

立法會
Legislative Council

LC Paper No. CB(1)1163/13-14
(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 ninth meeting
held on Tuesday, 17 December 2013, at 4:30 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
Hon CHAN Hak-kan, 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
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Tony TSE Wai-chuen

Member absent : Dr Hon Helena WONG Pik-wan

Public Officers attending : **For item II**

Mr Andrew LAI, JP
Deputy Director of Environmental Protection (3)
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

Action

I. Confirmation of minutes

(LC Paper No. CB(1)521/13-14 — Minutes of the meeting held on
22 October 2013)

1. The minutes of the meeting held on 22 October 2013 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)545/13-14(01) — List of follow-up actions arising
from the meeting on
29 November 2013

LC Paper No. CB(1)545/13-14(02) — Administration's response to
CB(1)545/13-14(01)

Action

Draft Committee Stage amendments proposed by the Administration

LC Paper No. CB(1)432/13-14(01) — Draft Committee Stage amendments proposed by the Administration

LC Paper No. CB(1)557/13-14(01) — Marked-up copy of the Bill showing the draft Committee Stage amendments to be moved by the Administration prepared by the Legal Service Division

Relevant papers

LC Paper No. LS17/13-14 — Note on "Comment on the Administration's response to the follow-up issues arising from the fifth meeting" prepared by the Legal Service Division

LC Paper No. CB(1)280/13-14(01) — An information note provided by Hon WU Chi-wai on his proposed Committee Stage amendments (Chinese version only)

LC Paper No. CB(1)2667/11-12(01) — Administration's supplementary paper on extension of the Environmental Levy Scheme on Plastic Shopping Bag

LC Paper No. CB(1)112/13-14(01) — Administration's response to issues arising from the Bills Committee meeting on 8 October 2013)

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

Admin 3. The Administration was requested to –

(a) having regard to members' view that the proposed fixed penalty level of \$2,000 for a specified offence under the proposed section 28A(4) was on the high side, consider lowering the penalty level;

Action

- (b) advise the administrative measures for monitoring the usage of plastic shopping bags ("PSBs") after the proposed extension of the Environmental Levy Scheme on Plastic Shopping Bags ("the extended Scheme") had been implemented;
- (c) clarify its position on the suggestion of monitoring the usage of PSBs before and after the implementation of the extended Scheme by gathering statistics on the import of PSBs;
- (d) clarify how a bag would be regarded as a bag which was "specifically designed for containing the goods" under the proposed section 1(4)(a) of Schedule 2; and
- (e) regarding the Administration's proposed Committee Stage amendments (LC Paper No. CB(1)432/13-14(01)), explain the relationship between the commencement date and the dates which would be specified in the relevant provisions of Schedule 5.

4. Members agreed to continue discussion at the next meeting to be held on Tuesday, 7 January 2014, at 10:45 am.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, the next meeting of the Bills Committee originally scheduled for 7 January 2014 had been rescheduled to Wednesday, 8 January 2014, at 8:30 am. Members were informed of the above arrangement vide LC Paper No. CB(1)617/13-14 issued on 24 December 2013.)

