

# 立法會 *Legislative Council*

LC Paper No. CB(1)1171/12-13(04)

Ref. : CB1/BC/9/12

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

### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper provides background information on the Product Eco-responsibility (Amendment) Bill 2013 ("the Bill"), and gives a brief account of the views and concerns expressed by Members on the extension of the Environmental Levy Scheme on Plastic Shopping Bags ("the Levy Scheme").

#### **Background**

##### The Levy Scheme

2. Introduced under the Product Eco-responsibility Ordinance (Cap. 603), the Levy Scheme was launched on 7 July 2009 as the first mandatory producer responsibility scheme ("PRS") in Hong Kong to discourage the indiscriminate use of plastic shopping bags ("PSBs"). It currently applies to some 3 300 registered retail outlets and the relevant registered retailers are required to charge their customers an amount of 50 cents as an environmental levy for each PSB provided to them. They also have to submit to the Government quarterly returns setting out the number of PSBs distributed to customers in the non-exempted areas<sup>1</sup> in all of their registered retail outlets as well as the amount of levy collected for such bags. At the same time, they have to pay to the Government their levy income as stated in their returns on a quarterly basis.

3. Since its implementation, the Levy Scheme has yielded positive results in reducing the excessive use of PSBs significantly by up to 90%. However, according to landfill surveys, the problem of excessive PSB use remains serious

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<sup>1</sup> At present, there are two types of exemption, one for non-specified goods (i.e. goods other than food or drink, medicine or first-aid item and personal hygiene or beauty product) and the other for third-party operators.

outside the current scope of the Levy Scheme. Within the retail categories other than the regulated sectors<sup>2</sup>, PSB disposal at the landfills was found to have increased by about 6% between mid 2009 to mid 2010.

4. In May 2011, the Government launched a three-month public consultation on whether and how to extend the Levy Scheme. On the whole, the community was supportive of extending the Levy Scheme to a wider scope to further address the problem of excessive PSB use in Hong Kong. In particular, there was majority support for the Levy Scheme to cover also small and medium enterprises ("SMEs"). On the other hand, there were concerns about the potential implications on the operation of and compliance costs on SMEs.

5. Taking account of the views of the community, the Government considers it opportune to expand the coverage of the mandatory PRS on PSBs and proposes changes to the existing Levy Scheme as set out in the ensuing paragraphs.

#### Ban on free distribution of PSBs in retail sales

6. The Bill seeks to extend the Levy Scheme to cover the entire retail industry. Free distribution of PSBs will be banned in the retail sales of any goods. Where PSBs are distributed in the retail sales of goods, the retailer will be required to charge the customer not less than 50 cents for each PSB provided to that customer ("the PSB charge"), irrespective of the type of business of the retailer or where the sales transaction is completed.

#### Exclusion of PSB use for food hygiene reasons

7. The Bill provides that free distribution of PSBs that contain only an item of food, drink or medicine for human or animal consumption (collectively as foodstuff) will be excluded from the ban, except where the foodstuff item is already contained in airtight packaging; or even though not contained in airtight packaging, no part of the foodstuff item is exposed to the environment, and nothing may spill out of the packaging in the course of conveyance. However, PSBs that are used to carry securely packed frozen/chilled food will not be excluded.

#### Inclusion of flat-top bags under regulation

8. Flat-top bags will be added and subject to regulation under the extended Levy Scheme to deter the problem of excessive use of flat-top bags not solely for food hygiene purposes, which is increasingly reported. Any shopping bag

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<sup>2</sup> Namely chain or large retailers such as supermarkets, convenience stores and medicare and cosmetic stores.

that is made wholly or partially of plastic, including non-woven bags, paper bags with plastic lamination, will continue to be regulated as at present.

#### Retention of the PSB charge by retailers

9. At present, the Levy Scheme adopts a "remittance" approach, under which retailers are required to submit to the Government quarterly the levy income collected from distribution of PSBs. As such approach is burdensome to some SMEs, the Bill proposes to adopt a "retention" approach under which retailers may retain the PSB charge without the need of remitting it to the Government. The existing administrative requirements comprising registration of retailers and retail outlets, keeping of records as well as submission of quarterly returns to the Government will be removed.

#### Introduction of a fixed penalty system

10. A fixed penalty system will be introduced under the Bill to enhance enforcement efficiency and uphold the deterrent effect. If a person is committing or has committed an offence for failing to charge for PSBs provided at the time of sale, the person concerned may be given a fixed penalty notice offering him/her an opportunity to discharge the liability for the offence by paying a fixed penalty of \$2,000. Meanwhile, the option to institute criminal proceedings will be retained to tackle breaches of serious nature such as repeated or systemic contraventions.

