

立法會
Legislative Council

LC Paper No. CB(1)423/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/12/1

Bills Committee on Product Eco-responsibility (Amendment) Bill 2013

Minutes of fifth meeting
held on Tuesday, 8 October 2013, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex

Members present : Dr Hon Kenneth CHAN Ka-lok (Chairman)
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon Gary FAN Kwok-wai
Hon CHAN Han-pan
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Tony TSE Wai-chuen

Member absent : Hon CHAN Hak-kan, JP

Public Officers attending : **For item I**
Mr Albert LAM, JP
Deputy Director of Environmental Protection (2)
Environmental Protection Department

Mr Samson LAI
Assistant Director of Environmental Protection
(Waste Management Policy)
Environmental Protection Department

Miss Selina LAU
Senior Government Counsel
Department of Justice

Miss Libera CHENG
Senior Administrative Officer
(Waste Management Policy Division)
Environmental Protection Department

Clerk in Attendance : Ms Miranda HON
Chief Council Secretary (1)1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Mr Ken WOO
Senior Council Secretary (1)5

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Meeting with the Administration

(LC Paper No. CB(1) 1697/12-13(01) — Letter dated 15 August 2013
from Hon WU Chi-wai
(Chinese version only)

LC Paper No. CB(1) 1845/12-13(01) — List of follow-up actions
arising from the meeting on
23 July 2013

LC Paper No. CB(1) 1845/12-13(02) — Administration's responses to
CB(1)1697/12-13(01) and
CB(1)1845/12-13(01)

Action

Relevant papers

- LC Paper No. CB(3)540/12-13 — The Bill
- File Ref: EP CR 9/150/20 Pt.24 — Legislative Council Brief
- LC Paper No. LS47/12-13 — Legal Service Division Report
- LC Paper No. CB(1)1171/12-13(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(1)1171/12-13(04) — Background brief prepared by the Legislative Council Secretariat)

The Bills Committee deliberated (index of proceedings attached at the **Annex**).

- Admin 2. The Administration was requested to –
- (a) having regard to members' view that the "remittance" approach should continue to apply to those retailers which had the ability to comply with the relevant requirements under such approach, consider –
- (i) Ms Cyd HO's proposal of using business turnover and retail floor area of retail establishments as the criteria for deciding which retailers should be required to comply with the relevant requirements, in particular the requirement on the keeping of records and submission of quarterly returns to the Government;
- (ii) Mr WU Chi-wai's proposal of applying the "remittance" approach to those chain operators with "three or more business outlets" in Hong Kong; and
- (b) consider the need to remove the term "easily (輕易地)" from the proposed section 18A(4)(b).

(Post-meeting note: The Administration's response to the request set out in paragraph 2 above was circulated to members vide LC Paper No. CB(1)112/13-14(01) on 21 October 2013.)

Action

3. Members agreed to continue discussion at the next meeting to be held on Tuesday, 22 October 2013, at 10:45 am.

II. Any other business

4. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
27 November 2013

Bills Committee on Product Eco-responsibility (Amendment) Bill 2013

**Proceedings of the fifth meeting
on Tuesday, 8 October 2013, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000122 - 000402	Chairman Administration	The Chairman's reference to the letters of Mr Vincent FANG (LC Paper No. CB(1)1587/12-13(01)) and Mr WU Chi-wai (LC Paper No. CB(1)1697/12-13(01)) and his remarks that the Administration's response to the letters had been given in LC Paper No. CB(1)1845/12-13(02).	
000403-001556	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai's concerns/enquiries that –</p> <p>(a) under the proposed extension of the Environmental Levy Scheme on Plastic Shopping Bags ("the extended Scheme"), the replacement of the "remittance" approach by the "retention" approach would result in the removal of the existing administrative requirements introduced under the Environmental Levy Scheme on Plastic Shopping Bags ("the PSB Levy Scheme"), including the keeping of records for quarterly return to the Government. This might lead to a reversion of the behavioral change away from "bring your own bag" which had been successfully inculcated;</p> <p>(b) the Administration's failure to provide the information requested by him on the number of retailers in Hong Kong who operated at three or more retail outlets had made it difficult for him to support the "retention" approach, as a retailer operating at such scale should have the administrative capability to keep records on the distribution of plastic shopping bags ("PSBs") and hence should be subject to such requirements; and</p> <p>(c) the Administration might not have sufficient manpower for conducting surprise checks on the retailers to monitor compliance with the extended Scheme.</p>	

