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

This note sets out the Government's response to the issues raised by Bills Committee members at the meetings on 2 June 2015, 22 June 2015 and 20 July 2015. We would like to propose certain Committee Stage Amendments ("CSAs") as outlined below. After taking into account the Bills Committee's further views, we will aim to present the full set of the draft CSAs and other minor touch-ups for Members' consideration.

## Issues Raised on 2 June 2015

***(a) According to the proposed section 37(1) under the Bill, a recycling fee is payable in respect of a piece of regulated electrical equipment ("REE") if the equipment satisfies any requirement under the proposed section 37(1)(a) and if the registered supplier concerned satisfies any requirement under the proposed section 37(1)(b). Further, according to the Administration's response in paragraphs 4 and 5 of LC Paper No. CB(1)919/14-15(02), it appears that the Administration's policy intent is that "the proposed recycling fee is payable so long as the REE is "distributed" to a consumer in the local market" and "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". Given that there is no reference to "local market" in the proposed section 37(1)(b)(i) nor in the proposed definition of "distribute", a registered supplier may not be aware of the policy intent by referring to the Bill. As such, the Administration is requested to consider amending the proposed section 37 and/or any other relevant provision with a view to reflecting the said policy intent clearly to avoid any misunderstanding in respect of the duty to pay the proposed recycling fee.***

2. We note the Bills Committee's concerns about the lack of specific reference to the local market under the proposed section 37(1)(b)(i) of the Product Eco-responsibility Ordinance (Cap. 603) ("PERO"). We suggest amending the definition of "distribute" so as to exclude the supply of REE to outside the local market. With such amendments (and other consequential amendments), there will be no need to refer to "for further distribution in Hong Kong" in the proposed section 37(1)(b)(ii).

***(b) The Administration is requested to explain the operation of the recycling fee mechanism where a registered supplier leases any regulated REE to a consumer, or transmits/ delivers the equipment for leasing; and how consumers can identify whether the REE leased to them is subject to a recycling fee or not if the REE has been leased by the supplier more than once.***

3. Under the proposed definition of REE under section 3(1) of the PERO, REE does not include an item that has been used by a consumer as defined by the proposed section 31. Therefore, when a new, unused item of electrical equipment or electronic equipment that falls under the proposed Schedule 6 of the PERO is leased (or transmitted or delivered for leasing) (cf. definition of "distribute" under the proposed section 31) by a supplier in Hong Kong, it involves distribution of an item of REE to a consumer. The supplier must be a registered supplier and must (amongst other things) pay recycling fee in accordance with the proposed section 37. On subsequent occasions where the same item of equipment is leased again, it will no longer be regarded as REE since it has already been used. In any case, the registered supplier will not have to pay twice since it has been explicitly prescribed in the proposed section 37(2) of the PERO that the recycling fee is payable only once in respect of any REE. Under proposed section 35, each item of REE distributed must come with a recycling label, which will serve an identification purpose confirming that the item is covered under the Producer Responsibility Scheme ("PRS") and a recycling fee has been or will be paid to the Government by a registered supplier.

***(c) The Administration is requested to address concerns/ views raised by members as follows:***

***(i) private collectors might dismantle e-waste to obtain component parts of higher commercial value for sale and dispose the residual parts without proper treatment (e.g. detoxification) by persons with waste disposal licence;***

***(ii) notwithstanding that both the operator of the Waste Electrical and Electronic Equipment Treatment and Recycling Facility ("WEEETRF") and private recyclers are subject to the same licensing requirements under the producer responsibility scheme, and WEEETRF is contractually obliged to accept any regulated e-waste including items of lower commercial value, WEEETRF may potentially drive existing or prospective private***

***recyclers out of the recycling market, or monopolize certain e-waste treatment services, as the former enjoys advantages over private recyclers in terms of its capital-intensive facilities that can provide a wider spectrum of or more specialized treatment services and bring about greater profits and market coverage.***

4. As required under contract, the WEEETRF operator will be responsible at the operation stage for both the collection and treatment of regulated e-waste and will be paid based on the amount of regulated e-waste collected and treated, measured by tonnage. The WEEETRF operator will remain duty bound to accept regulated e-waste that has been partially dismantled, even if the component parts of higher commercial value have been removed.

