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Paper for the House Committee meeting on 27 June 2008

Bills Committee on Product Eco-responsibility Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Product Eco-responsibility Bill (the Bills Committee).

Background

2. In December 2005, the Administration published “A Policy Framework for the Management of Municipal Solid Waste (2005-2014)” (Policy Framework) setting out its strategy to tackle the imminent waste problem. Enshrining the principle of “polluter pays” and the element of “eco-responsibility”, the producer responsibility scheme (PRS) is a key policy tool in the Policy Framework for waste reduction, recovery and recycling. It is proposed that PRS will be introduced for six types of products, namely, vehicle tyres, plastic shopping bags (PSB), electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries. Under a PRS, manufacturers, importers, wholesalers, retailers or consumers are required to share the responsibility for reduction at source, collection, recycling, treatment or disposal of end-of-life products, with a view to avoiding and reducing the environmental impacts caused by such wastes.

3. The Administration proposes to adopt a framework legislative approach to implement PRS, i.e. an enabling legislation to provide for the shared core elements of all PRS and the fundamental regulatory requirements in respect of individual types of products, with operational details to be set out in subsidiary legislation when the opportunity is ripe.

The Bill

4. The objects of the Bill are –

- (a) to lay down a statutory framework for introducing measures to minimize the environmental impact of certain types of products; and
- (b) to impose a levy on certain retailers for providing PSB.

The Bills Committee

5. At the House Committee meeting held on 11 January 2008, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon CHOY So-yuk, the Bills Committee has held 15 meetings. The membership list of the Bills Committee is in **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the trade and related sectors. 18 groups have made written and/or oral representation to the Bills Committee. A list of these groups is in **Appendix II**.

Deliberations of the Bills Committee

6. The Bills Committee supports in principle the implementation of PRS in Hong Kong, with the environmental levy on PSB as the first PRS under the Bill to discourage the indiscriminate use of PSB. Members however express concerns on the framework legislative approach, and the lack of a comprehensive recycling plan for used PSB, which is an integral part of PRS. In the course of deliberation, members have also examined issues relating to the definition of PRS, authorized officers, powers to obtain information and samples, power of entry and search, provision of false information, obstruction of authorized officers, offences by body corporate, appeals, exercise of Appeal Board's jurisdiction, supplementary provisions as to Appeal Board, display of certificate of registration, assessment notice, the Secretary for the Environment (SEN)'s power to make regulations, Schedule 1, Schedule 4, legislative procedure for amendments to schedules, and levels of penalties.

Legislative approach

7. In line with the framework legislative approach, the Bill sets out the general provisions which may be extended to apply to other PRS beyond the environmental levy on PSB.

8. Members express concern that the Bill as drafted may have given SEN extensive power to introduce new PRS other than the scheme on PSB. Given that all PRS contain policy and administrative details, which have to be developed in consultation with the relevant stakeholders, they emphasize the need for each and every PRS to be subject to the full scrutiny of the Legislative Council (LegCo). The Administration's explanation is that as a piece of framework legislation, the Bill contains a purpose clause setting out its objectives and intended coverage. It also provides for enforcement powers and an appeal mechanism, which can be applied (with or without modification as appropriate) to other PRS when introduced under the primary legislation in future. However, the Bill does not contain any provision that will empower SEN to introduce a new PRS through subsidiary legislation. Each and every PRS must be implemented through amendments to the principal Ordinance, if enacted. The LegCo Panel on Environmental Affairs will be consulted prior to the introduction of such amendment bills, and the prevailing scrutiny process for amendment bills,

including the requirement of three readings by LegCo, will apply. At members' request, the Administration undertakes to clearly state in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill that new statutory PRS in respect of other products will be developed in consultation with the relevant stakeholders and LegCo, and that these will be implemented through amendments to the principal Ordinance.

9. The Bills Committee has studied the timeframe within which the remaining five products, namely, vehicle tyres, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries, will be implemented. According to the Administration, it would develop statutory PRS for other products in consultation with the relevant trades. It would also consult LegCo as well as the public before introducing new statutory PRS. It would however be impracticable to commit to an implementation timeframe for PRS for individual products at this stage, as changes in waste management and disposal practices might necessitate corresponding changes in the priority for introducing individual PRS, or even the introduction of PRS for other products not currently envisaged. Notwithstanding, the Bill has clearly underlined the Administration's commitment to introducing PRS beyond the one on PSB. The relevant work will be carried out in parallel with other waste management initiatives, including the introduction of voluntary PRS with the relevant trades.

Recycling of used PSB

10. Given that recycling is an integral part of PRS, members are disappointed that the Bill does not contain any provision in this respect. They hold the view that part of the proposed environmental levy should be used to provide financial incentives for the recycling of used PSB. These may be in the form of refund or partial refund for customers upon return of used PSB, or subsidy for the trade to place recycling bins at their retail outlets for the collection of used PSB.

11. According to the Administration, the best solution to the waste problem is to avoid and reduce waste at source. Insofar as PSB are concerned, the public can easily reduce their use by adopting a green lifestyle and bringing their own shopping bags at all times. The objective of the environmental levy aims at reducing the indiscriminate use of PSB at source through a direct economic disincentive. The environmental levy is meant to be an economic deterrent rather than a means to raise revenue. In fact, the more effective the environmental levy scheme is, the less revenue it generates. Apart from reduction at source, it is environmentally more desirable that PSB should first be reused as many times as possible before they are recycled. Recycling of PSB should only follow after all possible means for their reduction and reuse have been exhausted, and the most effective means to encourage the public to recycle their used PSB is to provide easily accessible points for their collection. Therefore, the Administration is continuing to roll out the Source Separation of Domestic Waste Programme to facilitate the recovery of used PSB. In addition, there are some 28 000 three-coloured separation bins throughout the territory, which also separately collect plastic materials, including PSB. These waste

separation bins are placed at public places (including roadside, parks, sport venues, leisure and cultural facilities, country parks, hospitals and clinics), schools, housing estates and government quarters. A new Announcement of Public Interest has also been launched to further promote the reuse and recycling of used PSB.

