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

**Background brief
prepared by the Legislative Council Secretariat**

Purpose

This paper provides background information on the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 ("the Bill"), and gives a brief account of the views and concerns expressed by members of the Panel on Environmental Affairs ("the Panel") on the proposed Producer Responsibility Scheme ("PRS") on waste electrical and electronic equipment ("WEEE").

Background

2. According to the Administration, about 70 000 tonnes of WEEE are generated in Hong Kong annually, most of which are exported for reuse or recovery of valuable materials. The reliance on export may not be sustainable in the long run because demand for second-hand products in markets outside Hong Kong will decline over time with progressive economic development and tightening of import control over WEEE in the developing countries.

3. In view of the above situation, the Administration conducted a public consultation in 2010 and obtained general community support to introduce legislation for the proper management of WEEE through a mandatory PRS.

4. In parallel, the Administration put forward a funding proposal for the development of a WEEE treatment and recycling facility ("WEEETRF")¹

¹ As set out in the funding proposal to the Public Works Subcommittee (Paper No. [PWSC\(2014-15\)39](#)), the proposed scope of WEEETRF includes (a) design and construction of WEEETRF to treat and recycle 30 000 tonnes of WEEE per annum; (b) provision of treatment and recycling equipment and machinery; and (c) provision of architectural and landscaping works for WEEETRF. The estimated expenditure of the project is \$548.6 million.

operated under a design-build-and-operate contract at the EcoPark in Tuen Mun. WEEETRF is an essential infrastructure for the launch of the mandatory PRS on WEEE. The proposal was approved by the Finance Committee of the Legislative Council ("LegCo") on 27 February 2015 and the facility is expected to be completed for commissioning in early 2017.

The Bill

5. The Bill seeks to amend the Product Eco-responsibility Ordinance (Cap. 603) ("PERO") and the Waste Disposal Ordinance (Cap. 354) ("WDO") to provide for a scheme for the recycling and disposal of specified types of electrical equipment and electronic equipment and make technical amendments to related legislation. The key provisions of the Bill are set out in the ensuing paragraphs.

Scope of regulation

6. The Bill seeks to regulate the recycling and disposal of regulated electrical equipment ("REE") which, in gist, is defined (vide clause 3 of the Bill) to mean any air conditioner, refrigerator, washing machine, television, computer, printer, scanner or monitor that has not been used by any consumer.

Scheme of control

Waste Disposal Ordinance (Cap. 354)

7. The Bill proposes to apply the licensing control scheme under section 16 of WDO to the disposal of any REE that has been abandoned ("e-waste"²) where disposal³, in relation to e-waste, includes storage, treatment, reprocessing and recycling (but does not include repair). Further, the Bill proposes, under clause 12(1), in respect of the licensing requirement, to provide for the following exemptions from the use of land or premises for –

- (a) the disposal of e-waste that is not chemical waste on land or premises with an area of not more than 100 square metres ("m²");
- (b) the storage of e-waste with a total volume of not more than 50 m³ (measured by the maximum width by the maximum height and the maximum length); or
- (c) the storage of e-waste on premises located inside a multi-storey

² The definition of "e-waste" is proposed under clause 11(3) of the Bill.

³ The definition of "disposal" is proposed under clause 11(1) of the Bill.

building.

8. Furthermore, the waste disposal authority, i.e. the Director of Environmental Protection ("DEP"), must not grant a waste disposal licence in respect of any land or premises for the disposal of e-waste unless the authority is satisfied with specified circumstances⁴. Any person who contravenes the said licensing requirement in section 16 of WDO commits an offence⁵.

9. In addition, the Bill proposes, under clause 15, to impose permit control under WDO such that the import and export of e-waste will require a permit issued by the waste disposal authority. Any person who, without a permit, does anything for which such a permit is required commits an offence. The Bill also proposes, under clause 23 of the Bill, to amend the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) to prohibit the disposal of e-waste at any designated waste disposal facility.