III. Any other business

5. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
25 March 2014

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

**Proceedings of the ninth meeting
on Tuesday, 17 December 2013, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes</i>			
000258 – 000407	Chairman	The minutes of the meeting held on 22 October 2013 (LC Paper No. CB(1)521/13-14) were confirmed.	
<i>Agenda Item II – Meeting with the Administration</i>			
000408 – 001849	Chairman Administration Assistant Legal Adviser 10 ("ALA10")	The Administration's response to members' views and concerns raised at the meeting of the Bills Committee on 29 November 2013 (LC Paper No. CB(1)545/13-14(02)).	
001850 – 002756	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG's views/request that –</p> <p>(a) he did not support the "dual" system and stressed the need to maintain a level playing field in the retail sector;</p> <p>(b) the Government should encourage both big retailers and those retailers which were small and medium enterprises ("SMEs") to voluntarily donate the plastic shopping bag ("PSB") charges received to support environmental causes; and</p> <p>(c) the proposed fixed penalty level of \$2,000 for a specified offence under the proposed section 28A(4) was on the high side, particularly for the small retailers which might omit to collect the PSB charge inadvertently. The Administration should consider lowering the penalty level.</p> <p>The Administration's response that –</p> <p>(a) the fixed penalty system gave an offender an opportunity to discharge liability by paying a fixed penalty than to attend a court hearing, thereby relieving pressures on courts by removing straightforward and clear-cut cases from the court systems. As a matter of principle, the fixed penalty should be pitched</p>	Admin (paragraph 3(a) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>at a level that reflected the seriousness of the offence and could achieve deterrent effect. The proposed level was consistent with the penalties for similar offences. The retailers could avoid the penalty by not committing the offence; and</p> <p>(b) the proposed fixed penalty level of \$2,000 under the proposed extension of the Environmental Levy Scheme on Plastic Shopping Bags ("the extended Scheme") corresponded to the level of penalty in all the six convictions under the current phase of the Environmental Levy Scheme on Plastic Shopping Bags ("PSB Levy Scheme") by May 2013. Admittedly, the offenders concerned were large-scale retailers.</p>	
002757 – 003200	Chairman Ir Dr LO Wai-kwok	<p>Ir Dr LO Wai-kwok's views/concerns that –</p> <p>(a) he did not support the "dual" system and accepted the Administration's rationale for applying the justification test;</p> <p>(b) he did not support using the retailers' scale of operation as the dividing line for granting exemption. Exemption should be granted to PSBs used for carrying foodstuff items according to the way they were packaged, as well as whether the physical state of the foodstuff would change due to temperature difference; and</p> <p>(c) the Administration should stage enhanced publicity and public education on the new legislative requirements as he envisaged that there was bound to be confusion over the exemption criteria during the early stage of implementing the extended Scheme.</p>	
003201 – 004713	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai –</p> <p>(a) clarified that the "dual" system proposed by him did not seek to request retailers to remit the PSB charge to the Government, but to request those with the administrative capability to submit information or returns on the distribution of PSBs to the Government with a view to facilitating the assessment of the effectiveness of the extended Scheme;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) did not subscribe to the Administration's view that his proposed Committee Stage amendments ("CSAs") involved differential treatment. In fact, the first phase of the PSB Levy Scheme, which covered only some 3 300 retail outlets, had already imposed differential treatment amongst retailers; and</p> <p>(c) pointed out that as opposed to his proposal that a retailer which had three or more retail outlets in Hong Kong, or had at least one retail outlet in Hong Kong with a retail floor area of not less than 100 square metres, should be required to submit to the Government quarterly returns setting out the number of PSBs distributed by all of the retailer's registered retail outlets, he was prepared to adopt the criteria used in the first phase of the PSB Levy Scheme (i.e. a retailer who carried on a retail business at five or more qualified retail outlets in Hong Kong, or at least one qualified retail outlet in Hong Kong that had a retail floor area of not less than 200 square metres).</p> <p><i>(Post-meeting note: The draft CSAs proposed by Mr WU Chi-wai was tabled at the meeting and subsequently circulated to members vide LC Paper No. CB(1)587/13-14(01) on 18 December 2013.)</i></p> <p>The Administration's response that –</p> <p>(a) in extending the PSB Levy Scheme to cover all retailers, the legislation should be simple and easy to administer and should maintain a level playing field in the retail sector as far as possible;</p> <p>(b) Mr WU Chi-wai's proposal would require large or chain operators to follow all that prescribed retailers were required to comply with under the current phase of the PSB Levy Scheme, such as registration with the Government, registration of each qualified retail outlet, submission of quarterly returns, remittance of the PSB charge, keeping of records and informing the Government of any changes in the number of retail outlets. The Administration would need to deploy staff resources to monitor the retailers'</p>	

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		<p>compliance with the requirements. Statistically, the some 40 prescribed retailers covering some 3 300 retail outlets under the first phase of the PSB Levy Scheme did not form a sufficiently representative sample of the entire retail industry as they only accounted for less than 3% of the total PSB disposal in 2012. Also, of the more than 10 000 covert operations conducted by the Administration since the PSB Levy Scheme was launched in July 2009, there had only been seven convictions; and</p> <p>(c) the Administration's manpower would be used more gainfully if its effort was focused on public education and publicity to reinforce the behavioral change towards using less PSBs and to promote compliance with the new legislative requirements.</p> <p>Having regard to the Administration's explanation, Mr WU Chi-wai responded that –</p> <p>(a) he was not aware that the compliance requirements under the current phase of the PSB Levy Scheme were of such level of complications. He had not envisaged an increase in the Administration's workload arising from his proposal and he would give his proposed CSAs further consideration; and</p> <p>(b) he urged the Administration to advise the administrative measures for monitoring the usage of PSBs after the extended Scheme had been implemented.</p>	<p>Admin (paragraph 3(b) of the minutes refers)</p>
<p>004714 – 005947</p>	<p>Chairman Ms Cyd HO Administration</p>	<p>Ms Cyd HO –</p> <p>(a) asked about the Administration's latest position with regard to gathering statistics on the import of PSBs as a means of assessing the effectiveness of the extended Scheme; and</p> <p>(b) pointed out that with regard to the "constitutionality" of the "dual" system proposed by members, it seemed that the Administration had changed its legal opinion by expressing that the issue remained unsettled in Hong Kong. In this connection,</p>	

