PwC’s interpretation of the new Food Safety Law

Referred to as the ‘toughest new law in China’s history’, what aspects of the Law will be affected by this amendment? How will monitoring and administration be tightened? What are the new requirements placed on companies with food related operations?
On 24 April 2015, the 12th Standing Committee of the National People’s Congress promulgated the amended Food Safety Law (“the New Food Safety Law”), effective as of 1 October 2015.

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To better understand the implications of the new Law, we explore the following four aspects of the Law in this paper: the new articles and provisions, the increased rigor, the additional depth and the wider scope.

Shirley Xie, China and Hong Kong Assurance Markets Leader: the New Food Safety Law is the foundation upon which China’s food safety and integrity will be built. However, food safety cannot be achieved by laws and regulations alone; it is the responsibility of food enterprises, regulatory authorities and society as a whole. Starting with the New Food Safety Law, China’s enterprises must lead the way in establishing industry best practices and making “Made in China” the gold standard for the global food industry.
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The New Food Safety Law has added new articles and supplementary provisions to existing articles. Most of the new articles have been added to Chapter III Food Safety Standards, Chapter IV Food Production and Operations and Chapter VIII Supervision and Management; these set out requirements for formulating national food safety standards, food safety traceability systems and food safety self-inspection systems. These new articles aim to regulate food production through the establishment of standards in order to improve food safety. Food producers and operators are not only required to familiarise themselves with all national standards, they are also required to improve their management and strictly comply with these standards and systems.

We recommend paying particular attention to these new aspects introduced by the New Food Safety Law:

1. The establishment of national food safety standards;
2. The set-up of national food safety traceability system;
3. The implementation of food safety self-inspection systems;
4. The management of internet food trading platforms; and
5. New requirements for health supplements and infant formula.

National food safety standards
Chapter III of the New Food Safety Law stipulates that the health administration department under the State Council and the food and drug administration department under the State Council will formulate and promulgate the national food safety standards; these will be strictly enforced and are aimed at protecting public health. Standards and inspection procedures for pesticide and veterinary drug residue in food products, as well as inspection procedures for the slaughter of livestock and poultry, shall be formulated to standardise the inspection process and enhance its effectiveness.

In a bid to continuously improve food safety standards and their effectiveness, the New Food Safety Law stipulates that the supervisory authorities, (including the health administration department, the food and drug administration department, the quality supervision department, the agriculture administration department under the State Council), food producers and food operators must promptly report any issues discovered in the process of implementing food safety standards or inspection evaluations.

The New Food Safety Law explicitly requires food producers and operators to comply with laws and regulations after the applicable national food safety standards are confirmed, and products must comply with the standards. In order to do so, food
producers and operators are required to establish and implement a range of controls on the following phases: procurement, acceptance and control of raw materials and inputs; manufacturing processes, equipment, storage, packaging, etc.; inspection of raw materials, semi-finished products, finished products etc.; as well as transportation and delivery. It’s only when food producers and operators pay greater attention to their production and distribution controls that non-compliant products will be minimised and the quality of their products improved.

**Food safety traceability system**

Article 42 of the New Food Safety Law stipulates that food producers and operators shall establish food safety traceability systems, and be encouraged to collect and store production and operations data using information technology. All food producers are required to record data from all phases of production, including breeding, manufacturing, packaging, inspections, storage, transportation and sales.

Food safety traceability systems should be capable of recording and tracing food quality, safety and other relevant data from the production source to final consumption and vice versa to ensure effective monitoring of the entire food production process at all times. Such a system enables food producers to quickly identify the root cause of food safety incidents.

A smart, comprehensive and reasonable food safety traceability system will give consumers a clear and detailed understanding of the food they purchase, as well as information pertaining to all phases of production. This will reduce losses arising from unmet consumer expectations, make it easier for consumers to gather information about the products, and help food producers establish their food safety credentials.

**Online trading platforms**

Article 62 of the New Food Safety Law was added to address online food trade, and requires third-party providers of food trading platforms to review the business licenses of their traders, and to immediately report any breaches of the New Food Safety Law and stop the illegal activity.

