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**Subcommittee on Toys and Children's Products Safety
(Additional Safety Standards or Requirements) Regulation,
Toys and Children's Products Safety Regulation (Repeal) Regulation and
Toys and Children's Products Safety (Amendment)
Ordinance 2013 (Commencement) Notice**

Background brief

Purpose

This paper provides information on the background of the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation, Toys and Children's Products Safety Regulation (Repeal) Regulation and Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice, and Members' relevant views and concerns.

Background

The Toys and Children's Products Safety Ordinance (Cap. 424)

2. The Toys and Children's Products Safety Ordinance (Cap. 424) ("the Ordinance") (before having been amended by the Toys and Children's Products Safety (Amendment) Ordinance 2013 ("the Amendment Ordinance")) regulates the safety of toys¹ and 12 classes of children's products² as specified

¹ Defined as products or materials that are designed or clearly intended for use in play by a child, as well as their packaging.

² The 12 classes of children's products are babies' dummies, baby walking frames, bottle teats, bunk beds for domestic use, carry cots and similar handled products and stands, child safety barriers for domestic use, children's cots for domestic use, children's high chairs and multi-purpose high chairs for domestic use, children's paints, children's safety harnesses, playpens for domestic use, and wheeled child conveyances, as well as their packaging.

in Schedule 2 to the Ordinance. The Ordinance requires toys and children's products to meet the general safety requirement³ and additional safety requirements. The Ordinance also provides that the Secretary for Commerce and Economic Development ("SCED") may by regulation stipulate additional safety standards for toys and children's products. This regime ensures that the level of safety accorded to children is on par with the international norm, and enables the imposition of additional standards to enhance the protection of children's safety.

3. Pursuant to section 35 of the Ordinance, SCED has made the Toys and Children's Products Safety Regulation (Cap. 424B) ("the Safety Regulation"). The Safety Regulation provides for identification marking for toys and children's products, and related penalties.

Control of phthalates

4. According to the Administration, phthalates are commonly used as plasticizers in polyvinyl chloride products. However, there has been public concern over the possible health hazards posed to children by phthalates that may be contained in plasticized materials in toys and children's products. Currently, advanced economies such as the European Union, Australia, the United States, Canada and Singapore have imposed concentration limits of six types of phthalates, namely DEHP, DBP, BBP, DINP, DIDP and DNOP⁴, in certain toys and children's products. Except Australia which has imposed control only on DEHP, all other jurisdictions have put into effect restrictions against the use of DEHP, DBP and BBP in certain toys and child care products used by toddlers⁵, and against the use of DINP, DIDP and DNOP in certain toys and child care products that can be mouthed by toddlers.

The Amendment Ordinance

5. On 18 December 2013, the Legislative Council ("LegCo") passed the Amendment Ordinance which –

³ General safety requirement means a duty to ensure that a toy or children's product is reasonably safe having regard to all the circumstances. If a toy or a product in Schedule 2 meets all the applicable requirements in any one set of the applicable safety standards (international standards or standards adopted by advanced economies) specified in the Ordinance, the toy or product is regarded as meeting the general safety requirement.

⁴ DEHP means di(2-ethylhexyl) phthalate (also known as bis-(2-ethylhexyl) phthalate or diethylhexyl phthalate), DBP means dibutyl phthalate, BBP means benzyl butyl phthalate, DINP means diisononyl phthalate, DIDP means diisodecyl phthalate, and DNOP means di-n-octyl phthalate.

⁵ These are products intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under three or four years of age.

- (a) expands the definition of "children's product" in the Ordinance to cover, in addition to the 12 classes of children's products in Schedule 2, other products that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and that contain any plasticized material; and
- (b) makes other amendments to the Ordinance, in particular, to enable regulations to be made to control the concentration of six types of phthalates in certain toys and children's products.

6. The Amendment Ordinance also replaces the existing section 35 (SCED's power to make regulations) by a new section 35 to empower SCED to make regulations, including imposing additional safety standards or requirements for the expanded scope of "children's product".

The Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation

7. To ensure that the existing regulatory regime is on par with those in advanced economies in protecting children from exposure to phthalates and prevent Hong Kong from becoming the dumping ground for non-compliant products, the Administration has proposed to impose similar controls on the concentration of the above six types of phthalates in certain toys and children's products, by way of making the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation ("the Additional Safety Requirements Regulation") under the new section 35 of the Ordinance as amended by the Amendment Ordinance.

8. The provisions of the Additional Safety Requirements Regulation are summarised below –

- (a) sections 5 and 6 set out the requirements on identification marking and warning or caution for toys respectively. Sections 10 and 11 set out the requirements on identification marking and warning or caution for children's products respectively. The requirements are essentially the same as those under the Safety Regulation and additionally permit the identification marking and warning or caution to be put on a label affixed to a toy or children's product; and

- (b) sections 7 and 13 specify the control on the concentration of Class 1 phthalates⁶ in toys and children's products respectively. Sections 8 and 14 specify the control on the concentration of Class 2 phthalates⁷ in toys and children's products respectively capable of being entirely placed into mouth of child under four years of age. Sections 9 and 15 specify the control on the concentration of Class 2 phthalates in toys and children's products respectively capable of being partly placed into mouth of child under four years of age.

The Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice

9. SCED has made the Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice ("the Commencement Notice") to appoint 1 July 2014 as the day on which the Amendment Ordinance comes into operation. According to the Administration, this has taken into account the time needed by manufacturers, importers and suppliers of toys or children's products to make preparations for complying with the new legislative requirements under the Additional Safety Requirements Regulation.

10. The Additional Safety Requirements Regulation comes into operation on the day on which section 16 (which repeals the existing section 35 of the Ordinance by substituting it with a new section 35) of the Amendment Ordinance comes into operation, i.e. 1 July 2014.

The Toys and Children's Products Safety Regulation (Repeal) Regulation

11. The Toys and Children's Products Safety Regulation (Repeal) Regulation ("the Repeal Regulation") repeals the Safety Regulation in view of the making of the Additional Safety Requirements Regulation. The Repeal Regulation comes into operation immediately before section 16 of the Amendment Ordinance comes into operation, i.e. immediately before 1 July 2014.

⁶ Section 2(1) of the Additional Safety Requirements Regulation defines "Class 1 phthalate" to mean BBP, DBP or DEHP.

⁷ Section 2(1) of the Additional Safety Requirements Regulation defines "Class 2 phthalate" to mean DIDP, DINP or DNOP.

Views and concerns of Members

12. The Panel on Economic Development has not been consulted on the Additional Safety Requirements Regulation, the Commencement Notice and the Repeal Regulation. However, members of the Bills Committee formed to study the Toys and Children's Products Safety (Amendment) Bill 2013 ("the Bill") expressed concerns on the scope of application of the proposed control of phthalates and the implementation date. These concerns are set out in the ensuing paragraphs.

13. Some members expressed concern on whether the packaging of a toy or a children's product also fell within the scope of the proposed control in the Bill, given that the definitions of "toy" and "children's product" under the Ordinance covered the "packaging" of a toy/children's product. These members pointed out that the restrictions against the use of phthalates in toys and children's products adopted in the European Union and the United States did not apply to the packaging of those products. They opined that if the proposed phthalate control also applied to the packaging of toys, Schedule 2 products or other children's products, it would deviate from international standards. They also pointed out that packaging might consist of a variety of materials (e.g. plastic tape, paint and glue), and imposing the same control on it would be very complicated.

14. In response to members' concerns, the Administration clarified that, in line with the regulatory approach adopted in the European Union and the United States, the proposed phthalate control would not apply to the packaging of toys, Schedule 2 products or products other than toys and Schedule 2 products that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under four years of age and contain any plasticized material. The Administration advised the Bills Committee that the scope of application of the proposed phthalate control would be reflected in the relevant subsidiary legislation.

15. The Bills Committee enquired whether the proposed phthalate control applied to internal/inaccessible parts of plasticized materials of toys and children's products. The Administration advised that it was not the Administration's policy intention that the proposed phthalate control applied to internal/inaccessible parts (e.g. cables enclosed inside a toy), if they could not be mouthed by or come into close contact with young children in a reasonably foreseeable manner. The Administration explained that the main consideration for determining whether a toy or children's product (or a part of it) should be subject to the proposed phthalate control was whether it had any plasticized part that could be mouthed by or come into close contact with

young children. The Administration advised that "can be placed into the mouth of a child under 4 years of age" in the Bill referred to a toy or children's product that could be brought to the child's mouth and kept there so that it could be sucked or chewed. According to the Administration, this formulation was in line with that adopted in the United States and Canada. To address members' concern, the Administration would consider how provisions concerning internal/inaccessible parts should be reflected in the proposed subsidiary legislation, taking reference from the practices of overseas economies.

16. The Bills Committee noted that the subsidiary legislation on the proposed phthalate control would be made after the enactment of the Bill and would be introduced into LegCo for scrutiny under the negative vetting procedure. The Administration agreed to take on board members' view that the Administration should consult the trade, particularly the small and medium enterprises of the toy manufacturing sector, and take into account their views in proposing the implementation date of the proposed phthalate control.

Relevant papers

17. The links to the relevant papers are as follows –

Legislative Council Brief for the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation, Toys and Children's Products Safety Regulation (Repeal) Regulation, Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice

http://www.legco.gov.hk/yr13-14/english/subleg/brief/17-19_brf.pdf

Report of the Bills Committee on Toys and Children's Products Safety (Amendment) Bill 2013

<http://www.legco.gov.hk/yr13-14/english/hc/papers/hc1206cb2-425-e.pdf>