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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 8 July 2009

**Proposed resolution under
the Ozone Layer Protection Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for the Environment will move at the Council meeting of 8 July 2009 under the Ozone Layer Protection Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both English and Chinese versions, which the Secretary for the Environment will deliver when moving the proposed resolution, is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

OZONE LAYER PROTECTION ORDINANCE

RESOLUTION

(Under section 16 of the Ozone Layer Protection Ordinance (Cap. 403))

RESOLVED that the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009, made by the Secretary for the Environment on 17 June 2009, be approved.

**OZONE LAYER PROTECTION (PRODUCTS
CONTAINING SCHEDULED SUBSTANCES)
(IMPORT BANNING) (AMENDMENT)
REGULATION 2009**

(Made by the Secretary for the Environment under section 16 of the Ozone Layer Protection Ordinance (Cap. 403) after consultation with the Advisory Council on the Environment and subject to the approval of the Legislative Council)

1. Commencement

- (1) Subject to subsections (2), (3), (4) and (5), this Regulation comes into operation on 1 January 2010.
- (2) Section 2(4) and (5) comes into operation on 1 July 2010.
- (3) Sections 2(6) and (10) and 4 come into operation on 1 July 2012.
- (4) Section 2(7) comes into operation on 1 January 2015.
- (5) Section 2(8) comes into operation on 1 January 2020.

2. Interpretation

(1) Section 2 of the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) Regulation (Cap. 403 sub. leg. C) is amended by repealing the definition of “controlled product” and substituting –

““controlled product” (受管制產品) means any of the following things that contains a scheduled substance listed in Part 1, 2, 3 or 9 of the Schedule to the Ordinance or Chlorodifluoromethane, as a scheduled substance listed in Part 8 of the Schedule to the Ordinance –

- (a) any air-conditioner or heat pump designed to cool the driver’s or passengers’ compartment of a motor vehicle (whether or not installed in the motor vehicle);

- (b) any refrigeration equipment or air-conditioning or heat pump equipment (whether for domestic or commercial use), other than a room air-conditioner;
- (c) an aerosol product;
- (d) an insulation panel, insulation board or insulation pipe cover;
- (e) a pre-polymer;”.

(2) Section 2 is amended, in the English text, in the definition of “refrigeration equipment”, by repealing the full stop and substituting a semicolon.

(3) Section 2 is amended by adding –

““air-conditioner” (空調機) means an encased assembly or encased assemblies that –

- (a) is or are designed primarily to provide free delivery of conditioned air to an enclosed space, room or zone; and
- (b) has or have a prime source of refrigeration for cooling or heating;

“room air-conditioner” (房間空調機) has the meaning given by section 2A;

“transhipment” (轉運) means the importation of a controlled product that –

- (a) is consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong; and
- (b) is or is to be removed from the vessel, vehicle or aircraft in which it was

imported, and, before being exported, is either –

- (i) returned to the same vessel, vehicle or aircraft; or
- (ii) transferred to another vessel, vehicle or aircraft, whether it is or is to be transferred directly between the vessels, vehicles or aircraft or whether it is to be landed in Hong Kong after its importation and stored, pending exportation.”.

(4) Section 2 is amended, in the definition of “controlled product”, in paragraph (b), by adding “that is of single package type” after “a room air-conditioner”.

(5) Section 2 is amended by adding –

““single package type” (獨立式), in relation to a room air-conditioner, means a room air-conditioner that consists of components of a refrigeration system fixed on a common mounting to form a discrete unit;”.

(6) Section 2 is amended, in the definition of “controlled product”, in paragraph (b), by repealing “, other than a room air-conditioner that is of single package type”.

(7) Section 2 is amended, in the definition of “controlled product”, by repealing “a scheduled substance listed in Part 1, 2, 3 or 9 of the Schedule to the Ordinance or Chlorodifluoromethane, as a scheduled substance listed in Part 8 of the Schedule to the Ordinance” and substituting “a scheduled substance listed in Part 1, 2, 3, 8 or 9 of the Schedule to the Ordinance, other than Dichlorotrifluoroethane, as a scheduled substance listed in Part 8 of the Schedule to the Ordinance”.

(8) Section 2 is amended, in the definition of “controlled product”, by repealing “, other than Dichlorotrifluoroethane, as a scheduled substance listed in Part 8 of the Schedule to the Ordinance”.

(9) Section 2 is amended by repealing the definition of “portable fire extinguisher” and substituting –

““portable fire extinguisher” (手提式滅火器) means a portable fire extinguisher that contains a scheduled substance listed in Part 1, 2, 3, 8 or 9 of the Schedule to the Ordinance;”.

(10) Section 2 is amended by repealing the definitions of “room air-conditioner” and “single package type”.