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		<p>The Administration's response that –</p> <p>(a) during the public consultation on the extended Scheme, the phased approach of extending the PSB Levy Scheme on the basis of selected specific sectors was found to achieve only modest impacts on reducing the use of PSBs. Thus, the Administration had not pursued that option. The information requested by Mr WU was unavailable from official open sources like the Census and Statistics Department;</p> <p>(b) the Product Eco-responsibility (Amendment) Bill 2013 ("the Bill") provided that a seller must charge at least \$50 cents for each PSB provided to a customer. The Administration had been communicating with retailers operating at various scales on the ways to facilitate their compliance with the extended Scheme. Some retailers who had registered under the present PSB Levy Scheme had indicated their intention to continue the operation of the record system; and</p> <p>(c) immediately after the passage of the Bill, the Administration would stage enhanced publicity and partner with related organizations to promote the wider coverage of the extended Scheme. Some organizations had volunteered to monitor implementation of the extended Scheme and report cases of non-compliance. There would be adequate government manpower for enforcement of the extended Scheme.</p> <p>In response to the Chairman's enquiry, the Administration advised that some chambers of commerce had indicated their intention to hold sharing sessions for their member companies to facilitate compliance with the extended Scheme.</p>	
001557 - 002101	Chairman Ir Dr LO Wai-kwok Administration	<p>Ir Dr LO Wai-kwok's views/enquiries that –</p> <p>(a) as 90.5% of the retail establishments only had a retail floor area of less than 100 square metres, adoption of the</p>	

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		<p>"remittance" approach would pose difficulties to these small retailers;</p> <p>(b) the adoption of the "retention" approach would unlikely revert the behavioral change of using less PSBs; and</p> <p>(c) of the aforesaid 90.5% retail establishments, the number of those who were chain operators.</p> <p>The Administration reiterated that statistics on chain operators were unavailable.</p>	
002102 - 002558	Chairman Dr Priscilla LEUNG Administration	<p>Dr Priscilla LEUNG expressed the view that assistance should be provided to needy households and the elderly. Reaching out services should also be provided to identify those who needed help to facilitate their compliance with the extended Scheme.</p> <p>The Administration's response that –</p> <p>(a) it would consider the above suggestion as far as possible. The fixed penalty proposed under the extended Scheme applied to sellers but not buyers; and</p> <p>(b) extensive publicity and education would be launched on the extended Scheme, with small and medium enterprises ("SMEs") being a major target for the promotion efforts. The Administration would also partner with green groups and other organizations to promote the extended Scheme.</p>	
002559 - 003249	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG's concerns/enquiries that –</p> <p>(a) the Administration's initial estimate on the number of PSBs to be distributed after implementation of the PSB Levy Scheme had been exaggerated as reflected by the actual levy income at about \$26.5 million as opposed to the original estimate at about \$200 million per annum;</p> <p>(b) the reason for not recovering PSBs for recycling and reuse by supermarkets;</p> <p>(c) with the proposed extension of the PSB Levy Scheme to cover all retailers, the</p>	

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		<p>"remittance" approach with its elaborated compliance system would be too burdensome and the compliance cost too high for SMEs and micro-enterprises. It might also be difficult for most of them to understand the legislative requirements or to prevent them from distributing free PSBs for food items; and</p> <p>(d) whether free distribution of PSBs would be allowed for an item of food which was already contained in airtight packaging.</p> <p>The Administration's response that –</p> <p>(a) it might have been overly pessimistic on its initial estimate on the number of PSBs which was expected to be distributed after implementation of the first phase of the PSB Levy Scheme;</p> <p>(b) the "brown" bin under the 3-colour recycling bin programme currently accepted all plastic materials including PSBs, which could be recycled for reuse; and</p> <p>(c) under the extended Scheme, the ban on free PSB distribution would not apply to PSBs used for food hygiene reasons, except where a food item was already contained in airtight packaging.</p>	
003250 - 003929	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO's enquiries that –</p> <p>(a) with reference to the Administration's paper which stated that the feedback from the trade was positive towards its encouragement for designating revenue raised from the PSB charge for environmental protection or other charitable causes under the "retention" approach, what the "trade" was; and</p> <p>(b) in the absence of record keeping requirements under the "retention" approach, there would not be any effective means to monitor the usage of PSBs. In this connection, whether the Administration would consider –</p>	