The promulgation of this new amendment fills the regulatory loophole for online shopping and facilitates the tightening of audit and monitoring of traders when they register on the platform. Meanwhile, the New Food Safety Law stipulates that when consumers report to third party service providers and provide sufficient supporting evidence of online traders’ illegal acts, third-party service providers are required to investigate and fulfil their legal obligations.

**Health supplements and infant formula**

The New Food Safety Law shines a spotlight on health supplements and infant formula, requiring health supplements to be registered with the relevant authorities. Health supplements must include the following statement on their packaging: ‘this product is not a substitute for pharmaceutical drugs’.

As for infant formula, the New Food Safety Law requires quality control over the entire process, starting from raw materials entering the production facility to finished products leaving the production facility, as well as inspection of each batch of finished products. It also states that manufacturers should not produce repackaged infant formula milk powder, and that a single company must not produce infant formula milk powder under different brands using the same recipe.
Increased rigor

The New Food Safety Law reflects a stricter regulatory attitude and carries tougher penalties. The penalties have been tightened for approximately 30 articles with more severe criminal penalties and increased costs for violations. Details for most of these stricter regulations and penalties are set out in Chapter IX Legal Liability. There are also higher requirements for various aspects of food production and operation as well as the monitoring of additional areas, such as controls over the production of food additives, which will prompt food production enterprises to standardise their day-to-day production and operating activities.

Amongst these amendments, the increased rigor is particularly evident in those regulations related to false advertising for food products and the management of food safety incidents.

False advertising of food products

The New Food Safety Law stipulates that food manufacturers are responsible for the truthfulness and legitimacy of their advertisements. In addition to the penalties for publishing false advertisements for food products as stipulated in the old 2009 food safety law (“the 2009 Law”), the New Food Safety Law also includes penalties for the advertisement of health supplements that have not received the relevant approvals and for health supplement advertising that is inconsistent with the description in the approval certificates. In cases that harm consumers’ interests, advertisers and publishers who design, produce and publish false advertisements, as well as communities, organisations, and individuals who recommend food products to consumers in false advertisements, will be held as jointly and severally liable with food producers and traders. In serious cases, they will be subject to regulatory sanctions.

The New Food Safety Law tightens the legal liability provisions and increases penalties to food producers and other participants in the food industry who are found responsible for false advertising. Enterprises need to recognise the potential adverse effects that false advertising can have on consumers and stamp out such practices.
PwC believes that food production enterprises must understand the implications of advertising for both themselves and consumers, and strictly control the quality of their products and their commercial advertisements.

**Food Safety Incidents**

The New Food Safety Law imposes stricter requirements for liability apportionment and higher compensation for the victims of food safety incidents. Most notably, it strengthens the apportionment of civil legal liabilities. To protect consumers’ interests, food producers and operators now bear the primary liability for compensating consumers. The New Food Safety Law has increased punitive compensation by giving consumers the right to demand punitive compensation of three times the amount of losses suffered in addition to the previously existing punitive compensation of ten times the purchase price. This significantly increases food producers’ and food operators’ costs of violating the law, while strengthening the protection of consumers’ interests.

PwC believes that the increased cost of dealing with food safety incidents will drive enterprises to enhance controls over all phases of food production, so as to manufacture products that comply with food safety standards and be mindful not to mislead consumers when producing incidental products, such as food instructions. The New Food Safety Law reminds food industry enterprises that it is vital to continuously improve their crisis management capabilities.
Additional depth

The New Food Safety Law provides additional, detailed elaboration and regulations for about 45 articles, thus clarifying their regulatory boundaries. Most of these regulations are found in Chapter IV Food Production and Operations.

