

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

This note sets out the second batch of the Administration's response to the follow-up issues arising from the second meeting of the Bills Committee on the Product Eco-responsibility (Amendment) Bill 2013 ("the Amendment Bill"), held on 18 June 2013.

**Implication of Inclusive Pricing**

(g) *in relation to the Administration's response in paragraph 9 of LC Paper No. CB(1)1291/12-13(02) –*

(i) *regarding the suggestion that a seller may sell goods at prices inclusive of the PSB charge (i.e. the PSB charge is included in the marked price of every item of goods which is, say, above a certain price) and hence would provide PSBs for the goods in any event but without any refund even if the customer does not want the PSB provided, please clarify on what legal basis the Administration considers that the customer has a right to seek a refund and the seller a corresponding obligation to provide the refund, as it would appear that the buyer only has the choice to proceed with the purchase on the seller's terms or shop elsewhere; and*

(ii) *please clarify how the seller's refusal to provide the refund when so requested "may serve as an evidence for contravening the new Section 18A(2)"; and*

2. In our daily life, there are various scenarios that plastic bags could form an integral part of the goods for sale. While on environmental grounds we discourage excessive and unnecessary packaging, the ambit of the Environmental Levy Scheme on Plastic Shopping Bags ("PSB Levy Scheme") cannot be extended to regulate this behaviour, which reflects the commercial decisions of individual sellers.

3. In our previous response, we clarified that the buyer may seek to negotiate with the seller if he does not want the plastic shopping bag ("PSB") provided by the seller. Under the first phase of the PSB Levy Scheme, a PSB refers to a bag that (i) is made wholly or partly from plastics and (ii) has a carrying device. For the second phase, we have

proposed under Clause 17 of the Amendment Bill to amend the definition of PSBs so as to cover flat-top bags. Furthermore, by amending Section 1 of Schedule 2 through Clause 18 of the Amendment Bill, we have sought to clarify that a PSB does not include a bag that forms part of the goods concerned. That said, we would appeal to consumers as well as shop operators to avoid excessive package. Indeed consumers could vote with their feet by choosing to purchase at shops without excessive packaging and such behaviour will influence the marketing strategies of the shops.

4. In summary, a PSB that is provided on top of the goods sold is subject to the PSB Levy Scheme. As regards the issue of whether and how prosecution actions could be initiated for contravening the new section 18A<sup>1</sup> in individual cases, the decisions will have to be made having regard to the actual circumstances of the cases.

*(h) if inclusive pricing is introduced as suggested in (g)(i) above by sellers, customers may lose the incentive to give up their PSBs and the objective of the PSB Levy Scheme to reduce the usage of PSBs by the public may thereby be frustrated. Please clarify whether, under these circumstances and given also that sellers are allowed to keep the charges collected without any requirement to submit any return to the Government, there may be a re-emergence of the pre-PSB Levy Scheme mode of distribution of PSBs.*

5. This hypothetical scenario will only arise if the retail industry extensively adopts marketing strategies to include plastic bags as part of their goods for sale. In reality, sellers of goods (particularly small and medium enterprises (“SMEs”)) will have strong incentives to cut operating costs. There does not appear to be any commercial reasons to add the operating costs by making plastic bags as integral parts of their goods for sale. This view has been echoed in the deputations by the Coalition of Hong Kong Newspaper Magazine Merchants. In addition, feedback from some current registered retailers indicates that they are most likely to largely retain the current operational mode (i.e. to continue the collection of PSB levy) and staff training in administering the PSB Levy Scheme. As the charge remains compulsory, there is no incentive

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<sup>1</sup> Under the new section 18A, a retail seller of any goods must charge a customer an amount not less than \$0.5 for each plastic shopping bag provided by the seller directly or indirectly to the customer at the time of the sale, for promoting the goods or otherwise in connection with the sale.

to change the current practices. The Committee also noted that some retailers have indicated their intention to consider donating the future PSB proceeds to green and other causes. For consumers, previous telephone survey findings suggest that the majority of Hong Kong people have adopted a Bring Your Own Bag (“BYOB”) habit. Accordingly, based on objective evidences that are available to us, we do NOT consider that the pre-levy mode of indiscriminately distributing PSBs free of charge would re-emerge.

### **Meeting with the Deputations**

6. A total of 17 deputations and individuals attended the Bills Committee meeting (with or without written submissions) on 18 June 2013; 8 other organizations or individuals put up written submissions without sending representatives. Our specific comments on the issues raised are set out at the Annex.