Product Eco-responsibility Ordinance (Cap. 603)

10. The Bill proposes to add a new Part 4 to PERO for implementing the mandatory PRS. The new Part 4 consists of six Divisions, as follows –

- (a) Division 1 adds certain definitions to PERO;
- (b) Division 2 provides for the registration of suppliers of REE. Under the Bill, a person who carries on a business of distributing REE for further distribution in Hong Kong without registration commits an offence;
- (c) Division 3 provides for the obligations of registered suppliers and sellers, where a registered supplier distributing any REE is required to provide a recycling label for the REE, to pay a recycling fee for the REE⁶ and submit returns and audit report to DEP. A registered supplier who contravenes any of the said requirements commits an offence;

⁴ The circumstances are (a) the land or premises has a waste disposal facility that has the capacity to dispose such minimum quantity of e-waste and within such period as may be prescribed and (b) the said facility is capable of disposing e-waste in such other manner as may be prescribed. Members may refer to clause 17 of the Bill for details.

⁵ Section 18(1) of WDO provides for penalties for an offence under section 16 of WDO.

⁶ According to paragraph 13(c) of the LegCo Brief, exports of locally manufactured REE or re-exports of imported REE which will ultimately be used outside Hong Kong will not be subject to the proposed recycling fee. Further, paragraph 12 of the LegCo Brief states that subsidiary legislation in relation to the charging and amount of recycling fees will be submitted to LegCo for approval in due course.

- (d) Division 4 provides for the arrangement of REE removal services by sellers. Under the Bill, a removal service plan must first be endorsed by DEP before a seller can distribute any REE concerned to a consumer. The Bill further proposes that a collector of any REE is required to ensure that the REE concerned is accepted by a recycler;
- (e) Division 5 proposes to add the new section 44 to PERO so that the Secretary for the Environment ("SEN") is empowered to make regulations. Such regulations include any regulation which concerns the recycling fee for each class of REE, the payment of recycling fees by a registered supplier and the requirements of the removal service plan. Further, any regulation made pursuant to section 44 will be subject to the approval of LegCo; and
- (f) Division 6 contains supplementary provisions such as exemptions and the power of SEN to amend the proposed Schedules 6 and 7 to PERO.

Commencement

11. The Bill, if passed, will come into operation on a day to be appointed by SEN by notice published in the Gazette.

Deliberations of the Panel

12. The Panel was consulted on the proposed PRS on WEEE at its meetings on 25 January, 22 February and 29 March 2010, and 28 November 2011 in the last term. In the current term, the Panel was briefed on the progress of the scheme at its meetings on 28 April 2014 and 26 January 2015. At the meeting on 28 April 2014, the Panel was also consulted on the funding proposal for the development of WEEETRF.

13. Members generally supported the principles of PRS on WEEE and the development of WEEETRF. Members, however, were concerned about the implementation details of the scheme, particularly the level of recycling fees, the sharing of the fees among stakeholders, the fees collection mechanism and proper treatment of WEEE, and the scope of electrical equipment subject to regulation. The major views and concerns expressed by members are summarized in the ensuing paragraphs.

Legislative proposal for introducing the PRS on WEEE

14. Some members pointed out that Hong Kong did not have a strong industrial base and most of the manufacturers of REE were operating outside Hong Kong's jurisdiction. The arrangement that the recycling fees would be collected from suppliers, instead of manufacturers, of REE under the proposed mandatory PRS on WEEE might defeat the purpose of PRS which sought to engage stakeholders including manufacturers to share responsibility for the treatment or disposal of end-of-life products.

15. The Administration acknowledged that Hong Kong lacked such a strong industrial base and an end-of-life fee was not very feasible in the community. It was therefore unlikely that local manufacturers would take a significant role in promoting and managing the collection and treatment of WEEE. Under these circumstances, the Administration considered that collecting the recycling fees from suppliers of REE could achieve a proper balance among different considerations.