5. On the other hand, the proposed amendments to section 2 of the Waste Disposal Ordinance (Cap. 354) ("WDO") will, when read with section 16 of the WDO, have the effect of imposing licensing control on the disposal (including storage, treatment, reprocessing and recycling) of regulated e-waste. We have proposed certain exclusion under the proposed section 16(2)(ea) of the WDO such that disposal of regulated e-waste on land or premises with an area of not more than 100 $m^2$ will not require a waste disposal licence. But such exclusion applies only to regulated e-waste that is not chemical waste. If a regulated e-waste that is also chemical waste (e.g. containing components that are classifiable as chemical waste, such as CRT monitors containing lead), then any treatment process including dismantling of the regulated e-waste must be undertaken by a licensed person.

6. We have previously explained our assessment that with a design capacity of about 30 000 tonnes per annum, the WEEETRF will not crowd out any ***existing or prospective*** recyclers. On the contrary, our view is that it is necessary to develop the WEEETRF under the Public Works Programme in order to facilitate the effective collection and recycling of regulated e-waste in support of a mandatory PRS on waste electrical and electronic equipment, after careful review of the market situation[1]. Please refer to paragraphs 16 to 17 of LegCo Paper No. CB(1)919/14-15(01) for details.

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[1] Since 2011, the overall waste electrical and electronic equipment ("WEEE") treatment capacity in the private market is observed to have expanded. For instance, additional computer recyclers have set up recycling facilities in the EcoPark. However, such expansion in the private market is still insufficient to support the implementation of a mandatory PRS on WEEE of territory-wide scale.

**Issues Raised on 22 June 2015**

***(a) Under the proposed section 35(2) under the Bill, if a seller distributes any REE to a consumer, the seller is required, under the proposed section 35(2)(a), to provide to the consumer a recycling label that is appropriate for the equipment. Further, according to the Administration's view that was expressed at the meeting, it seems to be the Administration's policy intent that a supplier who distributes an item of REE to a consumer directly in Hong Kong will also be required to satisfy the said requirement. Given that "supplier" and "seller" are respectively defined in the Bill and, according to the respective definitions, a supplier may not satisfy the requirements of a seller, the Administration is requested to consider whether it is necessary to amend the proposed section 35 and/or any other relevant provision with a view to reflecting the said policy intent clearly in respect of the duty to provide the recycling label.***

7. The definitions of "supplier" and "seller" under the proposed section 31 are not mutually exclusive to each other. In some cases a person who is a "supplier" may also be a "seller" within the meaning as defined under the proposed section 31. As a "supplier", this person must be registered under the proposed section 32(1) and undertake the obligations under the proposed section 35(1). As a "seller", this person must undertake the obligations under the proposed section 35(2).

8. Having reviewed the relevant provisions, we consider that the proposed section 32(1) will need to be expanded as illustrated below as it does not currently mandate the registration of a supplier who distributes REE but may not carry on a business of doing so, or who uses REE directly, or who only distributes REE directly to a consumer –

> A supplier commits an offence if, not being registered under section 33, the supplier ~~carries on a business of distributing~~ distributes or uses regulated electrical equipment~~ for further distribution in Hong Kong~~.

***(b) According to the proposed section 35(4), providing REE to an owner or tenant of a residential property under an agreement for sale and purchase, tenancy agreement or renovation agreement (all referred to as "Agreement" below), for the property without charging specifically for the equipment does not constitute distributing the equipment. As it is not uncommon for property developers or landlords to provide REE as a package in the***

***course of sale, letting or renovation of a residential property, the Administration is requested to elaborate on the charging of recycling fee as well as the provision of recycling label and receipt under the following situations –***

***(i) property developers or landlords <u>import</u> REE directly from an overseas manufacturer, and exhibit the equipment in a residential property for business purposes or provide the equipment to an owner or tenant of a residential property under an Agreement, for the property without charging specifically for the equipment; and***