12. On the proposal of offering refund of the environmental levy for returning used PSB for the purpose of recycling, the Administration's explanation is that a refund or partial refund of environmental levy would not be conducive to encouraging the public to bring their own bags, as evidenced by the previous experience of providing 10-cent rebate for not requesting PSB. Such refund might also send confusing messages to the public on what is the best for the environment (i.e. reduction at source vis-à-vis recycling). Besides, the offer of refund will also generate undue administrative burden to the trade. Notwithstanding, the Administration has been liaising with major supermarket chains to explore possible measures to facilitate the collection of used PSB. The initial feedback from the trade is that it would be more convenient for the public to dispose of used PSB at the recycling bins in their housing estates. Furthermore, the placement of recycling bins at retail outlets would be subject to physical constraints and could create hygiene problems. Nevertheless, the trade is prepared to provide recycling bins at some of their bigger outlets on a trial basis as a complementary measure to facilitate the collection of used PSB for recycling purposes. Riding on this momentum, the Administration is also exploring with the Hong Kong Retail Management Association on the feasibility of introducing a trade-wide campaign to further promote the reduction, recovery and recycling of PSB. Where appropriate, the Environment and Conservation Fund (ECF) could provide funding support for the campaign.

13. Noting that about 90% of recovered materials are exported for recycling, the Bills Committee considers that measures should be put in place to support the local recycling industry, particularly for recycling of PSB which is considered not cost-effective given the high transport cost. The Administration's explanation is that to foster the development of the local recycling industry, it has embarked on the establishment of the EcoPark in Tuen Mun to provide long-term land for the high value-added operations of the local recycling industry. It has also earmarked 36 pieces of conveniently located short-term tenancy sites of over 7.4 hectares for the recovery operations of the local recycling industry. Apart from the provision of suitable land, the Administration also provides funding support for research and development projects on waste recycling through ECF, the Innovation and Technology Fund and the Small and Medium Enterprises Development Fund. To provide market outlets for recycled products, the Administration has been adopting a green procurement policy. The Stores and Procurement Regulation requires all bureaux and departments to take into account green considerations, including recycled content, energy efficiency, minimal packaging and low emission, in their procurement.

14. Members are however disappointed at the low value of green products procured by the Government Logistics Department as opposed to the overall value

of procurement. Of the overall value of \$3,785 million of products procured in 2007, only \$722.1 million were green products. According to the Administration, the value of green products procured as a percentage of overall procurement value is not a useful indicator, because a considerable part of Government's procurement does not have green alternatives, such as pharmaceutical products, computer software, medical equipment, etc. Notwithstanding, there are plans to strengthen the Government's work on green procurement. These include a consultancy study to review and expand the list of products with mandatory green specifications, and the development of green specifications for plastic bags, plastic pipes and fittings, and other plastic materials will be covered in the study. Meanwhile, the Food and Environmental Hygiene Department, being the Government's agent for refuse collection, has already been conducting a trial on the use of plastic garbage bags with recycled content. Subject to the satisfactory performance, plastic garbage bags with recycled content will be used on a large scale. To underline the Administration's commitment to environmental protection, a circular is being prepared for issuance to all bureaux and departments advising against the free distribution of PSB. Bureaux and departments should encourage their clients to bring their own reusable bags instead.

Definition of producer responsibility schemes

15. The Bills Committee has studied the feasibility of defining PRS in the Bill, and delineating the share of responsibility of manufacturers, importers, wholesalers, retailers, consumers or any other parties for the reduction in the use, recovery, recycling and proper disposal of specified products under the Bill.

16. According to the Administration, PRS is a term commonly used in the arena of environmental protection and refers to a waste management approach that requires manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the management of certain products throughout their lifecycle to minimize the impact on the environment. Different jurisdictions have also used the term "producer responsibility" in their legislation. For example, certain European Union Directives mention "producer responsibility" in the preambles to highlight the objectives of the relevant Directives, without defining or referring to that term in the ensuing substantive articles. Likewise, the Bill spells out the meaning of the term "PRS" and provides examples of PRS to include product take-back schemes. It is also worth noting that the Environmental Act 1995 of the United Kingdom adopts the term "producer responsibility", but it is used in the context of empowering the Secretary of State to impose "producer responsibility obligations" (which is defined as "the steps which are required to be taken by relevant persons of the classes or descriptions to which the regulations in question apply in order to secure attainment of the targets specified or described in the regulations"). By comparison, "PRS" is not used in the operative provisions of the Bill. Furthermore, as opposed to the United Kingdom legislation, the Bill does not contain any provision that will empower SEN to introduce new PRS to impose obligations on different persons in respect of different products regulation, which

will have to be introduced by amendments to the principal Ordinance, if enacted. Having regard to overseas experience, the Administration considers a definition for “PRS” uncalled for in the context of the Bill.

17. As regards the delineation of responsibility of different parties in respect of different products, the Administration’s explanation is that this will be set out in the statutory provisions on each PRS in the principal Ordinance, if enacted, to be introduced in future after consultation with the relevant trades and LegCo. In the case of the PRS on PSB, the responsibilities of registered retailers are set out in Part 3 of the Bill. The delineation of responsibility for other PRS will be stipulated in new provisions (as Part 4 onwards) to be added by amendment bills to the principal Ordinance, if enacted. The Administration has also taken on board members’ view to include the reference to schemes based on the polluter-pays principle as one of the means to require relevant parties to share the responsibility to minimize the environmental impact of certain products. Committee Stage amendments (CSAs) will be moved to this effect.

