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Paper for the House Committee meeting on 6 December 2013

**Report of the Bills Committee on Toys and Children's Products Safety
(Amendment) Bill 2013**

Purpose

This paper reports on the deliberations of the Bills Committee on Toys and Children's Products Safety (Amendment) Bill 2013.

Background

2. The Toys and Children's Products Safety Ordinance (Cap. 424) ("the Ordinance") currently regulates the safety of (i) "toys" (defined as products or materials that are designed or clearly intended for use in play by a child, and their packaging) and (ii) specified "children's products" (i.e. those products specified in column 1 of Schedule 2 to the Ordinance¹, and their packaging) ("Schedule 2 products")². The Ordinance requires toys and Schedule 2 products to meet the general safety requirement³. If a toy or Schedule 2 product meets all the applicable requirements in any one set of the applicable safety standards (international standards or standards adopted by advanced economies) specified in the Ordinance, the toy or product is regarded as meeting the general safety requirement.

3. The Ordinance also provides that the Secretary for Commerce and Economic Development ("SCED") may by regulation establish additional safety standards for toys and Schedule 2 products. This regime ensures that the level of safety accorded to children is on par with the international norm, and enables the imposition of additional standards to enhance the protection of children's safety.

¹ There are 12 classes of products specified in column 1 of Schedule 2 to the Ordinance. They are babies' dummies, baby walking frames, bottle teats, bunk beds for domestic use, carry cots and similar handled products and stands, child safety barriers for domestic use, children's cots for domestic use, children's high chairs and multi-purpose high chairs for domestic use, children's paints, children's safety harnesses, playpens for domestic use, and wheeled child conveyances.

² Other children's products are regulated as consumer products under the Consumer Goods Safety Ordinance (Cap. 456).

³ General safety requirement means a duty to ensure that a toy or children's product is reasonably safe having regard to all circumstances.

Proposed phthalate control

4. According to the Administration, phthalates are commonly used as plasticizers in polyvinyl chloride products. However, there has been public concern over the possible health hazards posed to children by phthalates that may be contained in plasticized materials in toys and children's products. Currently, advanced economies such as the European Union, Australia, the United States, Canada and Singapore have imposed concentration limits of six types of phthalates, namely DEHP, DBP, BBP, DINP, DIDP and DNOP⁴, in certain toys and children's products. Except Australia which has imposed control only on DEHP, all other jurisdictions have put into effect restrictions against the use of DEHP, DBP and BBP in certain toys and child care products used by toddlers⁵, and against the use of DINP, DIDP and DNOP in certain toys and child care products that can be mouthed by toddlers.

5. The Administration considers it necessary to ensure that the existing regulatory regime is on par with those in advanced economies in protecting children from exposure to phthalates and also prevent Hong Kong from becoming the dumping ground for non-compliant products. Against this background, the Administration proposes to impose similar control on the maximum amount of the aforesaid six types of phthalates in certain toys and children's products, as set out in **Appendix I**.

6. According to the Legislative Council ("LegCo") Brief (File ref.: CITB CR 08/18/3), in order to impose the proposed phthalate control under the Ordinance, the Administration intends to expand the application of the Ordinance to cover, in addition to toys and Schedule 2 products, other products that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under four years of age and that contain any plasticized material.

The Toys and Children's Products Safety (Amendment) Bill 2013 ("the Bill")

7. The Bill was introduced into LegCo on 17 July 2013. The Bill seeks to amend the Ordinance to -

- (a) expand the existing definition of "children's product" in the Ordinance to cover not only Schedule 2 products but also certain other products that are intended to facilitate the feeding, hygiene,

⁴ DEHP means di(2-ethylhexyl) phthalate (also known as bis-(2-ethylhexyl) phthalate or diethylhexyl phthalate), DBP means dibutyl phthalate, BBP means benzyl butyl phthalate, DINP means diisononyl phthalate, DIDP means diisodecyl phthalate, and DNOP means di-n-octyl phthalate.

⁵ These are products intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under three or four years of age.

relaxation, sleep, sucking or teething of a child under four years of age and that contain any plasticized material, and their packaging (proposed new section 2B(1)(b)); and

- (b) make other amendments to the Ordinance, in particular, to enable subsidiary legislation to be made to implement the proposed phthalate control.

