

立法會
Legislative Council

LC Paper No. CB(1)242/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/14/2

**Bills Committee on Promotion of Recycling and Proper Disposal
(Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015**

**Minutes of seventh meeting
held on Tuesday, 3 November 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Ir Dr Hon LO Wai-kwok, SBS, MH, JP (Chairman)
Hon Vincent FANG Kang, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon Charles Peter MOK, JP
Dr Hon Kenneth CHAN Ka-lok
Hon KWOK Wai-keung

Members absent : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon CHAN Hak-kan, JP
Hon WU Chi-wai, MH

Public Officers attending : **For item II**

Mr Samson LAI
Assistant Director (Waste Management Policy)
Environmental Protection Department

Dr Alain LAM
Principal Environmental Protection Officer
(Waste Management Policy)
Environmental Protection Department

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting & Administration)
Department of Justice

Miss Elaine NG
Senior Government Counsel
Department of Justice

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Doris LO
Senior Council Secretary (1)1

Action

I. Confirmation of minutes

(LC Paper No. CB(1)48/15-16 — Minutes of the meeting held on
18 September 2015)

The minutes of the meeting held on 18 September 2015 were confirmed.

II. Meeting with the Administration

Matters arising from the meeting on 18 September 2015 and
consideration of Committee Stage amendments proposed by the
Administration

(LC Paper No. CB(1)50/15-16(01) — List of follow-up actions arising
from the meeting on
18 September 2015

LC Paper No. CB(1)50/15-16(02) — Administration's response to the
issues raised at the meeting on
18 September 2015 and draft
Committee Stage amendments
proposed by the Administration)

Action

2. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Follow-up actions to be taken by the Administration

Admin 3. The Administration was requested to explain the policy and legal considerations for the proposed Committee Stage amendments ("CSAs") to the definitions of "distribute", "supplier" and "use", and the related CSAs to the new sections 32(1), 37(1)(a) and (b) and 40 (which were proposed under the Bill to be added to the Product Eco-responsibility Ordinance (Cap. 603) ("PERO")).

Admin The Administration was also requested to clarify whether these CSAs had the effect of expanding the scope of regulation under the respective said provisions in the Bill and, if so, to provide the relevant legal and policy considerations for such expansion (and if the answer was in the negative, the relevant legal justifications).

Admin 4. In the light of section 13 of PERO as proposed to be amended by the Bill and the CSAs which were proposed to be made to the new sections 33, 34 and 44 (which were also proposed under the Bill to be added to PERO), the Administration is requested to confirm whether the decisions made under the new sections 33 and 34 were appealable matters to be specified pursuant to section 13 of PERO.

Admin 5. The Administration was requested to consider, in the light of the CSAs made to the new section 40(1) that was proposed to be added by the Bill to PERO, if the new section 40(2) should also be amended to clarify whether entering into an agreement to exhibit any piece of regulated electrical equipment concerned (which was considered as a kind of use under the definition of "use" in the Bill) constituted a kind of use which was proposed under the Bill.

III. Any other business

Date of next meeting

6. The Chairman said that a further meeting would likely be necessary to consider the Administration's response to the outstanding issues, and further/revised CSAs, if any, proposed by the Administration. He would work out the date of the next meeting with the Clerk, taking into account the progress of the Administration's preparation of the relevant documents. Members would be informed of the meeting arrangements in due course.

Action

(Post-meeting note: With the concurrence of the Chairman, the eighth meeting was scheduled for Wednesday, 2 December 2015, at 8:30 am. The notice of meeting was issued to members vide LC Paper No. CB(1)186/15-16 on 24 November 2015. At the request of the Administration, the meeting was subsequently re-scheduled to 16 December 2015, at 8:30 am. The notice of re-scheduling the meeting was issued to members vide LC Paper No. CB(1)221/15-16 on Wednesday, 30 November 2015.)

7. There being no other business, the meeting ended at 6:00 pm.

Council Business Division 1
Legislative Council Secretariat
2 December 2015

**Bills Committee on Promotion of Recycling and Proper Disposal
(Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015**