Part 2 – Prescribed products: general provisions

18. Part 2 of the Bill sets out the general provisions that supplement any regulation-making provision on specific products, the enforcement powers and the appeal mechanism. Since the Bill is a piece of framework legislation, the provisions under Part 2 may be extended to apply to other PRS as and when they are introduced through amendment bills in future.

Authorized officers

19. The Bill provides that the Director may, in writing, authorize any public officer to perform certain functions under the Bill, and that an authorized officer performing a function under the Bill may take with him such persons as he reasonably requires to assist him in the performance of the function.

20. The Bills Committee has studied the criteria for appointment and the minimum ranking of “authorized officer”. The Administration’s explanation is that in making such authorization, the Director will appoint public officers of the appropriate ranks based on considerations, such as the nature of the functions to be performed, the level of skills or knowledge required, the sensitiveness of the issues, etc. In accordance with the established practice, the ranks of public officers to be appointed will be clearly set out in an Instrument of Authorization signed by the Director. In view of members’ concern, the Administration agrees to specify the rank of environmental protection inspector as the minimum rank of public officers to be authorized by the Director under the Bill. A CSA to this effect will be moved by the Administration.

21. Members have raised concerns on the circumstances under which an authorized officer has to take with him such persons as he reasonably requires to assist him in the performance of the function, and how “reasonably requires” will be qualified. According to the Administration, the objective requirement of

reasonableness is embodied in the expression of “reasonably requires”. In other words, the authorized officer may not take with him persons whom a reasonable man would not consider as required for assisting him in the performance of the function in the circumstances. Neither may the authorized officer bring such an excessive number of assistants as are disproportionate to what would be necessary for the performance of his function. The power, as constrained by the reasonableness test, is necessary when, for instance, an authorized officer needs to review the retail transaction records that are kept by a registered retailer in electronic form. The authorized officer himself may not have adequate expertise in operating electronic database, and may need to bring with him a computer technician to assist him in performing such duties. Similarly, an authorized officer may need to audit the procurement records of PSB, and the assistance of a person with accounting expertise may be required. Without such assistance, enforcement effectiveness may be severely undermined.

Powers to obtain information and samples

22. The Bill provides that an authorized officer may require a person to provide all reasonable assistance, information or explanations in connection with any record or document required to be kept by him under the Bill.

23. Members are concerned about the extensive power of authorized officers. The Administration’s explanation is that in the case of PSB, retail transaction records and procurement records are increasingly kept in electronic form only. An authorized officer may need to know what kind of software is required to view, process and verify the records provided. If the software is proprietary or self-developed, an authorized officer may need to be given the permission to use the proprietary or self-developed software to view, process and verify the records provided. Without this requirement, enforcement effectiveness may be severely undermined. Nevertheless, the Administration has taken on board members’ concern that a person may not possess the information required by an authorized officer relating to any levy or fee imposed under the Bill, and will move a CSA to the effect that a person will only be required to provide the relevant information that is in his possession.

Power of entry and search

24. The Bill provides that except with the consent of the occupier or person in charge of any domestic premises, an authorized officer shall not enter or search those premises without a warrant issued by a magistrate.

25. The Bills Committee has studied the circumstances under which entry to and search of domestic premises with a warrant are required. According to the Administration, a registered retailer may submit false records to the Director, and deliberately hide the true records in domestic premises. Without the power to enter and search domestic premises under warrant, the Director would not be in a position to collect evidence for the offence of providing false information, even if a magistrate is satisfied that a piece of evidence is reasonably suspected to be hid

in domestic premises. The Administration therefore considers it necessary to retain the power to enter and search domestic premises in order to ensure effective enforcement. Nevertheless, the Administration has taken on board members' view that the power to enter and search non-domestic premises should also be subject to the issue of a warrant. A CSA will be moved to this effect.

26. In order to ensure effective enforcement of the environmental levy scheme, the Administration proposes to include a power for authorized officers to carry out routine inspection at non-domestic premises to ensure that the relevant regulatory requirements are complied with. In the case of the environmental levy for PSB, routine inspection will be carried out, for example, at the public area of retail outlets, to ensure that retailers do not provide free PSB from their retail outlets in contravention of the requirements in the Bill. A CSA will be moved to this effect.

27. Members have raised concern about the difference between "entry and search" and "routine inspection". The Administration's explanation is that an authorized officer may exercise the power to enter and search only if he reasonably believes that an offence has been, or is being committed in the place, or there is evidence of an offence in the place. In exercising such power to enter and search, an authorized officer may take a more proactive approach in gathering information and ascertaining facts relevant to an offence. Routine inspection, on the other hand, involves normal monitoring functions to ensure the regulatory requirements under the Bill are complied with. An authorized officer will adopt a relatively less intrusive approach by, for example, observing the relevant operation in the premises and requiring persons in the premises to provide information. In the case of PSB, an authorized officer may, under routine inspection, observe whether a customer is charged for each PSB provided at a cashier counter of a registered retail outlet. As to whether advance notice will be given for routine inspection, the Administration's explanation is that advance notice could undermine the effectiveness of the enforcement. Therefore, it is a general practice in routine inspection operations not to give advance notice.

Provision of false information

28. It is an offence for a person to omit a material particular from any record, document or information required to be produced or provided by him under the Bill.

29. The Bills Committee holds the view that a person commits an offence only if he omits any material particular from any record without any reasonable excuse. The Administration takes note of members' view and agrees to move a CSA to this effect.

