

Product Eco-responsibility (Amendment) Bill 2013

This note sets out the information requested by the Bills Committee at its meeting of 31 May 2013 –

Coverage of the Proposed Extended Scheme

2. First implemented on 7 July 2009, the Environmental Levy Scheme on Plastic Shopping Bags (“the PSB Levy Scheme”) currently covers some 3 300 retail outlets which are mainly chain or large supermarkets, convenience stores, medicare and personal hygiene and beauty product stores. Whereas the extended scheme is intended to adopt maximum coverage, the economic disincentive of a 50-cent charge will be triggered effectively at every point of sales of goods for the provision of a plastic shopping bag (“PSB”), irrespective of the type of business of the seller or where the sales transaction is completed [cf. paragraph 6 of the Legislative Council (“LegCo”) Brief]. According to the Census and Statistics Department (“C&SD”), there were about 64 000 retail establishments¹ in Hong Kong as at December 2012. In addition, there are primarily service businesses that also sell goods, e.g. tutorial schools selling books and stationery and hairdressing salons selling hair care products. Adding the two types of businesses together, we estimate that the total number of business outlets to be covered under the extended PSB Levy Scheme is in the order of 100 000.

3. At the meeting of 31 May 2013, Members asked for statistics relating to small and medium enterprises (“SMEs”). In general, non-manufacturing enterprises with fewer than 50 employees may be regarded as SMEs in Hong Kong². Following such definition and basing on the C&SD survey referred to at paragraph 2 above, over 99% of the retail establishments in Hong Kong should be regarded as SMEs. In other words, it will be difficult to achieve similar impact as now proposed under the Amendment Bill by continuing to focus at chain stores without extending to SMEs in the second phase.

Implementation Details of the Extended Scheme

¹ Source: <http://www.statistics.gov.hk/pub/B10500032012QQ04B0100.pdf>

² Source: http://www.success.tid.gov.hk/english/lin_sup_org/gov_dep/service_detail_6863.html.

4. Following the public consultation in 2011, we reported our proposed way forward to the LegCo Panel on Environmental Affairs in November 2011 vide LC Paper No. CB(1)424/11-12(05) and explained the policy intent in the key implementation aspects of the extended PSB Levy Scheme. In response to Members' specific request for information, we are pleased to highlight that –

- (a) **Definition of PSBs:** At present, a bag is subject to the PSB Levy Scheme if (i) it is made wholly or partly of plastic and (ii) there is a handle, handle hole, perforated line for tearing out a handle hole, carrying string or strap, or any other carrying device on, or attached to, the bag³. In the second phase, we will broaden the types of PSB covered by repealing the second leg of the definition, such that PSBs will include all bags that are made wholly or partly of plastic, irrespective of whether there is a carrying device. Following the proposed new definition, the following bags will be regarded as PSBs under the proposed extension and be subject to the PSB charge–
- (i) *Non-woven bags:* These bags are commonly made of polypropylene (a type of plastic) and are already covered under the PSB Levy Scheme even in the first phase;
 - (ii) *Paper bags with plastic components* (e.g. lamination, handling device or other decorative parts): These paper bags are already covered in the first phase of the PSB Levy Scheme; and
 - (iii) *Flat-top bags:* These bags do not have a carrying device and are usually used to wrap fresh food. They are currently exempted from the PSB Levy Scheme but as the public consultation in 2011 has confirmed community support, these bags will be regulated in the second phase so as to deter the problem of excessive use which is increasingly reported.
- (b) **Food Hygiene Exemption:** As affirmed during the public consultation in 2011, there is majority community support

³ Please refer to Schedule 1 to the PERO.

for granting exemption to PSBs that are used for food hygiene purposes. To facilitate deliberation on the scope of exemption, we cited Ireland's experience⁴ for general reference. As revealed during the public consultation, some groups tended to go for a more stringent approach in defining the scope for food hygiene exemption; at the same time, there were calls from the community that more flexibility should be allowed so as to adequately cater for different everyday local scenarios as far as possible (e.g. lunch boxes). On balance, we consider it appropriate for "foodstuffs" qualifying for exemption to include all food, drink or medicine that are for human or animal consumption. If a PSB is used to contain solely such items which are not packaged in a way that they are *securely segregated from the outside environment*, the PSB would not be subject to the PSB charge. With the aid of the findings of a study on common food packaging practice in Hong Kong (see Annex), we propose in the Amendment Bill that food hygiene exemption should not be granted if –

- (i) the foodstuff item is already contained in airtight packaging; or
- (ii) 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 any conveyance.

Assessment of the Effectiveness of the Levy Scheme

5. The effectiveness of the PSB Levy Scheme should be assessed with reference to the extent to which it has changed our behaviour. As explained in the Consultation Document for the public consultation in 2011, we considered three major factors –

- (a) *Actual levy income*: the actual levy income collected was in the range of \$26.5 million per annum, far less than the original estimation made in 2008, i.e. \$200 million per

⁴ In Ireland's case, only one layer of levy-free wrapping is allowed for food items such as fruits, nuts or vegetables; confectionary; dairy products; cooked food (cold or hot); and ice. Additional layers of packaging (including the use of bags) are allowed, free of levy, for fresh fish, fresh meat and fresh poultry.

annum⁵, proving that members of the public have indeed used much fewer PSBs than expected (cf. paragraph 1.4 of the Consultation Document);

- (b) *Telephone survey findings*: according to a telephone survey conducted by the Central Policy Unit before the public consultation in 2011, over 75% of the respondents did not claim PSBs when shopping at a registered outlet, while nearly 80% considered that the PSB Levy Scheme has helped them develop the BYOB habit (cf. paragraph 1.2 of the Consultation Document); and
- (c) *Statistics on the disposal of PSBs in the landfills*: landfill disposal of PSBs distributed by retail categories of supermarkets, convenience stores and medicare and cosmetics registered over 75% decrease in mid-2010 when compared with the same in mid-2009⁶ (cf. paragraph 1.5 of the Consultation Document).