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		<p>(i) using business turnover and retail floor area of retail establishments as the criteria for deciding which retailers should be required to comply with the relevant requirements, in particular the requirement on the keeping of records and submission of quarterly returns to the Government; and</p> <p>(ii) requesting existing registered retailers to continue to keep records and provide them to the Government for publication and inspection by the public.</p> <p>The Administration's response that –</p> <p>(a) the "trade" referred to in the Administration's paper was retailers whose operations were already covered by the PSB Levy Scheme; and</p> <p>(b) it was not justifiable to adopt the "dual" system under which the "remittance" approach would continue to apply to existing registered retailers which were mostly chain operators, while the "retention" approach would apply to newly covered retailers which were mostly SMEs. The Administration would however encourage the trade to release the records on PSB distribution, and would monitor the effectiveness of the extended Scheme through various means, such as landfill surveys on PSB disposal.</p>	
003930 - 004219	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG's concerns/enquiries regarding –</p> <p>(a) the difficulties that would be faced by SMEs and micro-enterprises if they were to keep records on PSB distribution for submission to the Government; and</p> <p>(b) whether there was any change in the quantity of imported plastics and the manufacture of PSBs upon implementation of the PSB Levy Scheme.</p> <p>The Administration explained that there did not appear to be a relationship between the</p>	

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		<p>quantity of imported plastics and the manufacture of PSBs due to Hong Kong's relatively simple requirements in terms of customs declaration. Currently, PSB usage was monitored by way of landfill surveys on PSB disposal.</p> <p>Mr Vincent FANG expressed doubt on the accuracy of landfill surveys on PSB disposal.</p>	
004220 - 005302	<p>Chairman Mr WU Chi-wai Mr Vincent FANG Administration</p>	<p>Mr WU Chi-wai's views that –</p> <p>(a) excessive use of PSBs remained a serious problem for large enterprises not covered by the PSB Levy Scheme, such as chain fashion retailers, and the quantity of PSBs used by them might be substantially higher than those of SMEs even though over 99% of the retail establishments in Hong Kong were SMEs; and</p> <p>(b) apart from landfill surveys, the accuracy of which was questioned, the Government would have no other way of evaluating the effectiveness of the extended Scheme if the "dual" system was not adopted.</p> <p>Mr Vincent FANG's views that –</p> <p>(a) the number of retail establishments in Hong Kong should be far beyond the number of 64 000 as advised by the Administration in view of the presence of a large number of SMEs and micro-enterprises; and</p> <p>(b) given the burden on SMEs and micro-enterprises if they were to submit quarterly returns to the Government, the Administration should ride on the success of the PSB Levy Scheme by adopting the "dual" system under the extended Scheme to enhance the monitoring of large enterprises' PSB distribution on account of their administrative capability.</p> <p>The Administration explained that the "dual" system would go against the consultation outcome which indicated general support for the across-the-board adoption of the "retention" approach, with the removal of the administrative requirements on keeping of</p>	

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		records to minimize the compliance burden on SMEs.	
005303 - 010154	Chairman Ms Cyd HO Mr WU Chi-wai	<p>Ms Cyd HO's views that –</p> <p>(a) while she had no strong views on mandating retailers to remit to the Government the income arising from the PSB charge, she supported retaining the record system which had been effectively operated by retailers covered under the PSB Levy Scheme; and</p> <p>(b) consideration should be given to using business turnover and retail floor area of retail establishments as the criteria for deciding which retailers should be required to comply with the relevant requirements, in particular the requirement on the keeping of records and submission of quarterly returns to the Government. She suggested that the Bills Committee should propose Committee Stage amendments ("CSAs") to this effect if the Administration was not going to do so.</p> <p>Mr WU Chi-wai requested the Administration to consider applying the "remittance" approach to those chain operators with "three or more business outlets" in Hong Kong. He might propose CSAs to this effect.</p> <p>The Chairman requested the Administration to consider members' views.</p>	<p>Admin (paragraph 2(a)(i) of the minutes refers)</p> <p>Admin (paragraph 2(a)(ii) of the minutes refers)</p>
010155 - 010524	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG's views that –</p> <p>(a) the use of PSBs to carry newspapers was not necessary; and</p> <p>(b) the Administration should consider taking measures to discourage the distribution of free newspapers which were now widely available, such as by imposing a charge on the over-printing of such newspapers.</p> <p>The Administration's response that –</p> <p>(a) the majority of newspaper retailers were supportive of being covered under the extended Scheme. They however were</p>	

