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Paper for the House Committee

Report of the Subcommittee on Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017 and Product Eco-Responsibility (Regulated Electrical Equipment) Regulation

Purpose

This paper reports on the deliberations of the Subcommittee on Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017 and Product Eco-Responsibility (Regulated Electrical Equipment) Regulation ("the Subcommittee") in relation to the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017 ("Commencement Notice").¹

Background

Producer responsibility schemes

2. In the Policy Framework for the Management of Municipal Solid Waste (2005-2014) published in December 2005, the Administration proposed to introduce producer responsibility schemes ("PRSs") in line with the "polluter pays" principle for minimizing the environmental impact of certain types of products.² The Product Eco-responsibility Ordinance (Cap. 603) ("PERO") was enacted in July 2008 to provide for the general provisions for the introduction of

¹ The Subcommittee will submit a further report regarding its deliberations on the Product Eco-Responsibility (Regulated Electrical Equipment) Regulation after completion of study of the Regulation.

PRSs and the regulatory framework in respect of individual schemes for specific types of products, whereas the detailed operational matters are prescribed by subsidiary legislation.

3. In 2010, the Administration conducted a public consultation on the introduction of a PRS for waste electrical and electronic equipment ("WEEE") ("WPRS" in short) and the community feedback was generally supportive. In February 2015, the Administration obtained approval of the Finance Committee of the Legislative Council ("LegCo") for a funding proposal for the development of a WEEE treatment and recycling facility ("WEEETRF") as an essential infrastructure for the launch of WPRS.²

Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016

4. The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 ("Amendment Ordinance") was enacted in March 2016 to provide for the regulatory framework for implementation of WPRS with the following main features:³

- (a) *Scope of regulated products*: Eight classes of products, namely air conditioners, refrigerators, washing machines, televisions, computers, printers, scanners and monitors, are defined as regulated electrical equipment ("REE") and subject to WPRS;
- (b) *Proper treatment of REE*: The licensing control under section 16 of Waste Disposal Ordinance (Cap. 354) ("WDO") is extended to the disposal (including storage, treatment, reprocessing and recycling) of e-waste.⁴ Disposal of e-waste at designated waste disposal facilities, including landfills, is prohibited so as to divert

² The approved funding proposal is for the development of WEEETRF at an estimated capital cost of \$550 million and operating expenses of \$200 million per annum. The facility was expected to commence operation in the second half of 2017.

³ The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 was introduced to LegCo in March 2015. The Bill sought to amend mainly PERO and the Waste Disposal Ordinance (Cap. 354). A bills committee was formed to study the Bill.

⁴ "E-waste" is defined under section 12 of the Amendment Ordinance as any electrical equipment or electronic equipment that, judging by its appearance, is an item set out in column 2 of the new Schedule 6 to PERO and has been abandoned.

e-waste from the waste stream to recycling facilities;⁵

- (c) *Import and export of regulated e-waste*: Permit control under WDO for the import and export of waste is applied to e-waste to prevent e-waste traded through Hong Kong from increasing the local waste burden or causing environmental hazards in other jurisdictions;
- (d) *Provision of removal services by sellers*: A seller⁶ of REE must have a removal service plan endorsed by the Director of Environmental Protection ("DEP") under which for every item of REE distributed to a consumer, the consumer is entitled to have the seller arrange the removal of an item of REE of the same class from a premises designated by the consumer for proper disposal free of charge; and
- (e) *Charging of recycling levies*: manufacturers and importers who distribute REE to the local market are required to register as "registered suppliers". A registered supplier distributing any REE is required to provide recycling labels for the REE,⁷ submit returns and audit reports to DEP, and pay recycling levies.⁸

⁵ The Amendment Ordinance amended the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) for banning disposal of e-waste in facilities specified in Schedule 1 to Cap. 354L.

⁶ "Seller" is defined to mean a person who carries on a business of distributing REE to consumers, but does not include a person who only provides service for transporting the equipment that does not belong to the person for another person.

⁷ The purpose of the recycling label is to facilitate identification of REE which is covered by WPRS with the recycling levy paid or to be paid by the relevant registered supplier.