3. Section added

The following is added –

“2A. Room air-conditioner

(1) In this Regulation, “room air-conditioner” (房間空調機), subject to subsection (2), means an air-conditioner that –

- (a) uses mains electricity as the primary power source;
- (b) operates by using the vapour compression cycle;
- (c) is non-ducted;
- (d) is air-cooled;
- (e) is of either cooling only type or reverse cycle type; and
- (f) has a rated cooling capacity not exceeding 7.5 kilowatts.

(2) In this Regulation, “room air-conditioner” (房間空調機) does not include an air-conditioner that is –

- (a) a fan-coil air-conditioning unit;
- (b) a water-cooled unit;

- (c) a multiple split-system air-conditioner;
- (d) a heat pump for heating only;
- (e) a unit designed for use with additional ducting or flexible pipes for air intake or exhaust; or
- (f) of either ceiling-mounted type or floor standing type.

(3) In subsections (1) and (2) –

“air-cooled” (氣冷式) means the employment of air-cooled condensers in an air-conditioner;

“cooling capacity” (製冷量) means the amount of sensible and latent heat that an air-conditioner can remove from the enclosed space, room or zone to which free delivery of conditioned air is provided in a defined period of time;

“fan-coil air-conditioning unit” (盤管式空調機組) means an air-conditioning unit that is equipped with a fan re-circulating air from the enclosed space, room or zone to which free delivery of conditioned air is provided, through the coil that contains either chilled or hot water for cooling or heating;

“heat pump” (熱泵) means an encased assembly or encased assemblies designed as a unit to provide free delivery of heat, and includes an electrically operated refrigeration system for heating;

“mains electricity” (市電) means the electricity that is supplied in Hong Kong at a voltage of 380/220V and a frequency of 50 Hz;

“multiple split-system” (多重分體式系統) means a split system that –

- (a) incorporates a single or multiple refrigerant circuits;
- (b) has one or more compressors;
- (c) has multiple indoor units;
- (d) has one or more outdoor units; and

(e) is capable of operating either as an air-conditioner or a heat pump;

“non-ducted” (非管道式) means not having any additional ducting or pipes required for air intake and exhaust;

“rated cooling capacity” (額定製冷量) means the cooling capacity of an air-conditioner as determined and declared by the manufacturer or importer of the air-conditioner in accordance with the standard and requirements specified in an approved code of practice;

“vapour compression cycle” (蒸氣壓縮循環方式) means a mechanism employed by an air-conditioner throughout which the refrigerant undergoes alternate compression and expansion to achieve the cooling or heating function;

“water-cooled” (水冷式) means the employment of water-cooled condensers in an air-conditioner.

(4) In subsection (1)(e), an air-conditioner is of cooling only type if it is used for cooling, but not for heating.

(5) In subsection (1)(e), an air-conditioner is of reverse cycle type if it can operate in normal or reverse vapour compression cycle, and is used for both cooling and heating.

(6) In subsection (2)(f), an air-conditioner is of ceiling-mounted type if it is of split type and its indoor unit –

(a) is equipped with mounting brackets or hooks on its body at appropriate locations;

(b) is intended to be installed with mounting rods or mounting bolts fastened on the ceiling in accordance with the manufacturer’s installation procedures;

(c) is intended to be installed directly under the ceiling; and

(d) has an intake grille, which may or may not be installed at the same level as the adjacent false ceiling panels (if there are such false ceiling panels).

(7) In subsection (2)(f), an air-conditioner is of floor standing type if it is of split type and its indoor unit is intended to be installed directly on the floor in accordance with the manufacturer's installation procedures.

(8) In subsection (3), "approved code of practice" (經核准實務守則) has the meaning given by section 2 of the Energy Efficiency (Labelling of Products) Ordinance (11 of 2008).

(9) In this section, an air-conditioner is of split type if it has separate indoor and outdoor components, which are connected with each other by the refrigerant piping, and the indoor component usually lies within the enclosed space, room or zone to which free delivery of conditioned air is provided."

4. Room air-conditioner

Section 2A is repealed.

5. Offence to import certain products

(1) Section 3(1) is amended by repealing everything after "from any country or place" and substituting ", whether or not the country or place is bound by the terms of the Protocol."

(2) Section 3 is amended by adding –

“(2A) This section does not apply to a controlled product that is –

- (a) in the course of transshipment; or
- (b) imported solely for export.

(2B) In a prosecution for an offence under this section, a controlled product that is found in Hong Kong is presumed, in the absence of evidence to the contrary, to be a controlled product that is not –

- (a) in the course of transshipment; or
- (b) imported solely for export.”.

(3) Section 3(3) is amended by repealing “\$200,000 and to imprisonment for 6 months” and substituting “\$1,000,000 and to imprisonment for 2 years”.