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		<p>concerned that the requirement on keeping of records would adversely affect their business operation; and</p> <p>(b) to maximize the coverage of the extended Scheme, the compliance cost would have to be manageable to SMEs. The "dual" system would however give rise to differential treatment which might not be legally justifiable.</p>	
010525 - 013722	<p>Chairman Ir Dr LO Wai-kwok Ms Cyd HO Mr Tony TSE Assistant Legal Adviser 10 ("ALA10") Administration</p>	<p>Clause-by-clause examination of the Bill (Marked-up copy of the Bill (LC Paper No. CB(1)1171/12-13(01))</p> <p><u>Clause 10</u></p> <p>ALA10's request for clarification on the kind of PSBs that were envisaged under the proposed section 18A(4)(b) in the light of the meaning of PSBs provided in Schedule 1 of the Product Eco-responsibility Ordinance (Cap. 603) ("the Ordinance").</p> <p>Ms Cyd HO's suggestion of removing the term "easily (輕易地)" from the proposed section 18A(4)(b) to avoid vagueness.</p> <p>The Administration's response that –</p> <p>(a) section 18A(4)(b) was provided to avoid circumvention by retailers who might devise and distribute PSBs which did not satisfy the definition of a PSB provided under the Bill; and</p> <p>(b) the same provision had been provided in section 19(3) of the Ordinance and was now proposed to be retained for the sake of completeness.</p> <p>Ir Dr LO Wai-kwok indicated that he would not oppose to the proposed section 18A(4)(b) although he could hardly believe that there would be any innovation on bag design solely for the purpose of circumventing the requirement to collect the PSB charge from customers.</p> <p>Mr Tony TSE enquired whether plastic bags distributed at shopping malls for containing wet umbrellas would be subject to the PSB</p>	<p>Admin (paragraph 2(b) of the minutes refers)</p>

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		<p>charge.</p> <p>The Administration's explanation that the above bags involved no retail sales and goods and hence would not be subject to regulation under the Bill.</p> <p>Mr WU Chi-wai enquired whether PSBs distributed at conferences and exhibitions, be they distributed by individual exhibitors or the organizer with the exhibitors' name printed on the bags, would be excluded from the application of the Bill.</p> <p>The Administration's explanation that –</p> <p>(a) whether the PSBs distributed were subject to the PSB charge would depend on the nature of the conferences and exhibitions and whether retail sales of goods were involved. Under the extended Scheme, a seller must charge at least \$50 cents for each PSB provided to a customer, irrespective of the type of business of the seller or where the retail sales of goods took place; and</p> <p>(b) the Hong Kong Convention and Exhibition Centre ("HKCEC") had been requested to remind its exhibitors of the relevant legislative requirements.</p> <p>Ir Dr LO Wai-kwok expressed the view that PSBs distributed at shopping malls for containing wet umbrellas and those distributed at conferences for holding brochures should not be subject to the regulation of the Bill as they were genuinely needed.</p> <p>The Administration's response to ALA10 that –</p> <p>(a) HKCEC, being a provider of venue for holding conferences and exhibitions and was not involved in the retail sales of goods with visitors, would not be subject to the regulation of the Bill; and</p> <p>(b) the extended Scheme covered the retail sales of goods and not services.</p>	

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013723 - 014906	Chairman Mr WU Chi-wai ALA10 Administration	<p>Mr WU Chi-wai requested for clarification as to whether the PSB charge would not be imposed on a pre-packaged pack of nine or less PSBs under the proposed section 18A(2).</p> <p>The Administration's explanation that –</p> <p>(a) the relevant provision would apply to PSBs which were normally sold in a pre-packaged pack of 10 or more, such as garbage bags and Ziploc bags. Under the PSB Levy Scheme, a levy would not be imposed on a pre-packaged pack of 10 if the pack was sold at \$5 or more; and</p> <p>(b) if however the bags were to be sold individually, a charge of \$50 cents should be imposed on each bag.</p> <p>In response to ALA10's enquires, the Administration advised that –</p> <p>(a) in relation to section 18A(2) which provided for the imposition of a charge on a pre-packaged pack of 10 or more PSBs, a PSB distributed by a seller for the purpose of holding the pre-packaged pack would be excluded from the count of the pre-packaged pack; and</p> <p>(b) the application of sections 18A(2) and section 1(c)(i) and (ii) in Schedule 2 of the Ordinance was different in that the former dealt with common daily examples while the latter had much broader scope of application.</p>	
014907 - 015038	Chairman Administration	<p><u>Clauses 11 to 14</u></p> <p>Members raised no query.</p>	
015039 -015854	Chairman ALA10 Administration	<p><u>Clause 15</u></p> <p>ALA10 sought clarification from the Administration regarding the inclusion of the proposed section 18A(2)(a) but not section 18A(2)(b) and (c) under the definition of "specified offence" in the proposed section 28A(4).</p> <p>The Administration explained that section 18A(2)(a) referred to the provision of a PSB</p>	

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		<p>at the time of the sale and the proof of contravention, if any, would be relatively straightforward and hence could be subject to a fixed penalty. On the other hand, section 18A(2)(b) and (c) concerned the provision of a PSB for promoting the goods or in connection with the sale, and the judgment of whether these provisions had been contravened would best be dealt with via normal court proceedings having regard to the circumstances of each case.</p> <p>In response to ALA10's enquiry, the Administration confirmed that the term "an offence" in the proposed section 28B(1) referred to the "specified offence" in the proposed section 28A(4).</p>	
015855 - 020032	Chairman	Date of next meeting	