Scope of REE

16. A member pointed out that the novelties in the functions and designs of mobile phones, notebook computers and tablet computers might make it difficult for the Administration to define in clear terms the scope of REE. The term "computer" had different definitions in different Ordinances. The member urged the Administration to provide clear definitions for different types of REE in the relevant legislation to avoid ambiguous interpretation.

17. The Administration responded that the legislative proposal for implementing the mandatory PRS on WEEE would clearly stipulate the definitions of REE. The Administration had made reference to the Mandatory Energy Efficiency Labelling Scheme which covered washing machines, refrigerators and air conditioners. As for "computer", a specific definition would be given for the purpose of the PRS, instead of relying on other existing definitions. The Administration would consider the need of extending the scope of REE at a later stage after accumulating further experience.

Charging of recycling fees

18. Regarding the setting of recycling fees, the Administration explained that in line with the "polluter pays" principle, recycling fees would be imposed to recover the full costs of the mandatory PRS on WEEE. The level of recycling fees would reflect the extent of treatment required. When determining the level of the recycling fees, the estimated capital and operating costs of WEEETRF

would be taken into account. The Administration would submit the proposal as subsidiary legislation to LegCo for approval in due course.

19. Some members expressed concern that if the respective portions of the recycling fees to be shouldered by different stakeholder groups such as manufacturers, importers, distributors, retailers and consumers were not stipulated expressly in the relevant legislation, a major if not entire part of the fees might ultimately be borne by consumers.

20. The Administration advised that it had engaged the trades in detailed discussion on the collection of the recycling fees. Two charging options had been envisaged. The first option was that importers and distributors of REE would act as the agents for collecting the recycling fees which would then have to be paid when their products were brought into Hong Kong for sale. Alternatively, retailers would collect the fees from consumers at the point of sale when a transaction was completed. Taking into account the views collected from the trades, their modes of operation and administrative convenience, the Administration considered that collecting the recycling fees from registered suppliers after the relevant REE had been distributed in Hong Kong could achieve a proper balance among different considerations. The sharing of the recycling fees among different stakeholder groups would be determined entirely by market forces.

Collection and recycling of REE

21. Some members expressed concern about how the Administration could ensure a proper and efficient collection of REE. The Administration explained that under the proposed mandatory PRS on WEEE, sellers of REE would be required under PERO to arrange for removal services. They were required to submit a removal service plan to DEP for approval, in which specifying that for every piece of new REE purchased by a consumer, an equivalent old product could be removed from a premises designated by the consumer for proper disposal at no extra charge to the consumer. While the sellers did not have to provide the collection and treatment services direct, each seller had to specify collection and recycling services provider(s) in the removal service plan and make necessary arrangements for the service provider(s) to provide the removal services. Suitable operational criteria might be prescribed in future legal provisions on removal services for broad consistency.

22. Some members opined that the Administration should consider providing incentives to consumers, such as cash rebates, so as to encourage them to use the removal services. In addition, the Administration should step up publicity and public education to prepare the community for the mandatory PRS on WEEE and enhance public understanding of the collection and recycling services.

Licensing requirement

23. Noting that the disposal of regulated e-waste on land or in premises with an area of not more than 100m² would not be required to obtain a waste disposal licence under section 16 of WDO, some members expressed concern whether some private WEEE recyclers might undertake the treatment process on a small scale such that their operation would not be subject to the proposed licensing control.

24. The Administration advised that local WEEE processing facilities required large operation space in order to carry out proper treatment and recycling of WEEE which involved various dismantling, detoxification and recovery processes. The proposed licensing control which required WEEE recyclers to obtain a waste disposal licence if their storage sites or premises for regulated e-waste were over 100m² could effectively bring most e-waste recycling operations under control. However, taking into consideration that some WEEE recyclers were undertaking part of the treatment process, the Administration proposed that disposal of regulated e-waste on land or in premises with an area of not more than 100m² would not be required to obtain a waste disposal licence with an aim to avoid undue impact on the operations of these recyclers.