⁸ The recycling levy is payable if (a) a piece of REE is manufactured in Hong Kong by the supplier in the course of the supplier's business; or is, in the course of the supplier's business, imported into Hong Kong by the supplier for distribution, but is not imported during the course of a service provided by the supplier for transporting articles into Hong Kong for another person; and (b) the supplier distributes the piece of REE, or uses the piece of REE for the first time.

Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017

5. The Commencement Notice was published in the Gazette on 21 April 2017 and tabled before LegCo on 26 April 2017. The purpose of the Commencement Notice is to provide the necessary legal basis for further preparatory work for WPRS. It brings into operation certain provisions of the Amendment Ordinance, including provisions relating to:

- (a) the short title and commencement of the Amendment Ordinance, the purposes of and the appealable matters under PERO, and the definition of REE and certain other definitions which are added to PERO by the Amendment Ordinance;
- (b) empowering the Secretary for the Environment ("SEN") to (i) make regulations which concern detailed operational matters related to registered suppliers and sellers of REE for the implementation of WPRS, and (ii) amend Schedules 6 and 7 to PERO which contain the list of REE to which PERO applies and the list of REE exempted from certain provisions respectively;
- (c) implementation of Schedules 6 and 7 to PERO which are referred to in sub-paragraph (b) above, and the amendments to WDO and the Waste Disposal (Permits, Authorizations and Licences) (Fees) Regulation (Cap. 354D) regarding the making of regulations for the fees for permits, authorization or licences to be granted by DEP; and
- (d) amendments to WDO to introduce the definition of "e-waste" and amend the definition of "disposal" and "waste" in relation to e-waste, and amend the circumstances under which DEP can grant a waste disposal licence to an applicant.

6. The Commencement Notice is subject to negative vetting by LegCo. The provisions relating to (a), (b) and (c) above have commenced operation on the gazettal date of the Commencement Notice (i.e. 21 April 2017), whereas the provisions relating to (d) will come into operation on 19 June 2017.

The Subcommittee

7. Members agreed at the House Committee meeting on 28 April 2017 to form a subcommittee to study the Commencement Notice. The House Committee further decided at its meeting on 12 May 2017 to task the same subcommittee with scrutinizing the Product Eco-Responsibility (Regulated Electrical Equipment) Regulation.

8. The membership list of the Subcommittee is in **Appendix I**. Under the chairmanship of Ir Dr Hon LO Wai-kwok, the Subcommittee has held three meetings to discuss the Commencement Notice with the Administration,⁹ including one meeting to receive views from deputations.¹⁰ A list of the organizations which have provided views to the Subcommittee is in **Appendix II**.

9. To allow more time for the Subcommittee to consider the Commencement Notice and prepare a report on its deliberations for submission to the House Committee, the Subcommittee Chairman moved a motion at the LegCo meeting of 24 May 2017 to extend the scrutiny period of the Commencement Notice to the LegCo meeting of 14 June 2017. The motion was passed.

Deliberations of the Subcommittee

10. Members supported in principle the implementation of WPRS in Hong Kong. In examining the Commencement Notice, the Subcommittee has focused on issues including the coverage of REE, the new licensing regime in respect of e-waste, and the disposal and treatment of e-waste. The deliberations of the Subcommittee are summarized in the ensuing paragraphs.

⁹ The Subcommittee discussed the Commencement Notice at its meetings on 16 May, 23 May and 2 June 2017. It will hold further meeting(s) to continue to study the REE Regulation.

¹⁰ The Subcommittee completed scrutiny of the provisions of the Commencement Notice at the meeting on 16 May 2017 and decided to invite public views on the REE Regulation. At the meeting with deputations on 23 May 2017, some deputations also provided views on issues relating to the Commencement Notice.