8. According to the LegCo Brief under reference, after the enactment of the Bill, SCED will make specific regulations under the Ordinance on the proposed phthalate control.

The Bills Committee

9. At the House Committee meeting on 4 October 2013, a Bills Committee was formed to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix II**.

10. Under the chairmanship of Hon Jeffrey LAM, the Bills Committee has held two meetings with the Administration. The Bills Committee has invited the public and relevant organizations to provide written submissions on the Bill. A list of the organizations/individuals which/who have made submissions to the Bills Committee is in **Appendix III**.

Deliberations of the Bills Committee

11. Members in general have expressed support for introducing the proposed phthalate control to enhance the protection of children's safety. Members have noted that the proposed phthalate control on the use of six types of phthalates (namely DEHP, DBP, BBP, DINP, DIDP and DNOP) in toys or children's products is on par with the relevant legislation of advanced overseas economies (including the European Union, the United States, Canada and Singapore). In the course of scrutiny of the Bill, members have expressed concerns on the scope of application of the proposed control, the implementation date, the proposed definition of "children's product" and certain drafting issues.

Scope of application of the proposed phthalate control

Packaging materials

12. Some members including Mr Jeffrey LAM and Ir Dr LO Wai-kwok have expressed concern on whether the packaging of a toy or a children's product also falls within the scope of the proposed control, given that the definitions of "toy"

and "children's product" under the Ordinance cover the "packaging" of a toy/children's product. These members have pointed out that the restrictions against the use of phthalates in toys and children's products adopted in the European Union and the United States do not apply to the packaging of those products. They opine that if the proposed phthalate control also applies to the packaging of toys, Schedule 2 products or other children's products, it will deviate from international standards. They have also pointed out that packaging may consist of a variety of materials (e.g. plastic tape, paint and glue), and imposing the same control on it would be very complicated.

13. In response to members' concerns, the Administration has clarified that, in line with the regulatory approach adopted in the European Union and the United States, the proposed phthalate control will not apply to the packaging of –

- (a) toys;
- (b) Schedule 2 products; or
- (c) products (other than toys and Schedule 2 products) that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under four years of age and contain any plasticized material.

14. The Administration has advised that upon passage of the Bill, SCED will make subsidiary legislation to implement the proposed phthalate control. The above-mentioned scope of application will be reflected in the relevant subsidiary legislation. At the request of the Bills Committee, the Administration has provided a supplementary information paper explaining the proposed framework for regulating the concentration of phthalates in toys and children's products including the scope of application, a copy of which is in **Appendix IV**.

Internal/inaccessible parts

15. The Bills Committee has enquired whether the proposed phthalate control applies to internal/inaccessible parts of plasticized materials of toys and children's products. The Administration has advised that it is not the Administration's policy intention that the proposed phthalate control applies to internal/inaccessible parts (e.g. cables enclosed inside a toy), if they cannot be mouthed by or come into close contact with young children in a reasonably foreseeable manner.

16. The Administration has explained that the main consideration for determining whether a toy or children's product (or a part of it) should be subject to the proposed phthalate control is whether it has any plasticized part that can be

mouthed by or come into close contact with young children. The Administration has advised that "can be placed into the mouth of a child under 4 years of age" refers to a toy or children's product that can be brought to the child's mouth and kept there so that it can be sucked or chewed. According to the Administration, this formulation is in line with that adopted in the United States and Canada. To address members' concern, the Administration will consider how provisions concerning internal/inaccessible parts should be reflected in the proposed subsidiary legislation, taking reference from the practices of overseas economies.

Implementation date of the new regulatory framework

17. The Bills Committee has noted that the subsidiary legislation on the proposed phthalate control will be made after the enactment of the Bill. The subsidiary legislation will be introduced into LegCo for scrutiny under the negative vetting procedure. Some members including Mr Jeffrey LAM and Mr WONG Ting-kwong have expressed the view that the Administration should consult the trade, particularly the small and medium enterprises of the toy manufacturing sector, and take into account their views in proposing the implementation date of the proposed phthalate control. The Administration has agreed to take on board members' view. The Administration has also advised that the proposed regulatory framework is expected to come into operation around mid-2014.