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		<p>whether the Administration would, in the light of LC Paper No. LS17/13-14, withdraw its view on the issue of "constitutionality".</p> <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) its legal viewpoint as presented so far was a general reference only based on Mr WU Chi-wai's preliminary proposal. It could only give concrete comments on CSAs proposed by members; (b) it would review its manpower need as necessary for implementing the extended Scheme; and (c) the triggering of the economic disincentive of the PSB charge at the point of sale of goods was most effective in inculcating behavioral change towards reduced use of PSBs. The Administration would consider gathering statistics on the import of PSBs as a means of assessing the effectiveness of the extended Scheme. <p>Ms Cyd HO reiterated her view that the focus of the Administration on the "constitutionality" of the "dual" system proposed by the members was not helpful, as the "dual" system involved no personal characteristics of the retailers that would engage the justification test or entail consideration under the Hong Kong Bill of Rights ("HKBOR") in the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Basic Law.</p> <p>In response to Ms Cyd HO's suggestion for the Administration to report to the Legislative Council on the import figures of PSBs on, for example, a half yearly basis after the passage of the Product Eco-responsibility (Amendment) Bill 2013 ("the Bill"), the Administration stressed that the relevant figures could only serve as one of the indicators to assess the effectiveness of the extended Scheme, as the volume imported might not necessarily equal to the volume used.</p> <p>Pointing out that the Administration had at previous meetings of the Bills Committee stated that statistics on the import of PSBs could not reflect the effectiveness of the extended Scheme, the Chairman requested the Administration to</p>	<p>Admin (paragraph 3(c) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>clarify its position on the suggestion of monitoring the usage of PSBs before and after the implementation of the extended Scheme by gathering statistics on the import of PSBs.</p> <p>Ms Cyd HO said that she would decide whether to support the CSAs proposed by Mr WU Chi-wai after receiving further information on the administrative measures to be proposed by the Administration for monitoring the usage of PSBs after implementation of the extended Scheme. She urged the Administration to provide the above information as soon as possible.</p>	
005948 – 011206	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE's views that –</p> <ul style="list-style-type: none"> (a) he supported the direction of reducing the use of PSBs by the imposition of the PSB charge and urged for the early implementation of the extended Scheme; (b) he did not support the "dual" system but urged the Administration to put in place effective measures to monitor the usage of PSBs and assess the effectiveness of the extended Scheme; (c) given that the proposed fixed penalty level of \$2,000 was based on the level of penalty in the convictions under the current phase of the PSB Levy Scheme where the offenders were retailers of larger scale, the same level of penalty would be too high for SMEs under the extended Scheme. Hence, the proposed fixed penalty level should be adjusted downwards. Moreover, retailers should not have the incentive to not to collect the PSB charge as the charge would be kept by themselves under the extended Scheme; (d) a mechanism should be in place to deal with cases of repeated contraventions; and (e) the Administration should issue clear guidelines to frontline staff on whether an offence should be dealt with by fixed penalty. Clear guidelines should also be issued to avoid grey areas associated with the exemption for certain temperature-controlled foods, such as fruit, which could be sold both with and without temperature control. 	