### **Other Issues**

7. The Bills Committee also requested a paper to set out the Administration’s stance on the views given in two written submissions –

- (a) LC Paper No. CB(1)1291/12-13(06) (about Micro-beads):  
Apart from plastics, micro-beads may also be made from other materials such as coconut husk. After use of the products in which they are added, the micro-beads will generally be disposed of with rinsed water to the sewerage system which conveys the wastewater to a sewage treatment works for proper treatment. They will exist as suspended solids in the sewage, and will be removed through sewage treatment processes. At present, the sewerage network has already covered some 93% of the local population. In any case, the discharge of wastewater to the marine environment is also subject to licensing control under the Water Pollution Control Ordinance (“WPCO”). Among other things, stringent effluent standards on suspended solids will be specified in the licence by reference to the WPCO Technical Memorandum for Effluent Standards.
- (b) LC Paper No. CB(1)1291/12-13(07) (about other plastic containers not covered by the extended PSB Levy Scheme):

We have already pledged under the Blueprint for Sustainable Use of Resources to review the need of extending to producer responsibility scheme (“PRS”) to other products in due course.

**Environmental Protection Department**  
**July 2013**

**Annex**

**Meeting with Deputations on 18 June 2013:  
The Administration's Response**

	<b>Issue</b>	<b>Relevant Deputations or Individuals</b>	<b>The Administration's Response</b>
1.	<ul style="list-style-type: none"> <li>♦ <b><i>Switching from PSBs to other types of bags:</i></b> Some deputations have raised concerns about the effectiveness of the PSB Levy Scheme because of a potential switching effect to other types of bags; some attempted to substantiate such arguments by referring to the landfill disposal statistics.</li> </ul>	<ul style="list-style-type: none"> <li>♦ 西九龍環保協會</li> <li>♦ Green. Recycling</li> <li>♦ Hong Kong Environmental Protection Association</li> <li>♦ Hong Kong Plastic Bags Manufacturers' Association</li> <li>♦ Liberal Party</li> <li>♦ Momentum 107</li> <li>♦ Ms Mabel Lau</li> <li>♦ Mr Anthony Yiu</li> <li>♦ The Lion Rock Institute</li> </ul>	<ul style="list-style-type: none"> <li>♦ Please refer to paragraphs 3 to 5 of the first batch of the Administration's response.</li> </ul>
2.	<ul style="list-style-type: none"> <li>♦ <b><i>Biodegradable bags:</i></b> Some suggested that the PSB Levy Scheme should take the form of banning the use of non-biodegradable bags; some suggested the promotion of biodegradable bags say through exemption under the PSB Levy Scheme.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Federation of Hong Kong Industries</li> <li>♦ Hong Kong Plastic Bags Manufacturers' Association</li> <li>♦ New People's Party</li> <li>♦ The Hong Kong Institution of Engineers</li> <li>♦ The Lion Rock Institute</li> </ul>	<ul style="list-style-type: none"> <li>♦ Notwithstanding the diverse standards promulgated internationally, the biodegradability of plastic materials is mostly valid only in laboratory settings with carefully controlled background environment in moisture, sunlight, temperature and etc. which might not reflect the actual situation in the landfills. Since the objective of the Amendment Bill is to promote a BYOB shopping habit, it has not included any provisions requiring that PSBs used in Hong Kong must be bio-degradable.</li> </ul>

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3.	<ul style="list-style-type: none"> <li>♦ <b>Coverage of the extended PSB Levy Scheme including the exemption provisions:</b> It was widely appreciated that there should be clarity in respect of who will be subject to regulation and what types of bags will require a PSB charge and what will be exempted from it. Some made specific suggestions on specific types of products that should also be entitled to exemption.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Federation of Hong Kong Industries</li> <li>♦ Hong Kong Doctors Union</li> <li>♦ Hong Kong General Chamber of Commerce</li> <li>♦ Hong Kong Retail Management Association</li> <li>♦ New People's Party</li> <li>♦ The Hong Kong Institution of Engineers</li> <li>♦ Wholesale and Retail Task Force of the Business Facilitation Advisory Committee</li> </ul>	<ul style="list-style-type: none"> <li>♦ Please refer to paragraphs 6 to 10 of the first batch of the Administration's response.</li> <li>♦ We will also stage enhanced publicity to promote the wider coverage of the extended producer responsibility scheme. Amongst other things, we will publish a set of guidelines which will comprehensively explain with the aid of illustrations the implementation details such as the specific exclusion arrangement for food hygiene purposes.</li> </ul>
4.	<ul style="list-style-type: none"> <li>♦ <b>The "retention" approach:</b> Some had doubts on the merits of adopting the "retention" approach; some raised concerns about enforcement effectiveness under the "retention approach" and made suggestions on how to uphold the effectiveness of the PSB Levy Scheme.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Coalition of Hong Kong Newspaper Magazine Merchants</li> <li>♦ Friends of the Earth (HK)</li> <li>♦ Greeners Action</li> <li>♦ Hong Kong Environmental Protection Association</li> <li>♦ Hong Kong Institution of Engineers</li> <li>♦ Hong Kong Plastic Bags Manufacturer's Association</li> <li>♦ Labour Party</li> <li>♦ Mr. Anthony Yiu</li> <li>♦ New People's Party</li> </ul>	<ul style="list-style-type: none"> <li>♦ It is a conscious decision to pursue the "retention" approach (as against the existing "remittance" approach) in handling the PSB charge collected under the extended PSB Levy Scheme. Adopting the "retention" approach is essential to ensure that we can achieve maximum coverage of the extended PRS without causing undue burden on SMEs which constitute over 90% of our retail industry. To enhance enforcement efficiency and uphold the deterrence effect, we have proposed to introduce a fixed penalty system.</li> <li>♦ Please also refer to CB(1)2667/11-12(01) for our analysis on the "dual" approach.</li> </ul>