Secretary for the Environment

17 June 2009

Explanatory Note

This Regulation amends the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) Regulation (Cap. 403 sub. leg. C) (“principal Regulation”) to give effect to initiatives adopted under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (“Protocol”). The amendments extend the control of import under the principal Regulation by –

- (a) expanding in phases the definition of “controlled product” under the principal Regulation to cover certain products containing certain substances listed in the Schedule to the Ozone Layer Protection Ordinance (Cap. 403);

- (b) expanding the definition of “portable fire extinguisher” under the principal Regulation; and
 - (c) prohibiting the import of things falling within the definition of “controlled product” from any country or place even if it is bound by the terms of the Protocol.
- 2. The Regulation also amends the principal Regulation, so that –
 - (a) it does not apply to a “controlled product” that is in the course of transshipment or is imported solely for export; and
 - (b) the penalties for an offence under the principal Regulation are increased to a fine of \$1,000,000 and to imprisonment for 2 years.

Speech by the Secretary for the Environment Mr. Edward Yau

at the Legislative Council on 8 July 2009

Motion to pass a resolution under

section 16 of the Ozone Layer Protection Ordinance (Cap. 403)

Ozone Layer Protection (Products Containing Scheduled Substances)

(Import Banning)(Amendment) Regulation

Mr. President,

I move the motion standing in my name on the Order Paper.

2. In 1993, the Government implemented the Ozone Layer Protection (Products Containing Scheduled Substances)(Import Banning)(Regulation) (the Regulation) so that Hong Kong can contribute to the recovery of the ozone layer in fulfillment of its obligations under an international agreement, the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

3. The ozone layer protects all life on earth against harmful ultraviolet radiation. Back in the 1970s, scientists discovered a large-scale depletion of the ozone layer, resulting in what is commonly referred to as “ozone hole” in the atmosphere, due to excessive human consumption of ozone depleting substances. To further expedite the recovery of the ozone layer, at the 19th Meeting of Parties to the Montreal Protocol (the Parties) held in Montreal in September 2007, the Parties approved an amendment to accelerate the phasing out of

hydrochlorofluorocarbons (HCFCs) for the Non-Article 5 Parties to the Montreal Protocol – to curtail by 2010 the consumption of HCFCs by 75% of the baseline level of 1989 instead of the original 65%; and to advance the completion of the phasing out from 2030 to 2020.

4. The Montreal Protocol, extended to Hong Kong by the United Kingdom in 1987, requires our compliance with the requirements applicable to the Non-Article 5 Parties. Under the Memorandum to the UN Secretariat from the Ministry of Foreign Affairs of the Central People's Government on 6 June 1997, the Hong Kong Special Administrative Region will continue to comply with the relevant requirements after the re-unification in 1997.

5. To meet the new requirements of the above amendment to the Montreal Protocol, we must further reduce the local consumption of HCFCs. Having made reference to the practices of other advanced countries and considered the views of local suppliers and other stakeholders, we now move an Amendment Regulation which seeks to ban the import of all products using HCFCs by phases from 1 January 2010. This will reduce the consumption of HCFCs for the operation and maintenance of such products in future. The aim is to meet the revised timelines and reduction targets under the amendment to the Montreal Protocol.

6. The proposals under the Amendment Regulation have fully taken into account the views of related trades. For instance, we recognise that amidst the

financial tsunami, some suppliers may need more time to set up the production lines for HCFC-free room air conditioners. Without prejudice to our compliance with the requirements under the Montreal Protocol, we have agreed to defer the banning of import of split type and window type room air conditioners to 1 July 2010 and 1 July 2012 respectively.

7. In the Amendment Regulation we have also proposed to amend the definition of “controlled product” to keep in line with the resolution at the 11th and the 12th Meeting of the Parties in 1999 and 2000 respectively that Non-Article 5 Parties should develop and implement a strategy for the management of chlorofluorocarbons (CFCs), including options for an eventual ban against CFC-containing Metered Dose Inhalers (MDIs). In 2002, we drew up and submitted to the Ozone Secretariat of the Montreal Protocol our strategy and target to phase out all CFC-containing MDIs by 1 January 2010 in tandem with other advanced countries. In this connection, the Hospital Authority (HA) and Department of Health (DH) have also launched since 2004 a voluntary programme to phase out CFC-containing MDIs, and considerable achievements have been made. At present, CFC-free dose accounts for about 90% of the total local consumption. The proposed Amendment Regulation will ensure that we can complete the phasing out of CFC-containing MDIs, and it is supported by the HA, DH, medical profession and suppliers.

8. We would also like to take this opportunity to amend related provisions of the Regulation to extend the ban on the import of controlled products from

countries of origin not being a Party to the Montreal Protocol to all countries. The aim is to prevent Hong Kong from becoming a dumping ground of these products from the Parties. Moreover, the Amendment Regulation extends the definition of “portable fire extinguisher” to ban the use of certain ozone depleting substances as fire extinguishing agents if their alternatives are available.

9. Mr. President, Hong Kong has been working tirelessly with the international community and staying at the forefront of the region’s efforts in restoring the ozone layer. The Amendment Regulation will enable us to continue and enhance our efforts in reducing unnecessary emission of ozone depleting substances into the atmosphere and hence protecting the environment. With these remarks, I commend the Amendment Regulation to Members.

10. Thank you, Mr. President.