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Legislative Council

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**Paper for the House Committee Meeting
on 11 January 2008**

**Legal Service Division Report on
Product Eco-Responsibility Bill**

I. SUMMARY

1. **Objects of the Bill**
 - (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 plastic shopping bags.

2. **Comments**

The Bill seeks to introduce "Producer Responsibility Scheme" ("PRS") in Hong Kong by means of a piece of "umbrella" legislation whereby the Bill, as a piece of "umbrella" legislation, would provide a legal framework for introducing PRS in respect of individual types of products "when the opportunity is ripe". Part 2 of the Bill are general provisions which may be applicable to prescribed products. At this stage, only plastic shopping bags are sought to be regulated under Part 2 in the Bill.

3. **Public Consultation**

The Administration conducted a 2-month public consultation between May and July 2007 on a possible PRS on plastic shopping bags including the proposed environmental levy of 50 cents on each plastic shopping bag given out by retailers. The proposals attracted different views from various sectors including the general public, the Hong Kong Plastic Bags Manufacturers' Association, the retail trade and green groups.

4. **Consultation with LegCo Panel**

The Panel on Environmental Affairs was briefed on the proposed legislation on implementation of PRS in Hong Kong at its meeting on 24 April 2006. While supporting the general concept of PRS, members were particularly concerned about the "umbrella" legislative approach to implement PRS. On 28 May 2007, the Panel was briefed on the proposal to introduce a PRS on plastic shopping bags involving an environmental levy. Members generally supported the proposal but they considered it more equitable to apply the scheme across the board to all retail shops.

5. **Conclusion**

In view of the important implications of the Bill and the concerns expressed by members of the Panel on Environmental Affairs about the "umbrella" legislative approach, the Legal Service Division recommends that a Bills Committee be formed to examine the Bill.

II. REPORT

Objects of the Bill

- (a) By means of a piece of "umbrella" legislation, 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 plastic shopping bags.

LegCo Brief Reference

2. EP 381/11/03 issued by the Environmental Protection Department on 20 December 2007.

Date of First Reading

3. 9 January 2008.

Comments

4. The Administration has stated its policy initiative of "Producer Responsibility Scheme" ("PRS") for waste reduction, recovery and recycling in "A Policy Framework for the Management of Municipal Solid Waste (2005-2014)" as a strategy to tackle the waste problem in Hong Kong. The Bill seeks to introduce PRS in Hong Kong, starting with plastic shopping bags (as defined in the Bill).

5. The Administration seeks to adopt a legislative approach whereby the Bill, as a piece of "umbrella" legislation, would provide a legal framework for introducing PRS in respect of individual types of products "when the opportunity is ripe". In particular, the Bill provides a purpose clause to set out the objectives of and the possible regulatory measures contemplated by the legislation. It seeks to lay down the structure so that any prescribed products may be regulated at the appropriate juncture in the future by introducing legislative amendments to set out the regulatory measures for the specific PRS when ready (ref: para. 11 of the LegCo Brief).

Part 1 of the Bill - Preliminary

6. Clause 2 sets out the purposes of the Bill -

- (i) to minimize the environmental impact of various types of products, which may include plastic shopping bags, vehicle tyres, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries; and

- (ii) to that end, to introduce PRS or other measures that may require manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the reduction in the use, and the recovery, recycling and proper disposal, of those products.

Part 2 of the Bill - Prescribed products: general provisions

7. Part 2 of the Bill contains general provisions which may be applicable to prescribed products. In the Bill, only plastic shopping bags are sought to be regulated under Part 2 (clause 4).

8. Clause 5 provides general regulation making powers under the Bill. It also provides a power in the regulations (to be made under the empowering provisions in clause 5) to make it an offence for a person to do or omit to do any specified act and to (a) impose a fine not exceeding \$500,000 for each offence, (b) and if the offence is a continuing one, a further fine of \$10,000 per day, and (c) a sentence of imprisonment for not more than 12 months.

9. The Director of Environmental Protection ("the Director") may authorize a public officer to perform any such statutory functions under the Bill as the Director may specify. An authorized officer has the power to obtain information and samples and the power of entry and search for the enforcement of the Bill (clauses 6, 7 and 8).

10. A person who provides false or misleading information or omits any material particular from any record or information required to be produced commits an offence and is liable to a fine of \$200,000 and imprisonment for 6 months. It is also an offence for a person to obstruct an authorized officer in the performance of his functions under the Bill and the penalty is a fine of \$200,000 (clauses 9 and 10).

