GSFDL will indicate that our society puts its imprimatur on the charitable activity and serve an often-overlooked symbolic purpose to encourage benevolence generally.

4.3 No Obvious Conflict with Existing Hong Kong Law

⁴⁹ Interview with Joel Berg, Coordinator of Community Food Security, USDA, Washington, D.C., 11 August 2000

⁵⁰ Above 28

⁵¹ Above 13

Enacting GSFDL in Hong Kong would not be too onerous given that such a statute, if in force, would perhaps not sit uncomfortably with existing law. As outlined in Part 2 above, certain liabilities can never be contracted out in Hong Kong; however, to provide sufficient immunity to food donors and NGOs means that there would be an area of liabilities which can be absolved through statutory means.

For food donors and NGOs who have not yet entered into food donation agreements, the issue of liability would be a straightforward one under the GSFDL. However, for food donors and NGOs who have entered, or opt to enter into food donation agreements, having a GSFDL would mean that the contract no longer represents the entire picture. It is possible that food donors or NGOs may not be held liable for the events which cannot otherwise enable them to take advantage of the contract, i.e., death or personal injury.⁵² Whether this is desirable or not is clearly an issue of policy balance which merits LegCo debates, however, it is foreseeable that, since the conditions which must be satisfied before exemption of liability can be granted would be clearly set out in the statute, in which case the effect of contract terms would only be taken into consideration to the extent stipulated in the statute, there would not be obvious conflict with existing Hong Kong law, such as the Control of Exemption Clauses Ordinance (Cap. 71).

⁵² See 2.2.2.2 above

4.4 Extreme Case

An extreme scenario under GSFDL in which a food donee was injured due to donated food, yet all the elements for exemption of liability (e.g., good faith, no intention to harm and no gross negligence, etc.) have been satisfied by the food donor/NGO, would potentially leave a donee without any legal remedy against the food donor/NGO.

As explained in 4.3 above, whilst this situation is strictly speaking, possible, the balance between the need to protect *bona fide* food donors/NGOs and the need to ensure minimum standard of protection to food donees is a difficult one, the threshold of which must ultimately be decided by LegCo. There is, admittedly, a fine line. However, it should be noted that such case would be extremely rare; and should it happen, the court, being equipped with flexible tools such as different statutory interpretation methods, would be in a position to make just and equitable decisions as demanded by the law.

4.5 Clear Problem to Address?

In its rejection to introduce GSFDL in the UK, the House of Lords expressed its concern over the 'perverse consequences should such a law not be adopted'.⁵³ Essentially, their Lordships opined

⁵³ Above 10, para. 132

that if a GSFDL were rejected after a structured debate and discussion, this could leave potential donors taking a more risk-averse approach than was then the case. Their Lordships further remarked that a GSFDL should only be proposed if there was a ‘clear problem to be addressed’.

Whereas such concern is a valid and disturbing one, the correlation between the rejection of GSFDL after debate and potential donors becoming more risk-averse is entirely speculative. It remains arguable whether such concern should outweigh the potential benefits which the enactment of GSFDL might generate, had a debate resolved that it was desirable.

Additionally, it is not entirely clear what constitutes a ‘clear problem to be addressed’ in their Lordships’ opinion. However, this decision was made with the fact in mind that in the UK, legal liability is not often cited as a reason for refusing to donate food.⁵⁴ This is materially different from the situation in Hong Kong.⁵⁵ Consequently, it seems possible that, applying the rather restrictive test by the House of Lords, there is a clear problem to be addressed by GSFDL in Hong Kong.

5. Key Recommendations

⁵⁴ House of Lords, EU Agriculture, Fisheries, Environment and Energy Sub-Committee. The EU’s Contribution to Food Waste Prevention Oral and Written Evidence. 20 November 2013

⁵⁵ Above 28

Having established the necessity and practicality to introduce GSFDL in Hong Kong, this part outlines the key recommendations on how to achieve the purposes identified in the preceding part, including waste reduction, poverty alleviation, and ensuring food safety.