11. To sustain community support for the extension, the Government will stage enhanced publicity and public education. For example, a set of draft guidelines detailing how the extended Levy Scheme will operate will be published, and various PR materials will be disseminated through the media for promulgation. In parallel, the Government will conduct inspections and surprise checks in addition to acting on complaints, in order to deter non-compliance.

### **Deliberation by Members**

#### Panel on Environmental Affairs

12. The Panel on Environmental Affairs ("the Panel") discussed the extension of the Levy Scheme at its meetings on 23 May, 20 July and 28 November 2011.

### *Extension of the Levy Scheme*

13. Some members were of the view that instead of a full extension, consideration could be given to adopting an incremental approach to include retailers operating above a certain scale in the second phase of the Levy Scheme. Subject to the success of the second phase, further extension could then be considered. To ease the burden of SMEs in complying with the administrative requirements under the "remittance" approach of the existing legislation on a quarterly basis, some members suggested allowing SMEs to submit their returns on a half-yearly basis.

### *Retention of the PSB charge by retailers*

14. Having regard to the fact that existing registered retailers had made substantial investment in setting up computer systems for collecting the PSB charge, keeping of relevant records and submitting the levy quarterly to the Government, a member was of the view that the proposed switch from the "remittance" to "retention" approach would render the retailers' investments obsolete. Some other members also expressed concern that if retailers were not required to remit the PSB charge to the Government, some retailers might distribute PSBs free of charge to attract customers, thereby defeating the purpose of the Levy Scheme and giving the public an impression that the PSB charge would change from public money to proceeds of private business.

### *Adoption of a "dual" system in handling the PSB charge*

15. Given that the remittance approach had been working well with existing registered retailers, some members were of the view that the Administration should adopt a "dual" system under which the "remittance" approach should remain status quo for existing registered retailers, while the "retention" approach should apply to the newly covered retailers which were mostly SMEs. A member further suggested using the scale of operation as the dividing line for the "dual" system such that the remittance approach would apply to large chain operators and the retention approach to SMEs. To facilitate members' consideration, the Administration was requested to provide an analysis on the legal concerns in adopting the "dual" system.

16. In response to the Panel's requests, the Administration provided an analysis of the legal concerns in pursuing a "dual" system. The Administration has advised that the right to equality and non-discrimination is constitutionally protected under Article 22 of the Hong Kong Bill of Rights. Article 25 of the Basic Law also protects equality before the law. Putting in place the "dual" system would give rise to differential treatment among retailers, and lead to concerns on wider issues, such as level-playing field in the retail industry and equality among retailers before the law. As regards whether "preserving the

current levy income" would be sufficient to constitute a legitimate aim for justifying differential treatment, the Administration has explained that PRS is not a revenue-generating measure. If the main justification for adopting the remittance approach for some or all retailers is to generate revenue for the Government, this might generate public misconception that they are contributing towards public revenue by claiming PSBs and paying the environmental levy. In this connection, adopting the "dual" system would defeat the policy intent of the Levy Scheme, i.e. to reduce excessive PSB use. With the above, the Administration considers the "dual" system not legally justifiable.

17. On the operational front, the Administration considers the "dual" system not practicable because existing registered retailers could deregister from the Levy Scheme and become newly covered retailers. Retailers could also restructure their businesses to adapt to the changing regulatory environment through such means as separate business registrations. Although not all chain operators or retailers currently covered under the Levy Scheme would seek business restructuring, it is not feasible to prohibit any changes in the business operation either. Also, if the "dual" system is to be pursued, objective criteria are required for determining which retailers should be subject to the "remittance" approach and which should be subject to the "retention" approach in order for differential treatment to be justified. On account of the legal and practical concerns aforementioned, the Administration considers the "dual" system not feasible as the way forward in extending the Levy Scheme.

#### *Other views and concerns*

18. To reduce PSBs at source, some members suggested restricting the import of PSBs, or apply the levy to manufacturers and importers of PSBs direct. Consideration should be given to mandating source separation of waste by legislation, and providing assistance to PSB manufacturers to facilitate their switch from manufacturing to recycling of PSBs. Other members considered that chain operators should be requested to use the PSB charge for charitable and environmental protection purposes.

#### **Latest development**

19. The Bill was gazetted on 3 May 2013 and introduced into the Legislative Council on 8 May 2013. At the House Committee meeting on 10 May 2013, Members agreed that a bills committee should be formed to examine the Bill.