WEEETRF

25. Noting that more than 70 000 tonnes of WEEE were generated in Hong Kong per year, members were concerned that the contractor of WEEETRF would only be obliged under contract terms to provide collection and treatment services for a target of a minimum of 30 000 tonnes per annum. The remaining 40 000 tonnes of WEEE would have to be dealt with by second-hand dealers and recyclers who might not have the technical know-how on proper treatment of WEEE.

26. The Administration advised that REE had accounted for some 85% of WEEE generated locally in Hong Kong in terms of weight, amounting to about 60 000 tonnes per year. Since WEEETRF would not be monopolizing WEEE recycling, the existing private WEEE recyclers in the market could continue their operation after WEEETRF commissioned in early 2017 provided that they could meet the prevailing requirements set by the Administration. Besides, the treatment capacity of WEEETRF could be expanded to 50 000 tonnes of WEEE per annum.

27. To prevent WEEETRF from vying with private WEEE recyclers for profits, a member opined that WEEETRF should undertake the recycling of toxic and hazardous electrical equipment which required sophisticated treatment

processes and were often costly for small-scale waste recycling operators. On the other hand, some members were concerned that the problem of "cherry picking" might arise if private recyclers chose to focus their business on recycling electrical equipment of high market value while WEEETRF would only be allowed to recycle toxic and hazardous equipment, which often required complicated treatment processes but had low commercial value in the second-hand market.

28. The Administration advised that it proposed to amend WDO such that a waste disposal licence would be required and would only be granted if the operator of a processing facility could demonstrate that the treatment, reprocessing and recycling of REE were environmentally sound. By so doing, the Administration would be able to ensure the proper handling of WEEE, provide a level playing field for private recyclers and WEEETRF, and prevent private recyclers from cherry picking high-market value electrical equipment and treating them in a low-cost and not environmentally-friendly manner.

Latest development

29. The Bill was gazetted on 13 March 2015 and tabled at the Council meeting of 18 March 2015. At the House Committee meeting on 20 March 2015, Members agreed that a bills committee should be formed to examine the Bill.

Relevant papers

30. A list of relevant papers is set out in the **Appendix**.

**Bills Committee on Promotion of Recycling and Proper Disposal
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List of relevant papers

Council/ Committee	Date of meeting	Papers
Panel on Environmental Affairs	28 November 2011	<p>Administration's paper on "A new producer responsibility scheme for waste electrical and electronic equipment" (LC Paper No. CB(1)424/11-12(03))</p> <p>Updated background brief on "A new producer responsibility scheme for waste electrical and electronic equipment" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)424/11-12(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)853/11-12)</p>
Panel on Environmental Affairs	28 April 2014	<p>Administration's paper on "Handling of waste electrical and electronic equipment (WEEE) and WEEE Treatment and Recycling Facility" (LC Paper No. CB(1)1292/13-14(03))</p> <p>Updated background brief on "Mandatory producer responsibility scheme for waste electrical and electronic equipment" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)1292/13-14(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)1812/13-14)</p> <p>Administration's supplementary paper on "Handling of waste electrical and electronic equipment (WEEE) and WEEE Treatment and Recycling Facility" (LC Paper No. CB(1)1499/13-14(01))</p>

Council/ Committee	Date of meeting	Papers
Panel on Environmental Affairs	26 January 2015	<p>Administration's paper on "Producer Responsibility Scheme on Waste Electrical and Electronic Equipment" (LC Paper No. CB(1)454/14-15(04))</p> <p>Updated background brief on "Mandatory producer responsibility scheme for waste electrical and electronic equipment" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)454/14-15(05))</p>
Legislative Council	18 March 2015	<p>Legislative Council Brief on "Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015" issued by the Environment Bureau/Environmental Protection Department (File Ref: EP CR9/150/28 Pt.4)</p>
House Committee	20 March 2015	<p>Legal Service Division Report on Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 (LC Paper No. LS52/14-15)</p>