***(ii) property developers or landlords <u>purchase</u> REE from a registered supplier in Hong Kong and provide the equipment to an owner or tenant of a residential property under an Agreement, for the property without charging specifically for the equipment.***

9. By way of the proposed section 35(4), as property developers, landlords, interior design companies and etc. (collectively as "property developers and landlords") provide REE for a residential property as a package in the course of sale, letting or renovation of the property without charging specifically for the REE, they will not be regarded as having distributed REE as a seller and will not be liable under the proposed section 35(2) in respect of the provision of recycling label and receipt if they do not manufacture or import REE. Suitable CSAs will be proposed such that the proposed section 35(4) will also cover the proposed section 35(1). This is to cater for the scenario that these property developers and landlords may also directly manufacture or import REE.

10. In such transactions, if the REE is imported into Hong Kong directly by the property developers and landlords, it is our intent that the property developers and landlords should register and pay the recycling fee under the proposed section 37(1). In reality, the REE would more likely be purchased from a registered supplier in Hong Kong and the recycling fee will be or have been paid by that registered supplier.

***(c) In respect of the proposed section 36, the Administration is requested to explain how the recycling labels of a particular class of REE will be provided by the Director of Environmental Protection ("the Director") to registered suppliers under the proposed section 36(1), or a person who requests to be provided***

***with the labels under the proposed section 36(3).***

11. There will be a particular recycling label for each of the eight classes of the REE set out in the proposed Schedule 6. If a registered supplier distributing, for example, air conditioners applies to the Director in a form specified by the Director for recycling labels for air conditioners, the Director will provide those labels to the supplier unless the Director considers that the number of the recycling labels applied for is, having regard to the registered supplier's state of business, more than reasonably necessary for complying with the proposed section 35.

12. On the other hand, if a person requests to be provided with a total of X recycling labels for air conditioners at a location specified by the Director and pays to the Director a sum that is equivalent to the recycling fees for X items of air conditioners, then the Director will provide those labels to the person subject to any limit that the Director has set under the proposed section 36(4).

***(d) According to the Administration, the amount of the recycling fee to be paid by a person who requests for a recycling label of a particular class of REE pursuant to the proposed section 36(3) will be the same as the amount of the recycling fee which is payable under the proposed section 37(1) in respect of a piece of REE that belongs to the same class of the recycling label as requested. Given that the recycling fee is payable <u>only once</u> in respect of any REE pursuant to the proposed section 37(2) and with a view to avoiding the public to perceive the aforesaid situation as "double-charging" in respect of a piece of REE, the Administration is requested to –***

***(i) advise the policy and legislative intent in respect of the application of the proposed section 36(3) and the circumstances that the proposed section is intended to be applicable to, such as the situations where a supplier (or any person) will be required to pay the recycling fee under the proposed section 36(3)(b) in respect of a piece of REE and whether the person making the request will be required to provide any justifications for the request;***

13. The proposed section 36(3) is intended to provide an avenue by which one may obtain recycling labels for a particular class of REE outside the mechanism provided for under the proposed section 36(1) under which a registered supplier may be provided recycling labels free of charge.

As an example, a seller who wishes to distribute an item of REE but does not have an appropriate recycling label may together with the required payment request to be provided with one under the proposed section 36(3). There is however no requirement as to who may obtain recycling labels through the proposed section 36(3) and why. Under the proposed section 36(4), DEP may set a limit on the number of recycling labels that may be provided. But such limit should be general by nature and should be the same for all requests made under the proposed section 36(3). Hence we will not ask the person making the request under the proposed section 36(3) to provide justifications for such a request.

14. It has been queried whether the payment required under the proposed section 36(3)(b) would amount to "double charging" given that the proposed section 37(2) provides that recycling fee is payable only once in respect of any REE. The question seems to have presumed that recycling fee is payable for the issue of recycling label, but it does not seem to be the case insofar as the proposed section 37(1) is concerned. This is because –

(a) the recycling fee under the proposed section 37(1) is paid for each piece of REE distributed by the registered supplier. The total amount of recycling fee payable under the proposed section 37(1) is determined by the number of REE distributed by the registered supplier, not by the number of recycling label the supplier obtained under the proposed section 36(1). In other words, for each piece of REE, the registered supplier is the only person who would be charged a recycling fee and the supplier would only be charged once by virtue of the proposed section 37(2).