Obstructing authorized officers, etc.

30. A person commits an offence and is liable on conviction to a fine of \$200,000 if he –

- (a) wilfully obstructs or delays an authorized officer in the performance of any of his function under the Bill; or
- (b) without reasonable excuse, fails to comply with any requirement properly made to him by an authorized officer under the Bill.

31. Members have pointed out that the gravity of the offences under (a) and (b) differ significantly, and hence warrant for different penalties. In the light of members' concern, the Administration will propose CSA to provide for separate levels of penalties with respect to offences under (a) and (b).

Offences by body corporate

32. If it is proved that an offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director of, or a person concerned in the management of, the body corporate, the director or that person also commits the offence and is liable on conviction to the penalty provided.

33. Members consider it unfair to hold a director liable for any offence which was attributable to neglect. In the light of members' concern, the Administration agrees to move a CSA to delete the reference to "neglect". In other words, if a body corporate commits an offence under the Bill, a director of the body corporate may be held criminally liable only if the prosecution proves that the offence was committed with the director's consent or connivance.

Appeals

34. A person who is aggrieved by a decision of a public officer relating to the following matters may appeal to the Appeal Board within 21 days after the date on which the notice about that matter is served on him –

- (a) rejection of an application for registration or deregistration in respect of a retail outlet;
- (b) rejection of an application for exemption of part of the area of a registered retail outlet;
- (c) an assessment notice;
- (d) any matter that is –
 - (i) provided by a regulation made under the Bill; and
 - (ii) specified in the regulation as a matter on which an appeal may be made.

35. The Bills Committee has studied the feasibility of generalizing the relevant provisions such that the Appeal Board can deal with appeals against all decisions made by the Director under the Bill. According to the Administration, the provisions as drafted cover all the decisions of a public officer in the determination of a person's civil rights and obligations under the Bill. The Administration considers it more appropriate for matters that are subject to appeal to be specified in the relevant provisions so that the Appeal Board can operate under clear terms of reference. Besides, not all decisions should be referred to the Appeal Board indiscriminately. Nevertheless, the Administration has taken on board members' suggestion and will move a CSA to explicitly provide that any party to an appeal may be legally represented in the proceedings before the Appeal.

Exercise of Appeal Board's jurisdiction

36. The Bill provides that the jurisdiction of the Appeal Board on an appeal shall be exercised by the Chairman and such number of panel members as the Chairman may appoint for the appeal.

37. Members have raised concern on the power of the Chairman of the Appeal Board to decide the number of panel members to be appointed for an appeal, which in their views may affect the decision of the Appeal Board, particularly in the event of an equality of votes when the Chairman has a casting vote. In the light of members' concern, the Administration agrees to move a CSA to specify that at least three members, one of whom must be the Chairman, shall hear and determine an appeal.

Supplementary provisions as to Appeal Board

38. The Bill provides that the hearing of an appeal may be continued notwithstanding any change in the membership of the Appeal Board as if the change had not occurred, and that a person may not be appointed as a member of the Appeal Board before which the hearing of an appeal has been commenced without the consent of the parties to the appeal.

39. The Bills Committee has studied how the hearing of an appeal can continue upon the resignation of a panel member. The Administration's explanation is that if a panel member who has been appointed to hear an appeal resigns after the commencement of the appeal, the hearing may continue so long as the proposed minimum number of members (i.e. at least three members) is met. If the number of members hearing the appeal falls below the minimum number, the Chairman of the Appeal Board may, with the consent of the parties to the appeal, appoint another panel member to continue to hear the appeal. In the absence of such consent, the Appeal Board will need to be reconstituted and the hearing of the appeal will start afresh. The Administration agrees to move CSAs to refine the relevant provisions to clarify the policy intent.

Part 3 – Plastic shopping bags

40. Part 3 sets out the regulatory scheme that introduces a levy on PSB.

41. The Bills Committee has studied the feasibility of combining Part 2 and Part 3 of the Bill, given that a substantial part of the Bill relates to the introduction of an environmental levy on PSB. The Administration's explanation is that as the proposed levy on PSB is the first PRS introduced under the Bill, all provisions in Part 2 are relevant to the implementation of the PRS on PSB. If the application of Part 2 is to be extended to other products, the relevant amendment bills must contain an amendment to specify those products as additional prescribed products to which Part 2 applies. The amendment bills may also propose amendments to other provisions in Part 2 in order to modify them where appropriate, having regard to the requirement for different products. All such proposals will be subject to the scrutiny of LegCo. The Administration reiterates its commitment to introducing PRS beyond the environmental levy on PSB. As such, it is necessary to preserve the current structure of Part 2 and Part 3, whereby the former provides for the general provisions applicable to any statutory PRS contained in the principal Ordinance, if enacted, while the latter sets out the specific contents of the first PRS on PSB. Nevertheless, the Administration agrees to propose CSAs to suitably revise the provisions in Part 2 so as to make it clear that Part 2 currently applies in relation to PSB only.

Display of certificate of registration

42. The Bill provides that a person shall not display a certificate of registration at a place that is not a registered outlet to which the certificate relates, failure of which will commit an offence.

43. Members have raised concern that a person may be unnecessarily caught if he inadvertently displays the certificate at a place that is not a registered outlet. In the light of members' concern, the Administration agrees to move a CSA to specify that a person who, without reasonable excuse, contravenes the relevant provision commits an offence.

Assessment notice

44. The Bill provides that if the Director reasonably believes that any amount of levies stated in a return in respect of a period submitted by the retailer is false, incorrect or misleading, he may –

- (a) assess the amount of levies payable for PSB provided by the retailer during that period; and
- (b) serve an assessment notice on the retailer demanding payment of that assessed amount or the balance of that amount if the retailer has already paid part of that amount.