**Relevant papers**

20. A list of relevant papers is set out in the **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
30 May 2013

## Appendix

### List of relevant papers

Council/ Committee	Date of meeting	Paper
Panel on Environmental Affairs	26 March 2007	<p>Administration's paper on "Update on the Progress of the Key Initiatives in the "Policy Framework for the Management of Municipal Solid Waste (2005-2014)"" (LC Paper No. CB(1)1182/06-07(06))  <a href="http://www.legco.gov.hk/yr06-07/english/panels/ea/papers/ea0326cb1-1182-6-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ea/papers/ea0326cb1-1182-6-e.pdf</a></p> <p>Administration's supplementary paper on "Proposed Mandatory Provision of Refuse Storage and Material Recovery Room on Each Floor of New Residential Buildings" (LC Paper No. CB(1)2210/06-07(01))  <a href="http://www.legco.gov.hk/yr06-07/english/panels/ea/papers/ea0326cb1-2210-1-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ea/papers/ea0326cb1-2210-1-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1372/06-07)  <a href="http://www.legco.gov.hk/yr06-07/english/panels/ea/minutes/ea070326.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ea/minutes/ea070326.pdf</a></p>
Panel on Environmental Affairs	25 February 2008	<p>Administration's paper on "Update on the Progress of the Key Initiatives in the "Policy Framework for the Management of Municipal Solid Waste (2005-2014)"" (LC Paper No. CB(1)844/07-08(03))  <a href="http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0225cb1-844-3-e.pdf">http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0225cb1-844-3-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1215/07-08)  <a href="http://www.legco.gov.hk/yr07-08/english/panels/ea/minutes/ea080225.pdf">http://www.legco.gov.hk/yr07-08/english/panels/ea/minutes/ea080225.pdf</a></p>
Legislative Council	9 July 2008	<p>Report of the Bills Committee on Product Eco-responsibility Bill (LC Paper No. CB(1)2075/07-08)  <a href="http://www.legco.gov.hk/yr07-08/english/bc/bc04/reports/bc040709cb1-2075-e.pdf">http://www.legco.gov.hk/yr07-08/english/bc/bc04/reports/bc040709cb1-2075-e.pdf</a></p>
House Committee	2 April 2009	<p>Report of the Subcommittee on Product Eco-responsibility (Plastic Shopping Bags) Regulation (LC Paper No. CB(1)1218/08-09)  <a href="http://www.legco.gov.hk/yr08-09/english/hc/papers/hccb1-1218-e.pdf">http://www.legco.gov.hk/yr08-09/english/hc/papers/hccb1-1218-e.pdf</a></p>

<b>Council/ Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Environmental Affairs	27 April 2009	<p>Administration's paper on "Update on the Progress of the Key Initiatives in the "Policy Framework for the Management of Municipal Solid Waste (2005-2014)"" (LC Paper No. CB(1)1357/08-09(03))  <a href="http://www.legco.gov.hk/yr08-09/english/panels/ea/papers/ea0427cb1-1357-3-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ea/papers/ea0427cb1-1357-3-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1943/08-09)  <a href="http://www.legco.gov.hk/yr08-09/english/panels/ea/minutes/ea20090427.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ea/minutes/ea20090427.pdf</a></p>
Panel on Environmental Affairs	29 March 2010	<p>Administration's paper on "Update on the Progress of the Key Initiatives in the "Policy Framework for the Management of Municipal Solid Waste (2005-2014)"" (LC Paper No. CB(1)1443/09-10(04))  <a href="http://www.legco.gov.hk/yr09-10/english/panels/ea/papers/ea0329cb1-1443-4-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/ea/papers/ea0329cb1-1443-4-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1922/09-10)  <a href="http://www.legco.gov.hk/yr09-10/english/panels/ea/minutes/ea20100329.pdf">http://www.legco.gov.hk/yr09-10/english/panels/ea/minutes/ea20100329.pdf</a></p>
Panel on Environmental Affairs	24 January 2011	<p>Legislative Council Brief issued by the Environment Bureau/Environmental Protection Department on 4 January 2011 (EP 86/03/175A)  <a href="http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea-ep8603175a-e.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea-ep8603175a-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1509/10-11)  <a href="http://www.legco.gov.hk/yr10-11/english/panels/ea/minutes/ea20110124.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ea/minutes/ea20110124.pdf</a></p>