(b) the basis of charging under the proposed section 36(3) is the provision of a recycling label, not the distribution of REE. It is our intention that the sum payable under the proposed section 36(3) should be equivalent to the amount of recycling fee for the relevant class of REE. This is because any differential charging may only open up loopholes for abuse. For instance, if a seller may lawfully obtain recycling labels at a cost much lower than the recycling fee for the purpose of further distribution of REE in Hong Kong, he or she may have incentives to source REE from suppliers who are not registered.

15. In order to avoid any further confusion of "double charging", we intend to introduce CSAs amending the proposed section 37(2) as follows –

> The recycling fee is payable only once under this section in respect of any regulated electrical equipment.
>
> Note: Only amendments directly relevant to the issue at stake have been highlighted in the above. Further amendments arising from other issues may be required.

***(ii) advise how a request made pursuant to the proposed section 36(3) will be dealt with if the request is supported by evidence that a recycling fee for the piece of REE concerned has already been paid pursuant to the proposed section 37;***

16. Given that the periodic returns will only capture aggregate data which does not enable tracking down to individual items of REE, it is impractical for a request under the proposed section 36(3) to be supported by evidence that a recycling fee for the piece of REE concerned has already been paid pursuant to the proposed section 37.

***(iii) consider setting out the circumstances which are stated in the Administration's response to paragraph (i) above in the proposed section 36 or any other part of the Bill which the Administration thinks fit with a view to reflecting the policy intent in the Bill; and***

17. As explained in paragraph 13, there is no requirement as to who may obtain recycling labels under the proposed section 36(3) and why. It is also our intention to provide the relevant trades with more operational flexibility. Hence it is both unnecessary and undesirable to include explicit provisions spelling out the anticipated circumstances for which the proposed section 36(3) is intended.

***(iv) advise the design of the recycling label.***

18. The design of the recycling labels will be specified by the Director under the REE Regulation.

***(e) The Administration is requested to clarify, in the light of the proposed definitions of "supplier" and "distribute" in the Bill and the nature of services provided by logistics companies (in***

***particular, services for transporting an item of REE from a person to another which involve an exchange or a disposal of REE for consideration (e.g. postage or freight charges) in Hong Kong), whether a courier that provides the aforesaid services will constitute distributing any REE and whether a logistics company that provides such courier services will fall under the definition of "supplier" and hence will have to pay or will have paid a recycling fee for the equipment.***

19. It is our policy intent that a logistics company should not be regarded as a supplier. Although the acts done by a logistics company may fall within the definition of "distribute", these logistics companies are not caught because they do not fall within the definition of "supplier", which does not include a person who only provides service for transporting REE that does not belong to the person for another person. To better clarify our policy intent, we propose to have a similar exclusion in the definition of "seller" –

> ***seller*** (銷售商) means a person who carries on a business of distributing regulated electrical equipment to consumers, but does not include a person who only provides service for transporting the equipment that does not belong to the person for another person;
>
> Note: Only amendments directly relevant to the issue at stake have been highlighted in the above. Further amendments arising from other issues may be required

***(f) According to the proposed section 37(1) under the Bill, a recycling fee is payable in respect of a piece of REE if the equipment satisfies any requirement under the proposed section 37(1)(a) and if the registered supplier concerned satisfies any requirement under the proposed section 37(1)(b). The Administration is requested to advise whether and how the quantities of REE to be imported to or manufactured in Hong Kong by registered suppliers will be verified against the periodic returns to be submitted by registered suppliers to the Director for computation of the recycling fees payable.***

20. Under the proposed section 39, a registered supplier must submit an audit report to the Director every year in respect of the periodic returns submitted by him under the proposed section 38. The audit report must be prepared by an independent certified public accountant (practising). The auditing requirement will help ensure accuracy of the information provided under the periodic returns. In addition, the Director may also conduct

inspections for enforcement purposes under section 7 of PERO. To facilitate that, it has been required under the proposed section 38(4) that a registered supplier must keep records and documents relating to the periodic returns for a period of five years.