5.1 Enacting GSFDL Based on BEA Model

It is recommended that Hong Kong should enact GSFDL based on the BEA in the US, with certain modifications to cater for local circumstances. The greatest advantage of the BEA model over the Italian or French food donation law is that it is drafted in common law terminology and therefore easier to adopt in Hong Kong. Its relatively long history of implementation also serves as good reference point as to its effectiveness.

Essential elements of the BEA model are summarised as follows:

- Providing wide protection to all food donors and receiving NGOs.
- Exempting them from civil and criminal liability should the food donated in good faith later cause harm to the donee.
- Setting conditions for exemption to apply: these include requirements of good faith, qualifications for NGOs and conditions of food such as labelling and packaging.

- Setting a liability floor for food donors/NGOs: this ensures that in any event, there will be no ‘safe harbour’, about which some critics of GSFDL may be concerned.

5.2 Setting Proper Liability Floor

The liability floor in the BEA is ‘gross negligence’ and ‘intentional misconduct’. As the meaning of these two concepts are not very clear under Hong Kong law, the GSFDL should ideally define them in clear terms.

It is recommended that ‘gross negligence’ be defined as voluntary and conscious conduct (including an omission) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or wellbeing of another.

It is recommended that ‘intentional misconduct’ be defined as to require actual knowledge at the time of the conduct that the conduct is harmful to the health or wellbeing of another.

Practically, the liability floor may also be lowered to ‘negligence’ should LegCo opine that the US standard does not provide sufficient protection to food donees. However, this may be risky because lowering the standard to ‘negligence’ will possibly result in the same difficulty with proving the case as described in 2.2.2.1, whereas the two concepts recommended are clearly defined by the statute and therefore easier to prove.

5.3 Clarify the Effect of Contract Terms

The GSFDL should specify whether its exemptive effect could be modified by contract between food donors and NGOs, as there is possibility that some food donors may be willing to take more responsibility. It is recommended that the statutory exemption should be the default position and the minimum protection for food donees, the threshold of which the parties may raise according to their needs but must not lower.

5.4 Other Measures to Be Implemented

It is recommended some collateral measures be employed in conjunction with exemption of liability in the GSFDL. These measures include:

- Providing tax relief incentive to C&I food donors: for example, companies can deduct a proportion of the cost price of food donated from tax liabilities and can claim tax breaks on shipments of food if they transport donated food using spare capacity on the delivery vehicle.⁵⁶ This is feasible considering Hong Kong's very large fiscal reserves.
- Providing clear guidelines on food labelling: practice in the EU suggests that it is prudent to require the C&I sector to use 'best

⁵⁶ This has been successful in the US and France. See above 54

before' or 'use by' date appropriately to facilitate donation.⁵⁷ Products past their 'use by' date are not marketable and thus cannot be donated, whereas products past their 'best before' date can still be donated if the product was properly stored.

5.5 Ensure High Food Hygiene Standard

It is further recommended that Hong Kong should considering elevating the status of the Food Safety Guidelines for Food Recovery from a non-binding best practice to a binding ordinance. This would further reduce the risk of food safety incidents and ensure public confidence in the food donation process.

However it is not recommended that the scope of general food hygiene law (Pt. V of Cap. 132 and Cap. 162) be extended to cover food donation or expressly provide for right to claim as it would be too onerous for food donors to comply with, therefore defeat the purposes of introducing GSFDL.

6. Conclusion

Food donation is gaining momentum worldwide as an effective practice to tackle food waste and poverty. To facilitate the development of an efficient and sustainable food donation system in Hong Kong, however, requires the legal rules regarding food

⁵⁷ Above 43, 3

liability to be clarified and modified. This paper sets out some key recommendations on how to introduce GSFDL in Hong Kong for the above purposes and why such recommendations are realistic and feasible.

It should be noted, however, the statute should be designed to balance the interest of food donors/NGOs and that of food donees for it to be workable. This is not entirely a legal issue by nature, but also a policy issue. The exact balance point can only be discovered through LegCo debate and public consultation. As far as this legal research is concerned, it is believed that the enactment of GSFDL would set a prime example of how the law, as a catalyst to successful public policy, can improve the wellbeing of our community.

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