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		<p>The Administration's response that –</p> <p>(a) a person who committed an offence for failing to charge for PSBs provided at the time of the sale would be given a fixed penalty notice offering the person an opportunity to discharge the liability for the offence by paying a fixed penalty of \$2,000. The option to institute criminal proceedings would be retained under the extended Scheme to tackle breaches of serious nature such as repeated or systemic contraventions, in which a maximum penalty of \$100,000 and \$200,000 would be imposed for the first and second (and subsequent) conviction(s) respectively; and</p> <p>(b) enforcement officers would be given clear instructions on whether a case should be dealt with by fixed penalty or normal court proceedings.</p>	
<p>011207 – 013633</p>	<p>Chairman Mr Vincent FANG Mr WONG Ting-kwong Mr WU Chi-wai Ms Cyd HO Administration</p>	<p>Mr Vincent FANG showed a plastic bag which he claimed was commonly used by confectionary sellers for holding small pieces of candies that were already individually contained in airtight packaging, and sought clarification on whether that plastic bag would be exempted from the PSB charge.</p> <p>The Administration's response that –</p> <p>(a) it was relevant to consider the proposed section 1(3)(b) of Schedule 2 for food hygiene exemption, and the proposed section 1(4)(a) of Schedule 2 on "a bag specifically designed" for holding the snacks (i.e. the plastic bag concerned was unfit for carrying other items apart from the snacks) to determine whether the plastic bag could be exempted from the PSB charge;</p> <p>(b) as the plastic bag shown by Mr FANG was said to be "specifically designed" for containing the candies, it would not be subject to the PSB charge; and</p> <p>(c) to avoid disputes arising from the implementation of the extended Scheme, it would clarify how a bag would be regarded as a bag which was "specifically designed</p>	<p>Admin (paragraph 3(d) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>for containing the goods" under the proposed section 1(4)(a) of Schedule 2.</p> <p>Mr Vincent FANG, Mr WONG Ting-kwong and Mr WU Chi-wai expressed concern about the Administration's response that plastic bags commonly used by confectionary sellers would be regarded as "specifically designed" for containing the candies and not subject to the PSB charge.</p> <p>The Chairman stressed the importance of making available clear exemption criteria to avoid confusion and disputes in implementing the new legislative requirements. Ms Cyd HO expressed a similar view.</p> <p>In response to Mr WU Chi-wai, the Administration advised that the feedback from the prescribed retailers under the current phase of the PSB Levy Scheme was positive in maintaining the record-keeping system and designation of the revenue from the PSB charge for environmental protection cause under the extended Scheme.</p>	
013634 – 013949	Chairman Mr WU Chi-wai	Mr WU Chi-wai explained that his proposed CSAs were not meant to hamper the operations of SMEs but to tackle the excessive use of PSBs which remained a serious problem for enterprises not covered by the PSB Levy Scheme, such as chain fashion and bakery retailers.	
013950 – 015011	Chairman Ms Cyd HO Administration	<p>The Chairman's views that –</p> <p>(a) the Administration should propose effective measures to assess the effectiveness of the extended Scheme as they would have a bearing on members' support for the CSAs proposed by Mr WU Chi-wai; and</p> <p>(b) regarding the case precedents which were referred to by the Administration, it seemed that although the United Kingdom courts and the European Court of Human Rights ("ECtHR") had clarified that the ground of "other status" under Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was not limited to differential treatment based on personal characteristics which were</p>	

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		<p>innate or inherent, it was unclear whether the Hong Kong courts would take a similar approach when considering the scope of "other status" in Article 22 of the HKBOR. Furthermore, it might be more helpful for the Administration to consider the "dual" system proposed by members from the policy perspective.</p> <p>Ms Cyd HO considered that there was a consensus in the Bills Committee that, since the issue on the "constitutionality" of the "dual" system proposed by members remained unsettled in Hong Kong, it would be more helpful for the Administration to consider the proposal from the policy perspective. She requested the Administration to withdraw its relevant legal opinion.</p> <p>The Administration responded that it was important to ensure that any Government-sponsored policies were not in breach of the guarantees under the Basic Law and the HKBOR. As a response to the points raised in LC Paper No. LS17/13-14, the Administration advised that as it was unclear whether the Hong Kong courts would take a similar approach as that of the United Kingdom courts and ECtHR when considering the scope of "other status" in Article 22 of the HKBOR, it was only prudent for the Administration to further consider whether the differential treatment was justifiable.</p>	
015012 – 015830	Chairman Administration ALA10	<p>The Chairman advised that the Bills Committee would proceed to scrutinize the CSAs proposed by the Administration at the next meeting.</p> <p>The Administration invited the Bills Committee's considerations on the following –</p> <ul style="list-style-type: none"> (a) the fixed penalty level of \$2,000; (b) the inclusion in the Bill the necessary amendments to the Product Eco-responsibility Ordinance (Cap. 603) and the Product Eco-responsibility Regulation (Cap. 603A) to provide for the savings and transitional arrangements and other operational matters after the PSB Levy Scheme was extended; and 	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) the appointment of a specific commencement date of the Amendment Ordinance (at about 12 months counting from the enactment of the Bill) instead of leaving it open until the publication of a commencement notice in the Gazette by the Secretary for the Environment.</p> <p>ALA10 referred to the Administration's proposed CSAs (LC Paper No. CB(1)432/13-14(01)) and requested the Administration to explain the relationship between the commencement date and the dates which would be specified in the relevant provisions of Schedule 5.</p>	Admin (paragraph 3(e) of the minutes refers)
015831 – 015855	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
25 March 2014