

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

This note serves to provide supplementary information about the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 in response to the letter from the Assistant Legal Adviser dated 17 March 2015, which requests information or clarifications on the following matters –

Definitions and their Respective Interpretations

- (a) *in relation to the definition of “residential property”, clarification on whether the definition includes a hotel, guesthouse or “serviced apartment”;*
- (b) *in relation to the definition of “tenant”, clarification on whether the definition includes a customer who is permitted to stay in a hotel, guesthouse or “serviced apartment”;*

2. The proposed section 35(2) provides for the obligations of a seller when he distributes any regulated electrical equipment (“REE”). A “seller” means “a person who carries on a business of distributing REE to consumers” under the proposed section 31. While a retailer or a supplier who is engaged in direct sale to consumers may qualify as a “seller”, we are also aware that it is not uncommon for other persons, such as property developers, landlords, interior design companies, etc. to provide REE as a package in the course of sale, letting or renovation of a residential property. Such property developers, landlords or interior design companies will fall under the definition of “seller”. By the proposed section 35(4), they will not be required to undertake the obligations of a seller such that the scope of affected trades will not be unnecessarily widened. Against this background –

- (a) under the proposed section 31, “residential property” means any real property constituting a separate unit used, or intended to be used, solely or principally for human habitation. The definition intends to cover a hotel, guesthouse or “serviced apartment”.
- (b) under the proposed section 35(6), “tenant” includes a

person who occupies a residential property under a licence (as a person may be given a right to occupy a residential property under a tenancy or a licence). It is our intent that “tenant” includes a customer who is permitted to stay in a hotel, guesthouse or “serviced apartment”.

(c) *in relation to the respective definitions for items of electrical and electronic equipment which are specified in the proposed Schedule 6, the considerations in deciding whether a certain function is a “principal function” or “one of the principal functions” of an item in case where the item possesses multiple functions;*

3. For a given electrical/electronic apparatus, whether a certain function is the principal function of the appliance can be determined by objective factors, such as their design and primary use. An electrical/electronic apparatus may have one or more principal functions.

Charging of Recycling Fee

(d) *in respect of the proposed section 37(1), which provides that a recycling fee is payable by a registered supplier for any piece of regulated electrical equipment (REE) if it satisfies the requirements in the proposed section 37(1)(a)(i) or (ii) and the supplier distributes the equipment to a consumer in accordance with the proposed section 37(1)(b)(i) or distributes the equipment for further distribution in Hong Kong to a consumer as provided in the proposed section 37(1)(b)(ii), clarification on whether the proposed recycling fee would be payable if the consumer concerned is an overseas consumer, in the light of paragraph 13(c) of the LegCo Brief (File Ref: EP CR 9/150/28 Pt.4) which states that, among other things, exports of locally manufactured REE and re-exports of imported REE which will ultimately be used outside Hong Kong will be excluded from the collection of the proposed recycling fees; and*

4. As explained in paragraph 13(c) of the Legislative Council (LegCo) Brief, we will collect from the registered supplier the proposed recycling fees for REE that is “used” in Hong Kong or “distributed” to the Hong Kong market, but not REE exported out of Hong Kong which will ultimately be used outside Hong Kong. Therefore, in the case of a consumer who is an individual coming from outside Hong Kong, the

proposed recycling fee is still payable if the REE is “distributed” to the Hong Kong market even though the consumer may use the item outside Hong Kong.

Basis of Prescribing the Proposed Recycling Fee

- (e) *in respect of the proposed section 44(3), which provides that “the amount of recycling fee payable under section 37 is not limited by reference to the amount of administrative or other costs incurred, or likely to be incurred, in the provision of any particular service, facility or matter” and in the light of paragraph 12 of the LegCo Brief, information on –*
- (i) *the types of “other cost” incurred (or likely to be incurred) that are not “administrative” in the proposed section 44(3);*
 - (ii) *whether the recycling fees are solely for the purpose of achieving a full cost recovery; and*
 - (iii) *if the answer to (ii) is in the affirmative, the legal justification of not limiting the amount of recycling fee payable by reference to the costs that are referred to in the proposed section.*

5. The use, recycling and disposal of REE will not only result in the direct administrative costs for the producer responsibility scheme (“PRS”) but also entails other economic, environmental and social costs associated with the relevant activities. By charging a recycling fee, we may raise funds to finance the proper waste management of regulated e-waste, thus reflecting the “polluter pays” principle. The fee may also have an impact on discouraging the excessive use of REE. We will review the recycling fee from time to time to ensure that it is set at an appropriate level to achieve the environmental objective in addition to seeking the full-cost recovery of the operation of the PRS. The recycling fee will be prescribed by regulation made under the proposed section 44(1)(c) of the Product Eco-responsibility Ordinance. As such regulation may only be made after consultation with the Advisory Council on the Environment and is subject to the approval of the LegCo, the consultation and scrutiny procedures will ensure that the determination of the recycling fee is transparent and takes all relevant factors into consideration.

**Environmental Protection Department
April 2015**