**Issues Raised on 20 July 2015**

Recycling fee payable by registered suppliers

***(a) In respect of the proposed section 44(3) of the PERO –***

***(i) Clarify the principles and considerations for determining the recycling fee, and provide the relevant legal justifications on not requiring the amount of the recycling fee to be limited with reference to the costs referred to in the proposed section 44(3);***

21. As advised vide LegCo Paper No. CB(1)712/14-15(03), the use, recycling and disposal of REE will not only result in the direct administrative costs for the PRS but will also entail 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. Also, under the current PERO, a PRS may include "the imposition of a recycling fee to finance the proper waste management of certain products". The recycling fee may have additional impact on discouraging the excessive use of REE.

22. In the current context, the PRS costs are mainly incurred for the Design-Build-Operate contract to the appointed operator of the WEEETRF in accordance with the result of the open tender. At its meeting on 27 February 2015, the Legislative Council ("LegCo") Finance Committee endorsed the funding application for the WEEETRF at an estimated capital cost of about $550 million and operating expenses of $200 million per annum. The Government will determine the charging levels taking into account the full costs of the PRS and other relevant factors to reflect the "polluter pays" principle.

***(ii) Consider whether it is necessary to amend the proposed section 44(3) to clearly reflect the Administration's policy intent if the recycling fee is to be determined at full cost recovery basis taking into account the development and operation costs of Waste Electrical and Electronic***

***Equipment Treatment and Recycling Facility and other management and administrative matters; and***

***(iii) Consider amending the reference of "無須參照" in the Chinese rendition to tally with its corresponding English text of "not limited by reference to".***

23. On further review, since no service is directly provided to the registered suppliers in relation to the REE that they distribute, we consider it is more appropriate to refer to the payment as a recycling levy rather than a fee. Subject to any other views by the Bills Committee, we will propose CSAs to this effect. Such CSAs, if passed, will better reflect the nature of the monies to be collected.

24. With the CSA that replaces "recycling fee" by "recycling levy", the proposed section 44(3) will no longer be necessary and will be removed. That said, 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 PERO. As such regulation may only be made after consultation with the Advisory Council on Environment ("ACE") 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.

***(b) Provide, before completion of scrutiny of the Bill, an updated ballpark estimation on the amount of the recycling fee payable for each of the eight classes of REE proposed in Schedule 6 to the Bill.***

25. During the public consultation, we explained that indicatively, the recycling fee could be around $100 for a smaller item of REE and around $200 to $250 for a bulky item; the recycling fee for a computer product is expected to be lower. We are in the process of conducting necessary costing and will aim to finalize the fee proposal as soon as possible.

26. As a matter of statutory procedures, the Secretary for the Environment will consult the ACE in due course and afterwards make the relevant regulation to prescribe the recycling fee. Such regulation will be subject to the approval of the LegCo (i.e. positive vetting).

Additional surcharge in relation to recycling fee

***(c)*** ***In respect of the Chinese rendition of the proposed section 40(11)(b) of PERO, which provides that "如在第(9)款所述的限期後的6個月屆滿時，有循環再造費及(a)段所述的附加費仍未繳付， 該人亦有法律責任繳付一項額外附加費…" and in light of the Administration's response given at the meeting, consider amending "及" to "或" with a view to reflecting its policy intent which was elaborated by the Administration at the meeting.***

27. We agree to amending "及" to "或" to better reflect the policy intent –

任何人被裁定犯第(10)款所訂罪行 —

(a) 該人亦有法律責任繳付一項附加費，款額為在第(9)款所述的限期屆滿時仍未繳付的循環再造費款額的 5%；而

(b) 如在第(9)款所述的限期後的 6 個月屆滿時，有循環再造費~~及~~或(a)段所述的附加費仍未繳付，該人亦有法律責任繳付一項額外附加費，款額為該等未繳付的循環再造費~~及~~或附加費~~的總額~~的 10%。

A person who is convicted of an offence under subsection (10) is also liable to pay—

(a) a surcharge of 5% of the amount of recycling fee that is outstanding at the expiry of the period mentioned in subsection (9); and

(b) an additional surcharge of 10% of the ~~total~~ amount of recycling fee or ~~and~~ the surcharge mentioned in paragraph (a) that ~~are~~is outstanding at the expiry of 6 months after the period mentioned in subsection (9).