Commencement Notice

Coverage of regulated electrical equipment

11. Under the Amendment Ordinance, eight classes of electrical and electronic equipment, i.e. air conditioners, refrigerators, washing machines, televisions, computers, printers, scanners and monitors, are specified as REE to which PERO applies and are subject to WPRS. The Commencement Notice has given effect to certain sections of the Amendment Ordinance, including sections 2 to 8, 9 (only in relation to sections 31, 44, 45 and 46 in Part 4 of PERO) and 10 to provide the necessary legal basis (e.g. the definition of REE, and provisions which empower SEN to make certain regulations under PERO and WDO) for further preparatory work for WPRS.¹¹

12. Hon KWOK Wai-keung has suggested the Administration consider including more types of REE such as mobile phones in WPRS in future, and educate the public to reduce consumption of REE products. He also considers it necessary to address concerns about the generation of e-waste due to the poor quality and short service life of certain REE and hence frequent replacement of REE by consumers. Hon LEUNG Che-cheung has suggested that the Administration should consider including electrical/electronic accessories of vehicles in WPRS in future.

13. The Administration has advised that the eight classes of REE under WPRS account for about 85% of all WEEE generated in Hong Kong at present. As most of other electrical/electronic equipment that is not REE (e.g. mobile phones) has an active second-hand market, proper recycling of such equipment can be supported by voluntary recycling programmes. The Administration will review the need of extending WPRS to cover more electrical/electronic equipment at a later stage taking into account actual experience in implementing WPRS, as well as factors such as market and technological developments, the situation of landfill disposal and reuse of the equipment in question. It will also continue to promote reduction of waste (including e-waste) at source to the public.

New licensing regime in respect of e-waste and level-playing field for recyclers

14. Section 16 of WDO was amended by the Amendment Ordinance to extend the waste disposal licensing control to the disposal of e-waste (i.e. unless exempted, the disposal of e-waste without a licence is prohibited under section 16(1) of WDO) ("the new licensing control"). Under the new licensing

¹¹ Please refer to paragraph 5 for details of the Commencement Notice.

control, a waste disposal licence will only be issued when the operations (including dismantling and detoxification) can demonstrably be conducted in environmentally sound procedures to turn e-waste into reusable materials.

15. The Commencement Notice will bring sections 12 and 18 of the Amendment Ordinance into operation on 19 June 2017. In gist, these provisions add the definition of "e-waste" to WDO, amend the definition of the terms "disposal" and that of "waste" in WDO, and provide for the circumstances under which a waste disposal licence in respect of e-waste is to be granted under WDO. With the commencement of these provisions, the Administration intends to accept applications for waste disposal licence in respect of e-waste from 19 June 2017. Subject to the progress in the processing of licence applications, the Administration planned to introduce a further commencement notice at the start of the 2017-2018 legislative session with a view to commencing the new licencing control as well as the import/export permit control for e-waste by end 2017. At the request of the Subcommittee, the Administration has provided information on the relevant licensing requirements for members' reference.¹²

16. The Subcommittee notes that the majority of the deputations, which are existing recyclers, have grave concerns about the timeframe to commence the new licensing control by end 2017, in particular:

- (a) the Administration has not yet made public the detailed requirements and application procedures for a waste disposal licence in respect of e-waste despite the Administration's intention to start accepting applications from 19 June 2017. This makes it difficult for existing recyclers to prepare applications and plan their business reasonably ahead of the imminent implementation of the new licensing control;
- (b) given their limited skills and resources, and the tight timeframe of effecting the new licensing control (i.e. about six months from commencement of accepting applications), the livelihood of some existing recyclers may be seriously affected if they cannot meet the licensing requirements in order to conduct their business as a going concern. It will also take time for them to discontinue or transform their business having regard to the investments made and the rental commitments for their existing business premises;

¹² Please refer to paragraph 4 of the Administration's written response to issues arising from Subcommittee meeting on 16 May 2017 (LC Paper No. CB(1)1059/16-17(01) issued on 2 June 2017) for details of the licensing requirements.

and

- (c) some recyclers have indicated particular difficulties for their business premises to conform to the relevant land use requirements for obtaining a waste disposal licence in respect of e-waste.

17. The Chairman has pointed out that issues relating to the commencement of the new licensing control falls within the scope of another commencement notice to be introduced in the 2017-2018 legislative session for commencing the licensing control, whereas the current Commencement Notice concerns only acceptance by SEN of the applications for waste disposal licence. Hon CHAN Hak-kan, Dr Hon Junius HO and Hon SHIU Ka-fai take the view that licence applications and imposition of licensing control in respect of e-waste are inter-related from the perspective of the entire licensing regime, and hence are relevant to the Subcommittee's consideration of the Commencement Notice.