**Food recall system**

The New Food Safety Law provides further clarification for food recall systems. Food producers and operators are required to tighten their grip on all stages of defective food product recalls, including identification, recall, processing and reporting. Food producers are required to immediately recall products upon discovery that they do not comply with food safety standards, unless provisions stipulate otherwise. They must also recall products where there is evidence of harm to human health. Food operators who believe they have caused their products to be defective or non-compliant should also recall the affected products. The New Food Safety Law also provides clarification on the sale, treatment and destruction of recalled products. Recalled food products are not to re-enter the market, except for food recalled for non-compliant labels, marks or instructions, whose problems have been remedied and whose safety can be guaranteed by producers. Producers should clearly indicate to customers the remedial actions they have undertaken.
PwC believes that companies must put risk assessment at the forefront of regulatory compliance, and strengthen and consolidate their approach to food safety risk management. Enterprises should integrate food safety risk assessment with risk assessments of other areas, so they can deal with all risks from a genuinely holistic perspective. PwC helps enterprises set up measures to respond to risks by strengthening their food safety management systems.

Food safety risk assessment system

The New Food Safety Law enhances the food safety risk assessment system by stipulating that food related products must be included in the scope of assessment, specifying the circumstances that warrant carrying out risk assessments, and expanding the scope of the Expert Committee on Food Safety Risk Assessment to the fields of biology and environment. The New Food Safety Law’s unequivocal attitude towards food safety risk controls is evident in the stipulation to establish multi-level risk assessment systems.

The New Food Safety Law has sent a clear signal by expanding the scope of products that must be recalled and stipulating strict post-recall measures: enterprises need to formulate preventative food safety risk management systems with strong and effective monitoring mechanisms and controls. At the same time, these requirements address potential delays in the recall of defective products from the market, and the risk of repackaged defective products re-entering the market. Enterprises that do not have effective recall mechanisms could spread the hazards of defective food to consumers and negatively impact the entire industry.

Food safety emergency response plan

The New Food Safety Law takes accountability to a new level. The 2009 law stipulated that “governments at the county level or above shall sanitise the sites of food safety incidents”, while the New Food Safety Law requires the State Council food and drug administration departments to “immediately investigate food safety incidents”. It also stipulates which departments will work together in investigating those responsible for food safety incidents, as well as the higher level departments to whom they report the conduct and findings of their investigations. For serious food safety incidents, the New Food Safety Law clearly states which regulatory body is responsible and the required actions to be taken.
Wider scope

The New Food Safety Law provides clarification for nearly 20 provisions with the focus expanding from food to products closely related to food, such as additives. The scope of the New Food Safety Law extends from food production enterprises to those involved in food storage, transportation and handling.

PwC believes that companies should move from addressing food safety issues in isolation towards addressing them at an overall enterprise level. They need to scan for aspects that were previously overlooked or considered unimportant so as to ensure their food quality and safety management systems encompass the entire production chain and are effectively integrated with their corporate strategy.

Food additives and food related products

The New Food Safety Law has extended its coverage to both food additives and food related products in its stipulations of food safety assessment, food safety standards, licensing, label instructions, scope of government supervision, production prohibition and penalties, import/export quarantine requirements, penalties and inspections. The New Food Safety Law stipulates that a specialised licensing system be set up for food additive producers; this will bring food additives and food related products within the scope of items subject to national food safety risk assessment and strict import/export controls.
PwC believes that regulatory bodies are bound to increase the intensity of spot checks and inspections after the New Food Safety Law comes into force, subjecting food enterprises to more stringent compliance requirements. Food enterprises should re-examine their compliance systems, as well as their procurement controls for food additives and food related products.

**Storage and transportation**

The New Food Safety Law stipulates that food storage and transportation are now within its regulatory scope. It stipulates for the first time non-food operators’ food storage, transportation and handling obligations and responsibilities. Article 33 stipulates that non-food operators should comply with the same storage, transportation and handling safety requirements as food operators. Article 132 stipulates that in the event food operators fail to comply with storage, transport and handling requirements, the relevant regulatory bodies can order them to take remedial action, cease production and operations, and pay fines of between RMB10,000 and RMB50,000. In serious cases, regulatory bodies can revoke a company’s business licences.

PwC believes that the New Food Safety Law’s benefits extend downstream from food production to storage. Food enterprises are not only required to ensure product safety, they are also required to ensure the safe transportation of their products to consumers. Food enterprises should be sure to set up safe, sanitary and secure storage and a logistics management system that includes regular inspections. PwC has a cross-industry team of experts who can assist enterprises with their comprehensive supply chain organisation and optimisation.

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