Arrangements for removal service in respect of REE

***(d)*** ***Address the following views/concerns expressed by members –***

***(i)*** ***a consumer may not be aware of (i) the availability of removal service under which for every item of REE purchased by a consumer, an old equipment of the same class can be removed from a premise designated by the consumer for proper disposal at no extra charge on the consumer, and (ii) whether a REE seller has fulfilled the requirement to formulate a removal service plan for endorsement by the Government under the proposed***

***section 41(1) of PERO, and therefore does not request a REE seller to provide the removal service; and***

28. Under the proposed section 41(1), a seller must have a removal service plan endorsed by the Government under which for every item of REE purchased by a consumer, an old equipment of the same class can be removed from a premises designated by the consumer for proper disposal at no extra charge on the consumer. We will make available relevant information relating to the endorsed removal service plans (e.g. the collector who has undertaken to provide removal service and the recycler who has undertaken to provide treatment, reprocessing or recycling service) for public inspection or checking.

29. The proposed section 42(4) requires that a seller must notify the consumer in writing of the seller's obligation in relation to removal services before entering into the relevant contract of distribution. Furthermore, under the proposed section 42(5), the seller must also notify the consumer in writing of any applicable removal terms before entering into the contract. Our intent is to ensure that before entering into any contract of distribution, the consumer will be referred to written information that sets out the seller's obligations in relation to the removal service. Coupled with our other publicity and public education, these notification requirements will help inform the consumers of the availability of statutory removal services.

30. Separately, we have previously explained (vide LegCo Paper No. CB(1)712/14-15(03)) that property developers, landlords or interior design companies that provide REE as a package in the course of sale, letting or renovation of a residential property may 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. Since a seller's obligations will also include those relating to removal service under Part 4 Division 4, we will propose CSAs to exclude property developers, etc. from the liabilities under the proposed sections 41(1), 42(2), 42(4) and 42(5).

***(ii) a consumer may not be aware of (i) whether and when an explicit request for the removal service should/could be made to a REE seller (e.g. whether the request could only be made at the point of sale by the purchaser but not upon delivery of a REE by the seller to the designated premise); and (ii) whether a seller will remove a used REE from a premise designated by the consumer if the recycling label for the old equipment is lost or no longer***

***available.***

31. In order for a consumer to claim the removal service, he or she must under the proposed section 42(2)(b) put up request for removal service in accordance with the removal terms (which were previously agreed with the seller and notified to the consumer in writing) and any applicable requirements in the REE Regulation. We will engage the trade and other stakeholders with a view to determining the relevant procedures requirements for claiming the service. Preliminarily, subject to further trade engagement, and any removal terms between the parties to the extent they are consistent with the legislative provisions, we believe that a request for removal service should be considered as valid if, for example, it is made by the consumer in writing within a certain deadline say a few days after the date on which the consumer takes possession of the REE.

32. On the other hand, the availability of seller-arranged removal service does not mean that a consumer must use such service. If for instance a consumer has decided to keep the old equipment for continued use, he or she will have to make separate removal arrangement outside the context of the statutory removal service by the seller as mandated under the proposed section 42. As illustrated in Annex A to LC Paper No. CB(1)788/14-15(06), a consumer may hand over the old product to a community green station or other collectors including a charitable organization operating refurbish-and-donate programme similar to WEEE Go Green operated by St James Settlement and the computer recycling programme operated by Caritas Computer Workshop. Upon commissioning of service, the operator of the WEEETRF will also operate a number of collection centres to facilitate the disposal of e-waste by members of the public.

**Environmental Protection Department**
**September 2015**