Council/ Committee	Date of meeting	Paper
Panel on Environmental Affairs	23 May 2011	<p>Administration's paper on "Public consultation on the Extension of the Environmental Levy Scheme on Plastic Shopping Bags" (LC Paper No. CB(1)2193/10-11(04))  <a href="http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea0523cb1-2193-4-e.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea0523cb1-2193-4-e.pdf</a></p> <p>Background brief on "The Environmental Levy Scheme on Plastic Shopping Bags" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)2193/10-11(05))  <a href="http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea0523cb1-2193-5-e.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea0523cb1-2193-5-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)2964/10-11)  <a href="http://www.legco.gov.hk/yr10-11/english/panels/ea/minutes/ea20110523.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ea/minutes/ea20110523.pdf</a></p>
Panel on Environmental Affairs	20 July 2011	<p>Minutes of meeting (LC Paper No. CB(1)228/11-12)  <a href="http://www.legco.gov.hk/yr10-11/english/panels/ea/minutes/ea20110720.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ea/minutes/ea20110720.pdf</a></p>
Panel on Environmental Affairs	28 November 2011	<p>Administration's paper on "Extension of the Environmental Levy Scheme on Plastic Shopping Bag" (LC Paper No. CB(1)424/11-12(05))  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-424-5-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-424-5-e.pdf</a></p> <p>Updated background brief on "The Environmental Levy Scheme on Plastic Shopping Bags" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)424/11-12(06))  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-424-6-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-424-6-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)853/11-12)  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20111128.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20111128.pdf</a></p> <p>Administration's supplementary paper on "Extension of the Environmental Levy Scheme on Plastic Shopping Bag" (LC Paper No. CB(1)2667/11-12(01))  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-2667-1-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-2667-1-e.pdf</a></p>

Council/ Committee	Date of meeting	Paper
Panel on Environmental Affairs	19 January 2012	<p>Consultation Document on "Strengthening Waste Reduction: Is Waste Charging an Option?" (LC Paper No. CB(1)819/11-12(01))  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0119cb1-819-1-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0119cb1-819-1-e.pdf</a></p> <p>Administration's paper on "Public Consultation on Municipal Solid Waste Charging" (LC Paper No. CB(1)855/11-12(05))  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0119cb1-855-5-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0119cb1-855-5-e.pdf</a></p> <p>Background brief on "Management of municipal solid waste in Hong Kong" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)855/11-12(06))  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0119cb1-855-6-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0119cb1-855-6-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1219/11-12)  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20120119.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20120119.pdf</a></p>
Panel on Environmental Affairs	26 March 2012	<p>Administration's paper on "Reduce, Recycle and Proper Waste Management" (LC Paper No. CB(1)1369/11-12(01))  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0326cb1-1369-1-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0326cb1-1369-1-e.pdf</a></p> <p>Updated background brief on "Management of municipal solid waste in Hong Kong" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)1369/11-12(02))  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0326cb1-1369-2-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0326cb1-1369-2-e.pdf</a></p> <p>Minutes of special meeting at 10:45 am (LC Paper No. CB(1)2555/11-12)  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20120326a.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20120326a.pdf</a></p> <p>Minutes of meeting at 2:30 pm (LC Paper No. CB(1)2604/11-12)  <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20120326.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20120326.pdf</a></p>

<b>Council/ Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Environmental Affairs	20 April 2012	<p>Administration's paper on "Reduce, Recycle and Proper Waste Management" (LC Paper No. CB(1)1628/11-12(01)) <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0420cb1-1628-1-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea0420cb1-1628-1-e.pdf</a></p> <p>Minutes of special meeting (LC Paper No. CB(1)2140/11-12) <a href="http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20120420.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20120420.pdf</a></p>
Panel on Environmental Affairs	18 December 2012	<p>Administration's paper on "Waste reduction through municipal solid waste charging: way forward" (LC Paper No. CB(1)276/12-13(01)) <a href="http://www.legco.gov.hk/yr12-13/english/panels/ea/papers/ea1218cb1-276-1-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/ea/papers/ea1218cb1-276-1-e.pdf</a></p> <p>Background brief on "Municipal solid waste charging in Hong Kong" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)301/12-13(02)) <a href="http://www.legco.gov.hk/yr12-13/english/panels/ea/papers/ea1218cb1-301-2-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/ea/papers/ea1218cb1-301-2-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)568/12-13) <a href="http://www.legco.gov.hk/yr12-13/english/panels/ea/minutes/ea20121218.pdf">http://www.legco.gov.hk/yr12-13/english/panels/ea/minutes/ea20121218.pdf</a></p>
Legislative Council	8 May 2013	<p>Legislative Council Brief issued by the Environment Bureau/Environmental Protection Department in April 2013 (EP CR 9/150/20 Pt.24) <a href="http://www.legco.gov.hk/yr12-13/english/bills/brief/b17_brf.pdf">http://www.legco.gov.hk/yr12-13/english/bills/brief/b17_brf.pdf</a></p>