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5.	<ul style="list-style-type: none"> <li>♦ <b><i>Imposing the PSB levy at the point of import:</i></b> There were suggestions that an import levy may be an alternative to the “retention” approach for enabling SMEs to participate in the PSB Levy Scheme.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Federation of Hong Kong Industries</li> </ul>	<ul style="list-style-type: none"> <li>♦ First and foremost, the PSB Levy Scheme is not a revenue generation measure. As supported by relevant international experience, applying a direct economic disincentive at the point of retail is the most effective way to encourage consumers to reduce the excessive use of PSBs. Over the years the PSB Levy Scheme has been proven successful in reducing the amount of PSBs distributed by the registered retailers using such approach.</li> </ul>
6.	<ul style="list-style-type: none"> <li>♦ <b><i>Offering of rebates:</i></b> There were requests for clarifications as to whether loyalty programmes operated by supermarkets or other similar schemes will lead to contravention with the proposed Section 18A(3) which forbids the offering of discount or rebate.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Hong Kong Retail Management Association</li> <li>♦ Mr LI Ka-leung</li> </ul>	<ul style="list-style-type: none"> <li>♦ It is common for businesses such as supermarkets or credit card companies to operate loyalty programmes or other similar schemes for marketing or other promotion purposes. While each case has to be considered given the specific circumstances involved, the common mode of operation is such that credits are first accrued in an account and then redeemed subject to certain terms and conditions. It will be difficult to argue that the operation of such schemes will directly offset the PSB charge.</li> </ul>
7.	<ul style="list-style-type: none"> <li>♦ <b><i>Other PRS initiatives:</i></b> There were suggestions that the Government should expedite actions in implementing PRS initiatives to a wider range of products.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Friends of the Earth (HK)</li> <li>♦ Hong Kong Environmental Protection Association</li> <li>♦ Ms Connor Laurie</li> <li>♦ Plastic Free Seas</li> <li>♦ The Lion Rock Institute</li> </ul>	<ul style="list-style-type: none"> <li>♦ Please refer to paragraph 7 of the second batch of the Administration's response.</li> </ul>

	Issue	Relevant Deputations or Individuals	The Administration's Response
8.	<ul style="list-style-type: none"> <li>♦ <b>Education and publicity:</b> There were calls for extensive education and publicity on both the details of the extension and other environmental issues in general.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Coalition of Hong Kong Newspaper Magazine Merchants</li> <li>♦ Friends of the Earth (HK)</li> <li>♦ Federation of Hong Kong Industries</li> <li>♦ Greeners Action</li> <li>♦ Hong Kong Environmental Protection Association</li> <li>♦ Hong Kong General Chamber of Commerce</li> <li>♦ Hong Kong Plastic Bags Manufacturers' Association</li> <li>♦ Ms Mabel Lau</li> <li>♦ The Hong Kong Institution of Engineers</li> </ul>	<ul style="list-style-type: none"> <li>♦ Please refer to paragraphs 13 to 14 of the first batch of the Administration's response.</li> </ul>
9.	<ul style="list-style-type: none"> <li>♦ <b>Others:</b> There are suggestions on how the Government may support to recycling industries in promoting the recycling of waste plastics.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Federation of Hong Kong Industries</li> <li>♦ Green. Recycling</li> <li>♦ Hong Kong Plastic Bags Manufacturers' Association</li> <li>♦ Hong Kong Recycle Materials &amp; Re-production Business General Association Ltd</li> <li>♦ Ms Mabel Lau</li> </ul>	<ul style="list-style-type: none"> <li>♦ The PSB Levy Scheme aims to discourage the excessive use of PSBs with the economic disincentive of a mandatory charge. In parallel, the Administration has committed to specific action plans on waste reduction and recovery under the Blueprint for Sustainable Use of Resources. We will continue to engage stakeholders in taking forward the action plans.</li> </ul>