Proposed definition of "children's product"

18. The legal adviser to the Bills Committee has expressed concern that the drafting of the proposed new section 2B(1)(b) which seeks to amend the definition of "children's product" makes it capable of covering certain baby food and pharmaceutical products if they contain any plasticized material. Such examples include biscuits for infants at teething stage, and medicine used to facilitate the hygiene, relaxation or sleep of children under four years old. The legal adviser has sought the Administration's clarification as to whether it is the legislative intent of the Bill to include certain food and pharmaceutical products as "children's product", and whether the Bill will have any implication on the operation of other existing legislation in relation to food safety and pharmaceutical products.

19. The Administration has explained that it is not the policy intent to impose the requirements for "children's product" under the Bill to regulate food or pharmaceutical products. Such products are regulated under other existing legislation, such as the Public Health and Municipal Services Ordinance (Cap. 132), the Food Safety Ordinance (Cap. 612) and the Pharmacy and Poisons Ordinance (Cap. 138).

20. The Administration has advised that plasticized materials are not allowed to be added into food as ingredients. Medicine for children under four years of age should normally contain no plasticized materials. Therefore, the Administration considers that, in practice, there would unlikely be any food and pharmaceutical products for children under four years old that would be caught by the definition of "children's product" under the proposed new section 2B(1)(b). That said, the Administration has agreed to review if the formulation in the proposed definition is sufficient for the intended purpose. After review, the Administration has proposed a Committee Stage amendment ("CSA") to provide for a new section 2AA to expressly state that the Ordinance does not apply to –

- (a) food, as defined by section 2(1) of Cap. 132;
- (b) medicine, as defined by section 2(1) of Cap. 138; or
- (c) Chinese herbal medicine or proprietary Chinese medicine, as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).

The Administration has explained that the proposed CSA seeks to put beyond doubt about the long-standing policy intention that food and medicine are not to be regulated under the Ordinance.

Drafting issues

- (a) *Chinese text of the proposed new section 2B(1)(b)(ii) – replacement of the expression "鬆馳" by "鬆弛"*

21. In the light of comments made by members and the legal adviser to the Bills Committee, the Administration will introduce a CSA to replace the expression "鬆馳" by "鬆弛" in the Chinese text of the proposed new section 2B(1)(b)(ii) which reads "是擬便利未滿4歲兒童的餵哺、衛生、鬆馳、睡眠、吮吸或長牙...".

- (b) *Chinese text of the proposed new section 2B(1)(b)(ii) – use of the expression "長牙" to reflect the meaning of "teething"*

22. The legal adviser to the Bills Committee has expressed concern that the expression "長牙", corresponding with the English text "teething of a child under 4 years of age", is capable of meaning "long teeth" or "teeth-growing" in Chinese usage. To avoid ambiguity, the legal adviser has suggested replacing the expression "長牙" by "出牙" which is more commonly used in Chinese language.

23. The Administration considers that the expression "長牙" should be read in the context of the proposed new section 2B(1)(b)(ii), and the context of that section clearly indicates that the expression "長牙" ("teething") in "便利...長牙" ("to facilitate the ...teething of") means the growth or development of teeth instead of "long teeth". The Administration therefore considers that the meaning of "長牙" in section 2B(1)(b)(ii) is clear and the use of the expression in that section would not give rise to any ambiguity.

24. Ms Cyd HO and Ir Dr LO Wai-kwok have expressed preference for the expression "出牙" which, in their view, is more commonly used to reflect the meaning of "teething" and easier to be understood. Ir Dr LO has pointed out that the expression "出牙" is adopted by the Department of Health as the Chinese term for "teething". The Administration has further explained that the expression "teething" in the English text should be read in the context of the proposed new section 2B(1)(b)(ii), and in that context, it refers to the growth or development of teeth. When reading in the context of the Chinese text of that section, the expression "長牙" in "便利未滿4歲兒童的餵哺...或長牙" could convey the same meaning as in the English text. However, if "長牙" is replaced by the expression "出牙", the Administration considers that the Chinese text may possibly be interpreted as referring only to the emergence of deciduous teeth of children through the gums. The Administration has suggested replacing "長牙" with "牙齒生長" to reflect the meaning of "teething", but the proposed alternative is considered clumsy by some members. Meanwhile, Mr Steven HO considers the expression "長牙" acceptable, while Mr Jeffrey LAM and Mr WONG Ting-kwong have no objection to any of the renditions. The Administration reiterates its above concern on the use of the expression "出牙" from the legal point of view. Taking account of members' views, the Administration has proposed the retention of "長牙" in the Chinese text of the proposed new section 2B(1)(b)(ii).

