

立法會
Legislative Council

LC Paper No. LS47/12-13

**Paper for the House Committee Meeting
on 10 May 2013**

**Legal Service Division Report on
Product Eco-responsibility (Amendment) Bill 2013**

I. SUMMARY

- 1. The Bill**

The Bill proposes to extend the charges on plastic shopping bags (PSBs) to all sales of goods by retail. The sellers may retain the charges that have been collected from customers and will not be required to remit the charges to the Government. There will not be any requirement for registration, record keeping and submission of quarterly returns and any such existing provisions are proposed to be repealed. The Bill also proposes to introduce a fixed penalty system for the offence of failing to charge for PSBs provided at the time of sale concerned or offering any rebate or discount to offset the charge concerned.
- 2. Public Consultation**

According to the Administration, public consultation on the extension of the PSB Levy Scheme was conducted between May and August 2011. The Administration also reported the proposed way forward to the Advisory Council on the Environment.
- 3. Consultation with LegCo Panel**

The Panel on Environmental Affairs was consulted on 28 November 2011. Members generally supported the proposed extension of the Environmental Levy Scheme on PSBs to cover all retailers in Hong Kong.
- 4. Conclusion**

The Bill involves an extension of PSB charges and other relevant changes. Members may wish to set up a Bills Committee to study the Bill in detail. Scrutiny on its legal and drafting aspects is continuing.

II. REPORT

The date of First Reading of the Bill is on 8 May 2013. Members may refer to the LegCo Brief (File Ref: EP CR/9/150/20 Pt.24) issued by the Environment Bureau and Environmental Protection Department dated April 2013 for further information.

Object of the Bill

2. The Bill seeks to amend the Product Eco-responsibility Ordinance (Cap. 603) (the Ordinance) to –

- (a) require the seller to charge a customer for plastic shopping bags (PSBs) provided at the time of or in connection with a sale of goods by retail;
- (b) introduce a fixed penalty system for the offence of failing to charge for a PSB at the time of the sale and for offering rebate or discount with the effect of offsetting the charge; and
- (c) allow the seller to retain and handle the PSB charge without the need of remitting them to the Government.

Background

3. In 2008, the Ordinance was enacted to minimize the environmental impact of PSBs and various other types of products by the introduction of producer responsibility schemes. According to the Administration, the current PBS Levy Scheme was launched in 2009 as the first producer responsibility scheme to address the problem of excessive PSBs use in chain or large retailers such as supermarkets, convenient stores and medicare and cosmetic stores.

Provisions of the Bill

Extension of charges on PSBs

4. At present, the PSB Levy Scheme only applies to prescribed retailers and qualified retail outlets as specified in the Ordinance. Such prescribed retailers are mainly chain or large retailers which carry on retail business by selling goods which include any food, drink, medicine, first-aid

item or any personal hygiene and beauty product in retail outlets (known as qualified retail outlets) in Hong Kong. The Bill proposes to extend the PSB charges to cover all sectors which sell¹ goods by retail in the course of their businesses, including small and medium enterprises (SMEs). In particular, the seller must charge at least 50 cents for each PSB provided to the customer at the time of or in connection with the sale, or for promoting the goods. Further, the Bill also proposes that if a PSB is provided as a single item of goods or ten or more PSBs is prepackaged as a pack, each PSB or pack should also be charged no less than 50 cents.

PSBs to which charges are imposed

5. The Bill proposes to make the following changes with respect to the chargeability of PSBs—

- (a) repeal the provisions which specify that a PSB sold at \$5 or more each, or to 2 or more PSBs that are sold as a pre-packaged pack at a price of \$5 or more per pack are excluded from the charge;
- (b) amend the Ordinance so that PSB charges shall be applicable to any bag which is made wholly or partly of plastic, regardless of whether or not there is a handle or carrying device on or attached to the bag;
- (c) provide that the charge do not apply to—
 - (i) any PSB that only contains an item of food, drink or medicine for human consumption. However, the charge is applicable to a PSB if any of those items contained in the bag is already contained in air-tight packaging. Further, the charge is also applicable to any PSB which contains such an item and the item is already in such packaging that no part of the item is exposed to the environment and nothing may spill out of the packaging in the course of its conveyance; and
 - (ii) any PSB which forms part of the goods concerned. Such bags include a PSB which is specifically designed for containing the goods or information on how to consume or use the goods contained in the PSB is found on the bag.

¹ A sale includes a display or offer for sale.

Retention of the PSB charges by seller

6. At present, a prescribed retailer may apply to the Director of Environmental Protection (DEP) for registration as a registered retailer in respect of a qualified retail outlet of that retailer. A registered retailer has various obligations which relate to registration, record keeping, and submission of quarterly returns to the DEP. The Bill proposes to repeal such obligations. Further, under the current PBS Levy Scheme, the registered retailer is required to pay the levy income to the Government. The Bill proposes to repeal the requirement so that a seller may retain the PSB charges that it has received without remitting them to the Government. According to the Administration, the amendments are intended to streamline the existing compliance system, which may be too burdensome to SMEs concerned.

Introduction of a Fixed Penalty System

7. The Bill proposes that if the DEP believes that a person is committing or has committed an offence of failing to charge for PSB provided at the time of the sale or offering any rebate or discount to a customer with the effect of directly offsetting the charge payable, the DEP may offer the person an opportunity to discharge the person's liability for the offence by giving the person a fixed penalty notice. The penalty is fixed at \$2,000. If the person pays the penalty within the time limit prescribed under the Ordinance, the person is not liable to be prosecuted or convicted for the offence concerned. According to Administration, the option to institute criminal proceedings is proposed to be retained to tackle breaches of serious nature such as repeated or systematic contraventions.

Commencement

8. The Bill, if enacted, will come into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

Public Consultation

9. According to the Administration, public consultation on the extension of the PSB Levy Scheme was conducted between May and August 2011. In November 2011, the Administration reported the proposed way forward to the Advisory Council on the Environment.

Consultation with LegCo Panel

10. According to the Clerk to Panel on Environmental Affairs, the Panel was consulted on 28 November 2011. Members generally supported the proposed extension of PSB charge to cover all retailers in Hong Kong. However, there were requests for clear guidelines on the compliance requirements and exemption criteria for the PSB charges. The Panel also asked the Administration to consider continuing to apply the remittance approach under the current scheme to existing registered retailers in which they had to remit the levy collected periodically to the Government, while only allowing retailers newly covered by the PSB charges to retain the levy collected. Some Panel members further suggested that chain operators should be requested to use the charges collected for charitable and environmental protection purposes.

Conclusion

11. The Bill involves an extension of the coverage of PSB charges and other relevant policy changes. Members may wish to set up a Bills Committee to study the Bill in detail. Scrutiny on its legal and drafting aspects is continuing.

Prepared by

LEE Hoi-see, Evelyn
Assistant Legal Adviser
Legislative Council Secretariat
9 May 2013

LS/B/19/12-13