**Proceedings of the seventh meeting
on Tuesday, 3 November 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000134 - 000210	Chairman	The minutes of the meeting held on 18 September 2015 (LC Paper No. CB(1)48/15-16) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000211 - 012919	Chairman Administration Assistant Legal Adviser 10 ("ALA10") Mr Andrew LEUNG Mr WONG Ting-kwong	<p>Briefing by the Administration on its response to the issues raised at the meeting on 18 September 2015, and proposed Committee Stage amendments ("CSAs") to the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 ("the Bill") (LC Paper No. CB(1)50/15-16(02))</p> <p><u>CSA to add Clause 2A to the Bill and consequential CSAs</u></p> <p>Members raised no query to the CSA which sought to add Clause 2A to the Bill to provide for a "recycling levy" ("the levy") (originally referred to as "recycling fee") and consequential CSAs.</p> <p><u>CSAs to Clause 8 of the Bill</u></p> <p>The Chairman queried about the legal and policy considerations in respect of the CSAs to the definitions of "distribute", "supplier" and "use" and the related new sections 32(1), 37(1)(a) and (b) and 40 (which were proposed under the Bill to be added to the Product Eco-responsibility Ordinance (Cap. 603) ("PERO")) as the proposed amendments appeared to have expanded the scope of regulation under the said provisions to cover the mere "use" of regulated electrical equipment ("REE") whether or not for business purposes.</p> <p>Mr Andrew LEUNG and Mr WONG Ting-kwong sought clarifications on whether the person concerned would be regarded as a "supplier" in</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the following situations –</p> <ul style="list-style-type: none">(a) a person giving a piece/certain pieces of REE he purchased, whether or not through an online website, directly from a manufacturer operating outside Hong Kong to his employee(s) for use at no charge; and(b) a person originally purchased, whether or not through an online website, a piece of REE directly from a manufacturer operating outside Hong Kong for his personal use but instead transferred it unused to another person at a cost. <p>Mr Andrew LEUNG was worried that indiscriminate regulation of the "use" of REE, irrespective of whether it was for business purposes or not, would in some cases cause inadvertent contravention of relevant offences.</p> <p>Mr WONG Ting-kwong took the view that the CSAs might in effect expand the scope of regulation too far and likely encourage parallel trading of REE.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none">(a) the aforesaid CSAs were proposed with a view to plugging the loopholes that a supplier who distributed REE but might not carry on a business of doing so, or who used REE directly, or who only distributed REE directly to a consumer, was not subject to the payment of the levy;(b) it was not common for consumers to purchase REE directly from manufacturers operating outside Hong Kong; and(c) a person purchasing REE from manufacturers operating outside Hong Kong for personal use would not be required under the Bill to be registered as a supplier and pay the levy. However, if the person imported in the course of the person's business and distributed the REE to another person in Hong Kong, the person importing the REE would be subject to the relevant regulation under the Bill. Similarly, parallel traders would also be subject to the regulation under the Bill.	

Time marker	Speaker	Subject(s)	Action required
		<p>ALA10 sought clarification on whether a registered supplier who had imported a batch of REE into Hong Kong for distribution but subsequently donated part or all of the REE to charity was required to pay the levy for part or all of the REE.</p> <p>In reply, the Administration advised that the registered supplier concerned would be required to submit returns and pay the levy in respect of all the REE distributed and donated, given that "donating" REE as a gift, whether or not for business purposes, would be regarded as a kind of use under the definition of "use" (as amended by the CSAs) in the Bill.</p> <p>At members' requests, the Administration agreed to provide written information to explain the policy and legal considerations for the CSAs to the definitions of "distribute", "supplier" and "use", and the related CSAs to the proposed new sections 32(1), 37(1)(a) and (b) and 40 of PERO; and clarify whether these CSAs had the effect of expanding the scope of regulation under the respective said provisions in the Bill and, if so, to provide the relevant legal and policy considerations for such expansion (and if the answer was in the negative, the relevant legal justifications).</p> <p>Discussion on –</p> <p>(a) the operative effect of the CSAs in respect of the proposed new section 37(1)(b) of PERO (i.e. the CSAs to replace "consumer" by "person" in subsection (i), and delete subsection (ii) "distributes the equipment for further distribution in Hong Kong to a consumer; or");</p> <p>(b) whether the term "hire-purchase" in paragraphs (a) and (c) of the definition of "distribute" (as amended by the CSAs to the proposed new section 31 of PERO) was commonly used and understood, or any references to the definitions in dictionaries should be made; and</p> <p>(c) the legal implications of imposing a statutory duty on the Director of Environmental Protection by the CSAs which substituted "<u>may</u> register" and "<u>may</u> cancel the</p>	<p>Admin (paragraph 3 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>registration" with "<u>must</u> register" and "<u>must</u> cancel the registration" respectively under the proposed new sections 33 and 34 of PERO, and the legal consequences of non-compliance, if any.</p> <p>The Administration was requested to provide written responses to the following matters raised by ALA10 at the meeting –</p> <p>(a) in the light of section 13 of PERO as proposed to be amended by the Bill and the CSAs to the proposed new sections 33, 34 and 44 of PERO, whether the decisions made under the new sections 33 and 34 were appealable matters to be specified pursuant to section 13 of PERO; and</p> <p>(b) in the light of the CSAs to the proposed new section 40(1) of PERO, whether the proposed new section 40(2) of PERO should also be amended to clarify if entering into an agreement to exhibit any piece of REE concerned (which was considered as a kind of use under the definition of "use" in the Bill) constituted a kind of use which was proposed under the Bill.</p> <p>Members raised no query to other CSAs to Clause 8 of the Bill.</p> <p><u>CSAs to Clauses 9, 14, 15 and 16 of the Bill</u></p> <p>Members raised no query to the CSAs.</p>	<p>Admin (paragraph 4 of the minutes refers)</p> <p>Admin (paragraph 5 of the minutes refers)</p>
<i>Agenda Item III – Any other business</i>			
012920 - 013200	Chairman Administration	Meeting arrangements	