CSAs

25. The Bills Committee agrees to the Administration's proposed CSAs which are set out in **Appendix V**. The Bills Committee has not proposed any amendment.

Resumption of Second Reading debate

26. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 18 December 2013.

Advice Sought

27. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
5 December 2013

Appendix I

Proposed Controls on Maximum Amount of Phthalates in Toys and Children's Products

Toys or children's products	Safety standards or requirements
A toy (i.e. a product or material designed or clearly intended for use in play by a child) that contains any plasticized material	<p>(a) The total weight of the chemicals di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) and benzyl butyl phthalate (BBP) in the toy must not exceed 0.1% of the total weight of all the plasticized materials in the toy.</p> <p>(b) If the toy can, in a reasonably foreseeable manner, be entirely placed in the mouth of a child under 4 years of age, the total weight of the chemicals diisononyl phthalate (DINP), diisodecyl phthalate (DIDP) and di-n-octyl phthalate (DNOP) in the toy must not exceed 0.1% of the total weight of all the plasticized materials in the toy.</p> <p>(c) If only a part or parts of the toy can, in a reasonably foreseeable manner, be placed in the mouth of a child under 4 years of age, the total weight of the chemicals diisononyl phthalate (DINP), diisodecyl phthalate (DIDP) and di-n-octyl phthalate (DNOP) in such part or parts must not exceed 0.1% of the total weight of all the plasticized materials in such part or parts.</p>
A children's product that is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking	(a) The total weight of the chemicals di(2-ethylhexul) phthalate (DEHP), dibutyl phthalate (DBP) and benzyl butyl phthalate (BBP) in the product must not exceed 0.1%

Toys or children's products	Safety standards or requirements
<p>or teething of a child under 4 years of age and that contains any plasticized material</p>	<p>of the total weight of all plasticized materials of the product.</p> <p>(b) If the product can, in a reasonably foreseeable manner, be entirely placed in the mouth of a child under 4 years of age, the total weight of the chemicals diisononyl phthalate (DINP), diisodecyl phthalate (DIDP) and di-n-octyl phthalate (DNOP) in the product must not exceed 0.1% of the total weight of all the plasticized materials in the product.</p> <p>(c) If only a part or parts of the product can, in a reasonably foreseeable manner, be placed in the mouth of a child under 4 years of age, the total weight of the chemicals diisononyl phthalate (DINP), diisodecyl phthalate (DIDP) and di-n-octyl phthalate (DNOP) in such part or parts must not exceed 0.1% of the total weight of all the plasticized materials in such part or parts.</p>

**Bills Committee on Toys and Children's Products Safety
(Amendment) Bill 2013**

Membership list

Chairman	Hon Jeffrey LAM Kin-fung, GBS, JP
Members	Hon Abraham SHEK Lai-him, GBS, JP Hon WONG Ting-kwong, SBS, JP Hon Cyd HO Sau-lan Hon Alan LEONG Kah-kit, SC Hon Steven HO Chun-yin Dr Hon Fernando CHEUNG Chiu-hung Hon SIN Chung-kai, SBS, JP Ir Dr Hon LO Wai-kwok, BBS, MH, JP Total : 9 Members
Clerk	Ms Joanne MAK
Legal Adviser	Ms Clara TAM
Date	24 October 2013

《2013年玩具及兒童產品安全(修訂)條例草案》委員會
Bills Committee on Toys and Children's Products Safety
(Amendment) Bill 2013

曾向法案委員會提交意見書的團體/個別人土名單
List of organizations/individuals which/who have
made submissions to the Bills Committee

名稱

1. 美泰玩具亞太有限公司
2. 埃克森美孚香港有限公司
3. Professor Jim Bridges
Emeritus Professor of Toxicology and Environmental Health
University of Surrey, UK
4. 香港玩具協會
5. 消費者委員會

Name

1. Mattel Asia Pacific Sourcing Limited
2. ExxonMobil Hong Kong Limited
3. Professor Jim Bridges
Emeritus Professor of Toxicology and Environmental Health
University of Surrey, UK
4. Hong Kong Toys Council
5. Consumer Council

**Proposed Framework for Regulating
the Concentration of Phthalates in Toys and Children’s Products
under the Toys and Children’s Products Safety Ordinance (Cap. 424) (the Ordinance)**