45. Members consider that a higher threshold should be set for the Director to serve an assessment notice. For instance, an assessment notice would only be served after a registered retailer has been found guilty of an offence for providing false information. In the light of members' concern, the Administration agrees to move CSAs to make it clear that an assessment notice would only be served upon conviction of an offence in respect of provision of false information or failure to submit return, or acquittal of the said offence in reliance on the relevant statutory defence.

Power of Secretary to make regulations

46. The Bills provides that SEN may, after consultation with the Advisory Council on the Environment, make regulations for and with respect to all or any of the following matters –

- (a) application for registration and deregistration in respect of a retail outlet, and the determination of such an application;
- (b) application for the exemption of part of the area of a registered retail outlet, and the criteria in accordance with which the Director may determine such and application;
- (c) submission of returns and payment of levies by registered retailers;
- (d) records and documents to be kept by registered retailers; and
- (e) such supplemental provisions as are necessary or expedient for giving full effect to the provision of Part 3;
- (f) any matter ancillary or incidental to those specified to this section.

47. The Bills Committee notes with concern that the regulations to be made by SEN will be subject to the negative vetting procedure. Given the extensive scope of the regulations to be made, members consider it necessary that such regulations should be subject to the positive vetting procedure to allow sufficient time for LegCo to consult the stakeholders and scrutinize the regulations. According to the Administration, the substantive regulatory provisions for the environmental levy on PSB have already been incorporated into the Bill itself, the regulation to be made by SEN would only deal with operational details, such as application for registration, submission of returns and payments, as well as records and documents to be kept. In line with the usual practice in other environmental legislation, negative vetting of subsidiary legislation on such procedural matters should suffice. The Administration has provided an outline setting out the proposed procedural matters to be covered in the future regulation, which is given in **Appendix III**. Members are not convinced of the Administration's explanation. They have pointed out that implementation and operational details indeed are subject to contentions, and hence would need more time for discussion. At members' repeated requests, the Administration

eventually agrees to move CSAs to specify that regulations to be made by SEN are subject to the approval of LegCo. It also undertakes to include in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill that the Administration would continue to consult the affected trades on the implementation and operational details of the environmental levy on PSB, including how to account for the number of PSB.

Schedule 1 – Plastic shopping bags to which this Bill applies

48. The Bill provides that a bag is a PSB to which the Bill applies if there is any hole, perforation, handle or string on or attached to it.

49. The Bills Committee considers that there is a need to make it clear that the hole on PSB is solely for handling only and not for other purposes. The Administration agrees to move a CSA to specify that the Bill will apply to PSB with handle holes or other carrying devices.

Schedule 4 – Prescribed retailers to whom Part 3 of this Bill applies

50. The Bill provides that a person is a prescribed retailer if he carries on a retail business at –

- (a) two or more qualified retail outlets in Hong Kong; or
- (b) one qualified retail outlet in Hong Kong that has a retail floor area of not less than 200 square metres.

51. Members have raised concern that small and medium enterprises which happen to have more than one outlet will be subject to the levy scheme, thereby increasing their financial burden. The Administration agrees to move CSAs to take on board members' suggestion that a person will be a prescribed retailer if he carries on a retail business at five or more qualified retail outlets in Hong Kong, or at least one qualified retail outlet in Hong Kong that has a retail floor area of not less than 200 square metres.

52. The Bill provides that a retail outlet is a qualified outlet if the goods offered for sale in the outlet include –

- (a) any food or drink;
- (b) any medicine or first-aid item; and
- (c) any personal hygiene or beauty product.

53. The Bills Committee considers it necessary for the Administration to make it clear that a retail outlet is a qualified outlet if the goods offered for sale in the outlet include all of the three categories of goods specified in (a), (b) and (c). The Administration agrees to move a CSA to this effect.

54. The Bill also provides that if a retail business is carried on under a franchise agreement, the franchiser is the prescribed retailer unless the Director agrees otherwise.

55. Members consider that apart from the franchiser, the franchisee should also be held liable for contravention with the requirements relating to the provision of PSB from his retail outlet and the display of a certificate of registration in the outlet. The Administration has taken on board members' view and will move CSAs to this effect.

Legislative procedures for amendments to Schedules

56. As Schedules 1, 2, 3 and 4 to the Bill set out the definition of PSB, the exemptions, the level of levy and the definition of prescribed retailers respectively, which are the core elements of the levy scheme, the Bills Committee does not agree that future amendments to these Schedules should be subject to the negative vetting procedure as currently proposed under the Bill. To allow sufficient time for scrutiny, members hold the view that the positive vetting procedure should be adopted for these amendments. According to the Administration, there will be sufficient time for LegCo to consider amendments to these Schedules under the usual negative vetting procedure, as the Administration would have completed the necessary public and LegCo consultation before submitting any proposed amendments. Members are not convinced of the Administration's response as evidenced by previous experience. After members' repeated requests, the Administration eventually agrees that the positive vetting procedure should be adopted for future amendments to Schedules 1, 2 and 4. Given that Schedule 3 only sets out the level of levy, the Administration considers that there will be sufficient time for LegCo to consider amendment to this Schedule under the usual negative vetting procedure. Nevertheless, it has taken on board members' view, and will include in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill that any change in the level of levy will take effect after completion of scrutiny of the relevant amendment under the negative vetting procedure.

Levels of penalties

57. The Bills Committee considers that the levels of penalties in the Bill are on the high side, given that the offences are only related to the collection of an environmental levy on PSB, which will not give rise to significant adverse impacts on the general public. In the light of members' concern, the Administration has reviewed the penalty provisions under the Bill in a holistic manner to ensure that the penalty of an offence should be commensurate with the nature of the offence. CSAs will be moved to this effect.