11. An Appeal Board will be established to hear and determine an appeal against certain decisions under the Bill (clause 13). The Chief Executive shall appoint a panel of persons, a Chairman and a Deputy Chairman to the Appeal Board (clause 14).

Part 3 of the Bill - Plastic shopping bags

12. Part 3 of the Bill introduces a levy on plastic shopping bags. The prescribed levy under Schedule 3 to the Bill is 50 cents per plastic shopping bag. The Secretary for the Environment ("the Secretary") may, after consultation with the Advisory Council on the Environment, by order published in the Gazette amend Schedule 3.

13. A person is a prescribed retailer if he carries on a retail business at 2 or more qualified retail outlets in Hong Kong or one qualified outlet in Hong Kong that has a retail floor area of not less than 200 square metres. A retail outlet is a qualified retail outlet if the goods offered for sale include any food or drink, any medicine or first-aid item and any personal hygiene or beauty product (Schedule 4). A prescribed

retailer may apply to the Director for registration as a registered retailer in respect of a qualified retail outlet (clause 19(3)).

14. A prescribed retailer shall ensure that no plastic shopping bag or nothing that can be easily turned into a plastic shopping bag is directly or indirectly provided to a customer from a qualified retail outlet unless the outlet is a registered retail outlet. A prescribed retailer who contravenes this requirement commits an offence and is liable to fine of \$200,000 on the first occasion and to a fine of \$500,000 on each subsequent occasion (clause 19(5)).

15. Division 3 of Part 3 of the Bill imposes certain obligations on registered retailers -

- (i) to display the certificate of registration issued by the Director in respect of each registered retail outlet;
- (ii) to charge not less than the levy prescribed for each plastic shopping bag provided to a customer from that outlet;
- (iii) to submit to the Director periodical returns concerning the plastic shopping bags provided and the amount of levies payable for those bags;
- (iv) to pay to the Government the amount of levies stated in such returns or the levies demanded under an assessment notice served by the Director; and
- (v) to keep records and documents relating to such returns.

16. It is a defence to a charge under Part 3 of the Bill for a person charged to prove that he exercised due diligence to avoid the commission of the offence (clause 26).

17. Under Division 5, the Secretary may, after consultation with the Advisory Council on the Environment, make regulations to implement the various measures provided in the Bill.

Public Consultation

18. The Administration conducted a 2-month public consultation between May and July 2007 on a possible PRS on plastic shopping bags including the proposed environmental levy of 50 cents on each plastic shopping bag given out by retailers. The details about the consultation exercise are set out in para. 4 to 10 of the LegCo Brief. A "*Public Consultation Report on the Proposal on an Environmental Levy on Plastic Shopping Bags*" is also annexed to the LegCo Brief (Annex B). Briefly speaking, the proposals attracted different views from various sectors including the general public, the Hong Kong Plastic Bags Manufacturers' Association, the retail trade and green groups.

Consultation with LegCo Panel

19. The Panel on Environmental Affairs was briefed on the proposed legislation on the implementation of PRS in Hong Kong at its meeting on 24 April 2006. While supporting the general concept of PRS, members were particularly concerned about the "umbrella" legislative approach to implement PRS, i.e. to enact an enabling legislation to provide for the shared core elements of PRS, with detailed regulatory requirements in respect of individual types of products to be set out in subsidiary legislation when the opportunity was ripe. They considered that the enabling legislation would not be useful in the absence of regulatory requirements. To facilitate members' understanding on the proposed regulatory control, the Administration undertook to submit at least one PRS regulation together with the enabling legislation. It also took on board members' suggestion that the relevant subsidiary legislation should be subject to positive vetting to allow sufficient time for scrutiny by the Legislative Council.

20. On 28 May 2007, the Panel was briefed on the proposal to introduce a PRS on plastic shopping bags involving an environmental levy. Members generally supported the proposal which aimed to reduce the indiscriminate use of plastic shopping bags, but they were concerned about the scope of the scheme which would cover only chain or large supermarkets, convenience stores and personal health and beauty stores. They considered it more equitable to apply the scheme across the board to all retail shops.

21. Because of the far-reaching implications of the proposed PRS on plastic shopping bags, the Panel invited deputations to express their views at its meeting on 16 July 2007. Whilst there was a general support for the scheme, the affected trades were opposed to the scheme.

Conclusion

22. In view of the important implications of the Bill and the concerns expressed by members of the Panel on Environmental Affairs about the "umbrella" legislative approach, the Legal Service Division recommends that a Bills Committee be formed to examine the Bill.

Prepared by

Kitty Cheng
Assistant Legal Adviser
Legislative Council Secretariat
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