

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 26 June 2009**

**Legal Service Division Report on
Proposed Resolution under section 16 of the
Ozone Layer Protection Ordinance (Cap. 403)**

The Secretary for the Environment (the Secretary) has given notice that he will move a motion at the meeting of the Legislative Council on 8 July 2009 under section 16 of the Ozone Layer Protection Ordinance (Cap. 403). Under section 16, the Secretary may, after consultation with the Advisory Council on the Environment and subject to the approval of the Legislative Council, make regulations generally for the purposes of the Ordinance including certain specific matters. The purpose of the motion is to make the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009 (the Amendment Regulation) to meet the new requirements of the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol).

Background

2. The Montreal Protocol, which was extended to Hong Kong in 1987, aims at eliminating according to certain timelines the production and use of nearly 100 chemicals that have ozone depleting properties. At the 19th Meeting of Parties to the Montreal Protocol held in September 2007, Parties reached an agreement to accelerate the phasing out of Hydrochlorofluorocarbons (HCFC). The requirements for the Non-Article 5 Parties, with which Hong Kong should comply, are to curtail by 2010 the consumption of HCFC 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.

3. At the 11th and 12th Meetings of the Parties to the Montreal Protocol held in 1999 and 2000, it was also agreed that Non-Article 5 Parties should develop and implement a strategy to phase out the use of chlorofluorocarbon-containing (CFC) metered dose inhalers (MDI) in view of the availability of the economically and technically feasible non-CFC alternatives or substitutes.

4. Members may refer to the LegCo Brief (EP 351/O4/34) issued by the Environmental Protection Department on 17 June 2009 for more background information about the Amendment Regulation.

Amendment Regulation

5. The Amendment Regulation seeks to -
- (a) ban the import of products using HCFC according to the following timetable -
 - (i) 1 January 2010 (by phases) - all products using HCFC-22, except imports of split type room air conditioners and single package (window) type room air conditioners are to be banned from 1 July 2010 and 1 July 2012 respectively (as opposed to the original proposed dates of 1 January 2010 and 1 January 2012 when the legislative proposals were referred to the Panel on Environmental Affairs on 24 November 2008);
 - (ii) 1 January 2015 - all products using HCFC, other than HCFC-123, which according to the Administration, has very low ozone depleting and global warming potentials but high cooling performance (para. 5 of the LegCo Brief); and
 - (iii) 1 January 2020 - all products using HCFC;
 - (b) ban the import of MDI and other products containing CFC by 1 January 2010;
 - (c) extend the banning of portable fire extinguishers to those containing other fully halogenated chlorofluorocarbons, HCFC and bromochloromethane, which according to the Administration, already have economically and technically feasible ozone layer friendly alternatives or substitutes (Para. 10(b) of the LegCo Brief);
 - (d) extend the banning of products containing certain scheduled substances including CFC and HCFC-22 from any country, irrespective of whether it is bound by the terms of the Montreal Protocol;
 - (e) increase the penalties for offences under the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) Regulation (Cap. 403 sub. leg. C) to a fine of \$1,000,000 (from \$200,000) and imprisonment for 2 years (from 6 months); and
 - (f) state clearly that the banning control does not include those products in the course of transshipment or are imported solely for export.
6. According to paragraphs 15 and 16 of the LegCo Brief, the Administration has consulted major trade associations and concerned product suppliers and they have no objection to the proposals.

7. The proposals contained in the Amendment Regulation were referred to the Panel on Environmental Affairs for discussion at its meeting on 24 November 2008. Whilst there was general support for the proposals, members raised concerns about whether there would be adequate supply of HCFC-free window type air conditioners to meet the demand since only four compliant models were available in the market. Members also expressed concerns about the sale of products containing HCFC which were smuggled to Hong Kong by unscrupulous retailers if these retailers were not held liable. They also emphasized the need for the Administration to provide assistance to the affected trades in complying with the control.

8. Subsequent to the meeting, the Administration has taken into account the views of the related trades and agreed to defer the banning of import of split type room air conditioners and window type room air conditioners to 1 July 2010 and 1 July 2012 respectively (as opposed to the original proposed dates of 1 January 2010 and 1 January 2012).

9. In view of the concerns raised at the meeting of the Panel on Environmental Affairs, members may wish to examine the policy and operation aspects of the Amendment Regulation in detail.

Prepared by

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