58. The Bills Committee has also examined other technical aspects of the Bill.

Committee Stage amendments

59. A set of Committee Stage amendments to be moved by the Administration is in **Appendix IV**.

Recommendation

60. The Bills Committee supports the resumption of Second Reading debate on the Bill on 9 July 2008.

Advice sought

61. Members are requested to support the recommendation of the Bills Committee in paragraph 60 above.

Prepared by
Council Business Division 1
Legislative Council Secretariat
26 June 2008

Bills Committee on Product Eco-responsibility Bill

Membership list

Chairman	Hon CHOY So-yuk, JP
Members	Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon CHAN Yuen-han, SBS, JP Hon SIN Chung-kai, SBS, JP Hon Miriam LAU Kin-ye, GBS, JP Hon Emily LAU Wai-hing, JP Hon Audrey EU Yuet-mee, SC, JP Hon Vincent FANG Kang, JP Hon LEE Wing-tat Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon WONG Ting-kwong, BBS

(Total : 11 Members)

Clerk	Miss Becky YU
Legal Adviser	Miss Kitty CHENG
Date	24 January 2008

**List of organizations which have made
written and/or oral representations to the Bills Committee**

- (a) Advisory Council on the Environment
- (b) Christians for Eco-concern
- (c) Circle K Convenience Stores (HK) Ltd
- (d) Consumer Council
- (e) Democratic Alliance for Betterment and Progress of Hong Kong
- (f) Democratic Party
- (g) Friends of the Earth (HK)
- (h) Greeners Action
- (i) Green Council
- (j) Green Manufacturing Alliance
- (k) Green Power
- (l) Green Sense
- (m) Hong Kong Plastic Bags Manufacturers' Association
- (n) Hong Kong Retail Management Association
- (o) The Conservancy Association
- (p) The Hong Kong Institution of Engineers
- (q) Mr YAU Wing-kwong, Tai Po District Council member
- (r) Seiyu (Shatin) Co Ltd

Outline of the Proposed Procedural Matters to be covered by the Product Eco-responsibility (Plastic Shopping Bags) Regulation

If the Product Eco-Responsibility Bill is enacted, the Secretary for the Environment will propose to make a regulation, to be tentatively known as the Product Eco-responsibility (Plastic Shopping Bags) Regulation, under clause 27 after consultation with the Advisory Council on the Environment. The proposed Regulation will provide for the following matters –

- (a) application for registration and deregistration of prescribed retailers in respect of their qualified retail outlets;
- (b) application for exemption for certain area of a registered retail outlet;
- (c) submission of returns and payments of levies by registered retailers; and
- (d) records and documents to be kept by registered retailers.

Registration and deregistration

2. An application for registration shall be made to the Director of Environmental Protection (Director) in a specified form with the following information -

- (a) name and address of a prescribed retailer;
- (b) name(s) (if different) and address(es) of its qualified retail outlet(s); and
- (c) particulars of an authorized representative.

Upon registration, the Director shall issue a registration certificate for each of the qualified retail outlet(s) of the applicant. A registered retailer shall inform the Director of any changes subsequent to the registration (e.g. addition or deletion of a qualified retail outlet).

3. If a registered retailer ceases to provide plastic shopping bags to customers or ceases to be a prescribed retailer, he may apply to the Director for deregistration.

Exemption of certain area

4. Schedule 4 to the Bill sets out the meaning of prescribed

retailers. The retailers intended to be covered by the first phase of the environmental levy scheme are large or chain supermarkets, convenience stores and personal health and beauty stores. To maintain a level-playing field as far as practicable and taking into account the views previously expressed by some stakeholders, the Administration proposes to allow a prescribed retailer to apply for exemption for certain area of its qualified retail outlet in accordance with specified criteria (e.g. non-supermarket section within a department store).

5. In case a prescribed retailer is not satisfied with the decision of the Director in respect of its application for exemption, it may appeal to an Appeal Board under clause 13 of the Bill.

Submission of returns and payment of levies

6. A registered retailer shall submit a return every quarter, stating –
- (a) the number of plastic shopping bags provided by the retailer to customers within the quarter; and
 - (b) the total amount of levies payable for those bags within the quarter.

The return shall be certified true and correct by an authorized representative of the registered retailer. Payment of the amount of levies shall be made together with the return.

7. A registered retailer shall also submit an annual return, stating –
- (a) the number of plastic shopping bags in stock at the beginning of the year;
 - (b) the number of plastic shopping bags procured during the year;
 - (c) the number of plastic shopping bags distributed to customers during the year; and
 - (d) the number of plastic shopping bags in stock at the end of the year.

The annual return is necessary for the Director to cross-check the returns of the previous four quarters.

Records and documents to be kept

8. To allow for subsequent audits by the Director, registered retailers shall keep records and documents related to transaction records which involve the procurement or distribution of plastic shopping bags.

PRODUCT ECO-RESPONSIBILITY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>By deleting subclause (1)(b) and substituting –</p> <p>“(b) to that end, to introduce producer responsibility schemes, schemes based on the “polluter pays” principle, or other measures, which may require manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the reduction in the use, or the recovery, recycling or proper disposal, of those products.”.</p>
4	<p>By deleting the clause and substituting –</p> <p>“4. Prescribed products to which Part 2 applies This Part applies in relation to plastic shopping bags.”.</p>
5	<p>By deleting everything before subclause (1)(a) and substituting –</p> <p>“5. General provisions as to regulations made under this Ordinance</p> <p>(1A) In this section, “regulation” (規例) means any regulation made under section 27.</p> <p>(1) A regulation may do all or any of the following –”.</p>

6 By deleting subclause (1) and substituting –

“(1) The Director may, in writing, authorize a public officer not below the rank of Environmental Protection Inspector to perform such functions of the Director or an authorized officer under this Ordinance as are specified in the authorization.”.