Six Types of Phthalates to be Controlled under the Proposed Framework

The six types of phthalates are -

Group 1 phthalates:

- (a) DEHP, which means di(2-ethylhexyl) phthalate, bis-(2-ethylhexyl) phthalate or diethylhexyl phthalate;
- (b) DBP, which means dibutyl phthalate;
- (c) BBP, which means benzyl butyl phthalate;

Group 2 phthalates:

- (a) DINP, which means diisononyl phthalate;
- (b) DIDP, which means diisodecyl phthalate; and
- (c) DNOP, which means di-n-octyl phthalate.

Scope of Application

- 2. The proposed control applies to -
 - (a) a toy within the meaning of paragraph (a) of the definition of “toy” in section 2 of the Ordinance;
*[Note: Paragraph (a) of the definition states that a toy is a product or material that is designed or clearly intended for use in play by a child. The proposed control does **not** apply to paragraph (b) of the definition, which refers to the packaging of a toy.]*
 - (b) a Schedule 2 product referred in the proposed new section 2B(1)(a) and which is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of

age and contains any plasticized material; and

*[Note: The proposed new section 2B(1)(a) refers to products in Schedule 2 to the Ordinance. The proposed control does **not** apply to the proposed new section 2B(2)(a), which refers to the packaging of such a Schedule 2 product.]*

- (c) a children's product within the meaning of the proposed new section 2B(1)(b) of the Ordinance.

*[Note: The proposed new section 2B(1)(b) refers to products (other than toys and Schedule 2 products) that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and contains any plasticized material. The proposed control does **not** apply to the proposed new section 2B(2)(b), which refers to the packaging of such a product.]*

[Note: It means that the proposed control does not apply to the packaging of the above products (paragraph (b) of the definition of toy and proposed new section 2B(2)).]

The Proposed Control on the Concentration of Phthalates in Toys

Concentration of Group 1 phthalates

3. The total weight of all Group 1 phthalates in a toy must not exceed 0.1% of the total weight of all the plasticized materials in the toy.

Concentration of Group 2 phthalates

4. If a toy can be entirely placed into the mouth of a child under 4 years of age (i.e. the toy can be brought to the child's mouth and kept there so that it can be sucked or chewed) in a reasonably foreseeable manner, the total weight of all Group 2 phthalates in the toy must not exceed 0.1% of the total weight of all the plasticized materials in the toy.

5. If only a part or parts of a toy can be placed into the mouth of a child under 4 years of age (i.e. such part(s) can be brought to the child's mouth and kept there so that it can be sucked or chewed) in a reasonably foreseeable manner, the total weight of all Group 2 phthalate in such part(s) must not exceed 0.1% of the total weight of all the plasticized materials in such part(s).

The Proposed Control on the Concentration of Phthalates in Children's Products

Concentration of Group 1 phthalates

6. The total weight of all Group 1 phthalates in a children's product must not exceed 0.1% of the total weight of all the plasticized materials in the product.

Concentration of Group 2 phthalates

7. If a children's product can be entirely placed into the mouth of a child under 4 years of age (i.e. the product can be brought to the child's mouth and kept there so that it can be sucked or chewed) in a reasonably foreseeable manner, the total weight of all Group 2 phthalates in the product must not exceed 0.1% of the total weight of all the plasticized materials in the product.

8. If only a part or parts of a children's product can be placed into the mouth of a child under 4 years of age (i.e. such part(s) can be brought to the child's mouth and kept there so that it can be sucked or chewed) in a reasonably foreseeable manner, the total weight of all Group 2 phthalates in such part(s) must not exceed 0.1% of the total weight of all the plasticized materials in such part(s).

DRAFT

Toys and Children's Products Safety (Amendment) Bill 2013

Committee Stage

Amendments to be moved by the Secretary for Commerce and Economic
Development

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the heading, by adding “ 2AA, ” before “ 2A ”.
4	By adding before the proposed section 2A— “2AA. Application of Ordinance This Ordinance does not apply to— (a) food as defined by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); (b) medicine as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138); or (c) Chinese herbal medicine, or proprietary Chinese medicine, as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).”.
4	In the proposed section 2B(1)(b)(ii), in the Chinese text, by deleting “鬆馳” and substituting “鬆弛”.