

**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 (“Amendment Bill”) in response to the letter from the Assistant Legal Adviser dated 23 April 2015, which requests clarifications about the proposed amendments to the Product Eco-responsibility Ordinance (Cap. 603) (“PERO”) relating to a registered supplier’s liability to pay recycling fee in respect of regulated electrical equipment (“REE”) distributed to a consumer outside Hong Kong.

**The Issue**

2. Under the proposed section 37(1)(b)(i) and (ii) of the PERO, a registered supplier must pay recycling fee for an item of REE that is manufactured in Hong Kong in the course of the supplier’s business or that is imported into Hong Kong for distribution in the course of the supplier’s business if –

- (a) the supplier distributes the REE to a “consumer”, who, under the proposed section 31, means a person who acquires any REE otherwise than for selling it in the course of business;
- (b) the supplier distributes the REE for further distribution in Hong Kong to a “consumer”.

3. The ALA suggested that the term “consumer” seems to include a consumer who is, at all material times, located outside Hong Kong. The Government is required to explain the legal or legislative basis of the statement (in particular the part underlined) contained in a previous response given in April 2015, viz. the Government will collect from the registered supplier the proposed recycling fee 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 (Ref: CB(1) 712/14-15(03)).

## **The Administration's Response**

4. Our policy intent is that the proposed recycling fee is payable so long as the REE is “distributed” to a consumer in the local market. In other words, any REE distributed and acquired in Hong Kong is subject to the recycling fee, even if the consumer say a tourist subsequently leave the territory with the REE. In general, the law does not have extra-territorial application unless expressly provided. The term “consumer” in this context should therefore refer to a person in Hong Kong who acquires REE otherwise than selling it in the course of his business. We are of the view that the proposed section 37(1)(b) as drafted has served the policy intent above.

5. On the other hand, if a registered supplier distributes an item of REE directly to a consumer outside Hong Kong, the REE is not regarded as being “distributed” to the local market. Based on the Business Impact Assessment study conducted in February 2011, this should not be the main business of the suppliers practice<sup>1</sup>. In the unlikely event that such a transaction arises, the REE is taken to be exported out of Hong Kong by the registered supplier, so the proposed recycling fee will not be payable.

**Environmental Protection Department**  
**May 2015**

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<sup>1</sup> More specifically, as revealed from the BIA study, internet sales platforms are virtually non-existent for white goods (i.e. REE other than computer products). Internet operations of the sellers in Hong Kong only acts as an advertising tool or a marketing (rather than sales) platform. On the whole, internet sales of REE is insignificant in Hong Kong.