7 (a) By deleting the heading and substituting –

“7. Powers to obtain information, enter places for routine inspection, etc.”.

(b) By deleting subclauses (2) and (3) and substituting –

“(2) An authorized officer may require a person to provide information relating to any levy or fee imposed under this Ordinance that is in the possession of the person and is reasonably necessary to enable the officer to ascertain whether this Ordinance has been or is being complied with.

(3) For the purpose of ascertaining whether this Ordinance has been or is being complied with, an authorized officer may, at any reasonable time, enter a place to which the public are permitted to have access, and may do all or any of the following –

- (a) observe and inspect any activity, operation, process or procedure involving prescribed products;
- (b) require a person in charge of the place to produce any record or document relating to prescribed products or to any levy or fee imposed under this Ordinance;
- (c) make copies of any record or document produced under paragraph (b);

- (d) subject to subsection (4), take such samples of any products as the officer may reasonably require for the purpose of examination and investigation.”.

8 By deleting the clause and substituting –

“8. Power of entry and search

(1) Where a warrant has been issued under subsection (2) in respect of a place, an authorized officer may enter and search the place in accordance with this section.

(2) A magistrate may issue a warrant authorizing an authorized officer to enter and search a place only if –

(a) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that –

- (i) an offence against this Ordinance has been or is being committed in the place; or
- (ii) there is in the place anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed; and

(b) the magistrate is satisfied that –

- (i) it is not practicable to communicate with a person entitled to grant entry to the place;
- (ii) such a person has unreasonably refused entry to the place by an authorized officer;
- (iii) an authorized officer apprehends on reasonable grounds that entry to the place is unlikely to be granted unless a warrant is issued; or

(iv) the purpose of entry to the place would be prejudiced unless an authorized officer arriving at the place can secure immediate entry.

(3) An authorized officer who enters and searches a place under a warrant must, if required, produce the warrant for inspection.

(4) A warrant issued under this section continues in force until the purpose for which the entry is necessary has been satisfied.

(5) An authorized officer who enters a place under this section may do all or any of the following –

(a) require any person present at the place to provide such assistance or information as may be necessary to enable the officer to perform his functions under this Ordinance;

(b) search and seize anything that the officer reasonably believes to be evidence of the commission of an offence under this Ordinance;

(c) retain the thing for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined.

(6) An authorized officer must perform his functions under this section at a reasonable hour unless he believes that the purpose of their performance could be frustrated if he performs them at a reasonable hour.

(7) In this section, “place” (地方) includes any vehicle and vessel.”.

9 By deleting the clause and substituting –

“9. Providing false information, etc.

(1) A person who, in purported compliance with this Ordinance, produces or provides any record, document or information that is false or misleading in any material particular commits an offence and is liable on conviction to a fine at level 6.

(2) It is a defence to a charge under subsection (1) for the person charged to prove that –

(a) he did not know and had no reason to believe the record, document or information to be false or misleading; or

(b) he exercised due diligence to avoid the commission of the offence.

(3) A person who, without reasonable excuse, omits any material particular from any record, document or information required to be produced or provided by him under this Ordinance commits an offence and is liable on conviction to a fine at level 6.”.

10 By deleting the clause and substituting –

“10. Obstructing authorized officers, etc.

(1) A person who wilfully obstructs or delays an authorized officer in the performance of any of his functions under this Ordinance commits an offence and is liable on conviction to a fine at level 5.

(2) A person who, without reasonable excuse, fails to comply with a requirement properly made of him by an authorized officer under this Ordinance commits an offence and is liable on conviction to a fine at level 4.”.

11 By deleting the clause and substituting –

“11. Offences by body corporate

If –

- (a) a body corporate commits an offence under this Ordinance; and
- (b) it is proved that the offence was committed with the consent or connivance of a director of, or a person concerned in the management of, the body corporate,

the director or that person also commits the offence and is liable on conviction to the penalty provided.”.

14 By deleting the heading and substituting –

“14. Establishment of Appeal Board”.

15 By deleting subclause (1) and substituting –

“(1) The Appeal Board may exercise its jurisdiction in hearing and determining an appeal only if it is duly constituted.

(1A) The Appeal Board is duly constituted for the purpose of hearing and determining an appeal if it consists of the following members –

- (a) the Chairman; and
- (b) at least 2 other members appointed by the Chairman from among the panel members to hear the appeal.”.

16 By deleting subclauses (5) and (6) and substituting –

“(5) If there is a change in the membership of the Appeal Board (whether in respect of the Chairman or any other member) during the hearing of an appeal, the following applies –

- (a) in the case where the Appeal Board remains duly constituted according to section 15(1A) without the participation of any new or acting member, the Appeal Board may continue the hearing despite the change;
- (b) if paragraph (a) does not apply and every party to the appeal consents, the Appeal Board may continue the hearing after reconstitution; or
- (c) in any other case, the Appeal Board shall start the hearing afresh after reconstitution.

(6) Any party to an appeal may be represented by a legal representative in the proceedings before the Appeal Board.”.

- 17
- (a) In subclause (2), in the Chinese text, by deleting “以下情況獲符合” and substituting “符合以下情況”.
 - (b) In the Chinese text, by deleting subclause (2)(c) and substituting –
 - “(c) 署長未有根據第19(7)條批准任何就該店提出的撤銷登記申請，不論該店是否持續是一間合資格零售店。”.
 - (c) By adding –
 - “(3) For the purposes of this Part, a plastic shopping bag is provided if it is given free of charge or sold at a price, whether or not it is given or sold together with another product as a single item of goods.”.
- 18 By deleting subclause (4).
- 19
- (a) By deleting subclause (2).
 - (b) In subclause (5)(a), by deleting “of \$200,000” and substituting “at level 6”.
 - (c) In subclause (5)(b), by deleting “\$500,000” and substituting “\$200,000”.