18. Some members have expressed concern on whether there will be sufficient licensed recyclers in future to recycle e-waste and WEEE in general. These members take the view that the WEEETRF operator has an advantage over other recyclers in terms of its capital-intensive facilities which operate on government land, and they are concerned whether there is a level-playing field for other recyclers. There is also concern as to whether the threshold is too high for general recyclers to meet the licensing requirements. Dr Hon YIU Chung-yim has suggested the Administration review whether the designation of WEEETRF to provide statutory removal services for old REE items may give rise to potential competition issues. Hon LEUNG Chi-cheung is concerned that the WEEETRF operator may drive private recyclers out of the market and monopolize the business of recycling e-waste.

19. Hon CHAN Hak-kan, Dr Hon Junius HO and Hon SHIU Ka-fai doubted if the Administration had conducted adequate consultation with the recycling trade on the new licensing control, and assessed the impact on their business. In the light of deputations' concerns, these members have enquired about the measures (including financial assistance) to assist recyclers to overcome the licensing hurdles. They have also requested the Administration to consider the feasibility of the following suggestions with a view to allowing more time for the Administration to further communicate with the recycling traders and address their concerns about the licensing requirements, and for the recycling traders to prepare for licence applications while carrying on their recycling business legally pending the licensing approvals:

- (a) deferring commencement of the new licensing control, which the Administration aims to introduce by end 2017, by 18 months from June 2017 to allow more time for existing recyclers to prepare their licensing applications and for the Administration to process them;
- (b) introducing a grace period (say, three years) for imposition of the new licensing control; and/or
- (c) granting exemption or short-term waiver for individual recyclers in respect of certain licensing requirements (e.g. land use requirements) as appropriate.

20. The Administration has advised that as the proper treatment of e-waste is capital intensive, and as it was established during public consultation in 2010 that the treatment capacity in Hong Kong is well below what is needed for a territory-wide WPRS, it is necessary for the Government to develop a WEEETRF in order to facilitate effective collection and recycling of e-waste in support of the scheme. The design capacity of WEEETRF is about 30 000 tonnes per annum, and can be increased up to 57 000 tonnes by arranging additional shifts for the operation of the facility on a demand basis. Given that some 70 000 tonnes of WEEE are generated in Hong Kong annually, there should be room for existing or prospective recyclers to develop their business of recycling e-waste. The Administration has further advised that the number of recyclers who could meet the licensing requirements under the new licensing regime will depend on the circumstances of individual applications and it will not be practicable to make an accurate assessment at this stage. In any case, there would be a level-playing field for all e-waste recyclers in Hong Kong as both WEEETRF and other recyclers undertaking recycling of e-waste will have to obtain a waste disposal licence, and are subject to the same set of licensing requirements and approval standards.

21. Regarding the timeframe for accepting licence applications and imposing the licensing control respectively, the Administration has advised that:

- (a) extensive public discussions on the introduction of WPRS including the new licensing control in respect of e-waste began as early as 2010 when the public consultation was conducted, and the community feedback was generally supportive. Since the enactment of the Amendment Ordinance in March 2016, the Administration has been closely engaging the affected trades and other relevant stakeholders in developing the compliance system and finalizing the operational details. It has also stepped up its publicity efforts for recyclers and briefed them on the licensing

requirements in respect of e-waste;¹³ and

- (b) the licensing requirements are meant to enhance the control on the proper storage, treatment, reprocessing and recycling of such waste, and reference has been made to similar licensing regimes (such as those for disposal of chemical waste and clinical waste) as appropriate. In any event, the recycling trade should comply with the applicable statutory requirements in respect of land use, environmental protection, building/fire safety and environmental hygiene, etc. whether the new licensing control is in place or not.