6. In future, sellers of good may handle the PSB charge on their own without having to remit to the Government (cf. the “retention” approach). It will be difficult to collate information relating to the actual PSB charge received in the entire retail industry. That said, we will continue to conduct necessary surveys to assess the effectiveness of the extended PSB Levy Scheme in a multi-pronged approach. On the other hand, we will step up enforcement against non-compliance. With the proposed fixed penalty system, we envisage that enforcement efficiency under the extended PSB Levy Scheme may be enhanced thus upholding the deterrence effect. We will also enhance publicity and public education so as to maximize the benefits.

Issues Raised by the Assistant Legal Adviser

Application to the Government

⁵ We assumed a 50% reduction in the distribution of PSBs from registered retailers and a further 50% exemption of plastic bags that do not fall under the statutory definition with an environmental levy up to \$200 million a year based on the 2005 survey figure.

⁶ We estimated that about 65% of the pre-levy PSB distribution under these retail categories could be attributable to registered retail outlets under the PSB Levy Scheme. Taking into account such estimation, the reduction in PSBs distributed by registered retailers since the launch of the PSB Levy Scheme in July 2009 could be as high as 90%.

7. The Product Eco-responsibility Ordinance (“PERO”) (Cap. 603) currently does not bind the Government. With the extension of the PSB Levy Scheme, we will issue circulars to bureaux and departments regarding the requirements to cease the free provision of PSBs to customers if they are engaged in retail sales in line with the provisions in the Amendment Bill when enacted. It should be noted that retail sales of goods of limited scale by bureaux and departments are mainly incidental to the Government’s services to the public and should not be regarded as part of the broader retail industry. Given the aforesaid arrangement, and that there are other mandatory Producer Responsibility Schemes in the pipeline, we consider it more appropriate for the Amendment Bill not to affect the current binding effect of the PERO.






Product Eco-responsibility (Plastic Shopping Bags) Regulation




8. In line with the experience in the first phase, we will introduce necessary legislative amendments to the Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap 603A) through the positive vetting procedures in good time before the commencement of the Amendment Bill. This will deal with the necessary legislative amendment regarding the remittance approach of the levy collected.

Potential Circumvention by Inclusive Pricing

9. If a seller provides a PSB to the customer but does not collect the PSB charge from the customer, the seller will be subject to prosecution under the new Section 18A(2) as proposed under the Amendment Bill. In case the seller argues that the PSB charge is already included in the pricing of the goods concerned, it is relevant to consider the practical circumstances under which the PSB is provided. Nevertheless the customer can always refuse to claim the PSB in the first place and accordingly seek a refund of the PSB charge. The seller has to provide the refund when so requested; otherwise it may serve as an evidence for contravening the new Section 18A(2). We will publicize to the retail industry that such attempt to circumvent the extended PSB Levy Scheme is not allowed. We will also step up enforcement and encourage community participation in reporting non-compliance cases. Moreover, we will step up publicity and public education to the general public as well as the retail industry so as to promote the BYOB culture.

**Common Food Packaging Methods and
Food Hygiene Exemption under the
Product Eco-responsibility (Amendment) Bill 2013**

Category	Packaging Method	Example	Remarks
I	A. Bag with heat-sealed closure		<ul style="list-style-type: none"> ◆ With these packaging methods, the foodstuffs contained are fully enclosed in the packaging. ◆ Usually the foodstuffs can be so fully enclosed unless the packaging is torn off or otherwise damaged or broken. Such food items are generally suitable for BYOB. ◆ A PSB charge applies.
	B. Fixed-shape container with heat-sealed closure		
	C. Bottle, jar or tin		
II	A. Bag without any closure		<ul style="list-style-type: none"> ◆ The foodstuffs contained are NOT fully enclosed in the packaging. ◆ Not being segregated from the outside environment, such food items are generally unsuitable for BYOB. ◆ Exemption is given under the Section 1(3)(b) of Schedule 2 (proposed).
	B. Fixed-shape container without any closure or cover		

Category	Packaging Method	Example	Remarks
III	A. Bag with unsealed closure		<ul style="list-style-type: none"> ♦ Though providing some closure, these packaging methods could not ensure that no part of the foodstuffs contained therein is exposed to the environment. ♦ Exemption is given under Section 1(3)(b) of Schedule 2 (proposed).
	B. Fixed-shape container with unsealed closure		
	C. Cling film wrapping		

Remarks:

- The above is summarized from the findings of a consultancy study commissioned to facilitate the preparation of the Amendment Bill. During the study, over 1 200 interviews were conducted with retail outlets, licensed hawkers and other food service shops, and over 1 200 samples of food packaging means were identified for the common types of food available in Hong Kong. The samples were then examined as to whether they can securely segregate the foodstuff contained inside from the outside environment, and categorized to facilitate the law drafting process.
- At the risk of stating the obvious, exemption is given for the PSB in wrapping foodstuffs that are not packaged.