- (d) By deleting subclause (6)(a) and (b) and substituting –
- “(a) that retailer ceases to carry on a retail business in that outlet;
 - (b) that outlet is no longer a qualified retail outlet;
 - (c) that retailer ceases to provide plastic shopping bags from that outlet; or
 - (d) that retailer is no longer a prescribed retailer.”.

New By adding immediately after clause 20 –

“20A. Secretary may amend Schedules

(1) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 1, 2, 3 or 4.

(2) An order made under this section to amend Schedule 1, 2 or 4 is subject to the approval of the Legislative Council.”.

21 (a) By adding –

“(2A) A registered retailer who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.”.

(b) By deleting subclause (4) and substituting –

“(4) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 5.”.

22 (a) In subclause (1), by deleting everything before “from –” and substituting –

“(1) A registered retailer shall charge a customer an amount of not less than the levy for each plastic shopping bag provided directly or indirectly to the customer”.

(b) In subclause (6)(a), by deleting “of \$200,000” and substituting “at level 6”.

- (c) In subclause (6)(b), by deleting “\$500,000” and substituting “\$200,000”.

23 By deleting subclause (3) and substituting –

“(3) A registered retailer who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 5.”.

24 By deleting subclause (2) and substituting –

“(2) A registered retailer who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.”.

25 (a) By adding immediately before subclause (1) –

“(1A) This section applies if a registered retailer –

- (a) is convicted of an offence under section 9 relating to any record, document or information on any amount of levies stated in a return submitted by the retailer in respect of a period under section 23(1);
- (b) is acquitted of an offence mentioned in paragraph (a) in reliance on the defence under section 9;
- (c) is convicted of an offence under section 23(3) for failing to submit a return in respect of a period according to the requirements in section 23(1); or
- (d) is acquitted of an offence mentioned in paragraph (c) in reliance on the defence under section 26.”.

- (b) In subclause (1), by deleting everything before “may –” and substituting –

“(1) The Director”.

- (c) In subclause (2), by deleting “at any time”.

- (d) By adding –
- “(2A) An assessment notice served under this section in respect of plastic shopping bags provided during a period may only be served within 5 years after the end of that period.”.
- (e) By deleting subclauses (4) and (5) and substituting –
- “(4) A registered retailer shall pay the amount of the demanded levies under an assessment notice within such time limit as is prescribed by the regulation.
- (5) A registered retailer who contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 5.”.

Part 3, Division 4 In the heading, by deleting “**Defence**” and substituting “**Supplementary provisions as**”.

26 By deleting “21(4),”.

New By adding immediately after clause 26 –

“26A. Liability of franchisees

(1) In this section, “franchised retail outlet” (專營加盟零售店) means a qualified retail outlet at which a retail business is carried on under a franchise agreement.

(2) If an offence under section 19(5), 21(2A) or 22(6) involving a franchised retail outlet is committed, or would have been committed except for the reliance on the defence under section 26 (if applicable), by its franchiser owing to an act or default of its franchisee –

- (a) the franchisee also commits the offence and is liable on conviction to the penalty provided, whether or not the franchiser is charged with or convicted of the offence; and

(b) the franchisee may also rely on the defence under section 26 in the case of an offence under section 19(5) or 22(6).”.

- 27 (a) By renumbering the clause as clause 27(1).
 (b) In subclause (1), by deleting “for and”.
 (c) By adding –
 “(2) A regulation made under this section is subject to the approval of the Legislative Council.”.
- Schedule 1 (a) By deleting “[s. 18(1) & (4)]” and substituting “[ss. 18(1) & 20A(1) & (2)]”.
 (b) By deleting section 1(1)(b) and substituting –
 “(b) there is a handle, handle hole, perforated line for tearing out a handle hole, carrying string or strap, or any other carrying device on, or attached to, the bag.”.
- Schedule 2 (a) By deleting “[s. 18(2) & (4)]” and substituting “[ss. 18(2) & 20A(1) & (2)]”.
 (b) In section 1, by deleting “This Ordinance” and substituting –
 “(1) Subject to subsection (2), this Ordinance”.
 (c) In section 1(1)(c)(i), by deleting “item” and substituting “piece”.
 (d) In section 1, by adding –
 “(2) Subsection (1) does not apply to a bag mentioned in subsection (1)(a) or a pack of bags mentioned in subsection (1)(b) if –
 (a) it is given free of charge or sold at a price together with another product as a single item of goods; or
 (b) a rebate or discount is offered to the purchaser of the bag or pack,
 with the effect of directly offsetting the price or part of the price of the bag or pack, so that it is in effect given free of charge or sold at a net price of less than \$5.00.”.

Schedule 3 By deleting “[s. 18(3) & (4)]” and substituting “[ss. 18(3) & 20A(1)]”.

- Schedule 4
- (a) By deleting “[ss. 17(1) & 19(1) & (2)]” and substituting “[ss. 17(1), 19(1) & 20A(1) & (2)]”.
 - (b) By deleting section 1(1)(a) and (b) and substituting –
 - “(a) 5 or more qualified retail outlets in Hong Kong; or
 - (b) at least one qualified retail outlet in Hong Kong that has a retail floor area of not less than 200 square metres.”.
 - (c) In section 1(2), by adding “all of the following categories of goods” after “include”.