22. Notwithstanding the above, the Administration has reviewed the preliminary information provided by some prospective applicants and envisages that some existing operators may have to obtain prior approval of the Town Planning Board and/or the Buildings Department in meeting the relevant licensing requirements in respect of e-waste disposal. Having regard to Members' views and suggestions, in order to allow more time for relevant operators to complete the necessary procedures, the Administration has indicated that it will actively consider deferring the commencement of the new licensing control for 18 months counting from June 2017, as suggested by some members. The Administration will issue a waste disposal licence for the disposal of e-waste only after all the licensing requirements have been met. The plan to commence the import/export permit control for e-waste will remain unchanged at end 2017. The Administration will set out the specific dates in a further commencement notice to be gazetted which will be subject to negative vetting by LegCo.

Other issues

Disposal and treatment of e-waste

23. The Subcommittee has enquired about the treatment of WEEE including waste printed circuit boards ("PCBs"), the protection of personal data contained in computer products recovered and recycled under WPRS, and whether the WEEETRF would treat imported WEEE.

¹³ Please refer to paragraph 6 of the Administration's written response to issues arising from Subcommittee meeting on 23 May 2017 (LC Paper No. CB(1)1059/16-17(01) issued on 2 June 2017) for details of related publicity efforts.

24. The Administration has advised that the disposal and import/export of waste PCBs which are classified as chemical waste are subject to the existing Chemical Waste Control Scheme, but not the future licensing control in respect of e-waste. On the other hand, proper treatment, reprocessing and recycling of WEEE involve various dismantling, detoxification and recovery processes, which may vary for the different classes of REE and the respective treatment lines of WEEETRF. At the WEEETRF, WEEE will be dismantled and toxic substances will undergo detoxification processes in a controlled environment for further disposal or treatment. The remaining recyclable components will then be shredded and sorted into different types of useful materials, mainly metals and plastics for reuse as secondary raw materials. PCBs removed from WEEE at WEEETRF will not be further disassembled but transported to appropriate facility for further treatment and recovery processes. As regards personal data contained in WEEE such as computer storage devices, proper handling and treatment procedures will be in place to ensure that personal data contained therein cannot be recovered. The Administration has also clarified that the WEEETRF is developed to underpin WPRS for proper disposal and recycling of WEEE generated locally. Under its contract with the Government, the WEEETRF operator is not allowed to import WEEE for treatment in Hong Kong.

Recommendation

25. Subcommittee members have no objection to the Commencement Notice. The Subcommittee and the Administration will not move any amendment to the Commencement Notice.

Advice Sought

26. Members are invited to note the deliberations of the Subcommittee.

Subcommittee on Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017 and Product Eco-Responsibility (Regulated Electrical Equipment) Regulation

Membership list

Chairman Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Members Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Charles Peter MOK, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon Tanya CHAN
Hon HUI Chi-fung
Dr Hon YIU Chung-yim

(Total : 14 members)

Clerk Ms Angel SHEK

Legal Adviser Miss Evelyn LEE

Subcommittee on Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017 and Product Eco-Responsibility (Regulated Electrical Equipment) Regulation

List of deputations who have given views to the Subcommittee

1. ALBA Integrated Waste Solutions (Hong Kong)
2. Alpha Appliances Limited
- *3. Apple Inc.
4. Chung's Logistics Company Limited
- *5. Consumer Council
6. Dr CHUNG Shan-shan, Hong Kong Baptist University
7. EcoSage Limited
8. Ecycle Tech Limited
9. Environmental Association Limited
10. Hong Kong and Kowloon Electrical Appliances Merchants Association Limited
- *11. Hong Kong General Association Of Re-Cycling Business
12. Hong Kong Recycling Chamber of Commerce
- *13. Hong Kong Retail Management Association
14. Hung Tat Recycle Resources Limited
- *15. Information Technology Industry Council
16. Liberal Party
17. Miss Elsie CHANG
18. Miss HUI Ching-lam
19. Mr CHAU Gee-leung
20. Mr CHIU Yun-wai
21. Mr LEE Po-hong
22. Mr MAN Chun-kit
- *23. Mr NG Kong-fung
- *24. The Chamber of H.K. Computer Industry
25. Qing Yuan Logistics Limited
26. Top Pro Consulting Limited
27. Wai Mei Dat Group
28. Wing Fat Recycling Metals Company Limited

* views given by written submission only