

**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 meeting on 18 September 2015. We would also like to present the full set of proposed Committee Stage Amendments ("CSAs") at Annex A, including certain minor touch-ups which we consider necessary in reviewing the Bill for Members' consideration.

Issues Raised on 18 September 2015

Permit required for the import/export of e-waste into/from Hong Kong

In respect of the proposed amendments to sections 20A and 20B of the Waste Disposal Ordinance (Cap. 354) ("WDO") under clauses 14 and 15 of the Bill respectively, the Administration is requested to consider whether it is necessary to amend the reference of "any e-waste" (任何電器廢物) to clearly reflect the policy intent that such e-waste is confined to electrical equipment or electronic equipment that, judging by its appearance, is an item set out in column 2 of the proposed Schedule 6 to the Product Eco-responsibility Ordinance (Cap. 603) ("PERO") and has been abandoned.

2. In the English text, the references to "any" in conjunction with "e-waste" in the proposed sections 20A(1)(c) and 20B(1)(c) do not expand those provisions to cover anything other than e-waste. It is considered that the current wording already reflects the policy intent. As for the Chinese text, we propose to amend the proposed sections 20A(1)(c) and 20B(1)(c) to:

“(c) 任何不符合(a)或(b)段的描述的任何電器廢物。”。

Defence of due diligence for an offence in relation to import/export of e-waste into/from Hong Kong

The Administration is requested to consider amending "the defence" to "the defence under subsection (5)" in the proposed section 20G(6) of

WDO to reflect the policy intent that the proposed section 20G(6) is only applicable to the defence under the proposed section 20G(5) but not applicable to the defence under section 20G(1).

3. Appropriate adjustments have been incorporated in the draft CSAs at Annex A.

Recycling fee payable by registered suppliers

According to the Administration, it will propose Committee Stage amendments to the relevant clauses of the Bill to replace "recycling fee" by "recycling levy" when referring to recycling fee payable under the proposed section 37 of PERO, and hence 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") will no longer be necessary and will be removed. In view of the suggested removal of the proposed section 44(3), the Administration is requested to advise the factors that it will take into account or make reference to in setting the recycling levy, and whether it will consider specifying these factors in the relevant regulation to be made under PERO in respect of the levy.

4. Consistent with our position since the public consultation in 2010, the charging of a recycling fee or levy on the distribution or use of regulated electrical equipment aims to recover the full cost of the producer responsibility scheme. As previously explained¹, the regulation prescribing the charging level may only be made after consultation with the Advisory Council on Environment and is subject to the approval of the LegCo. The consultation and scrutiny procedures will ensure that the determination of the recycling fee/levy is transparent and takes all relevant factors into consideration. Also given that under section 2(1)(b) of the PERO, a PRS must be based on "polluter pays" principle, we do not find it necessary or appropriate to prescribe any details of the methodology in determining the charging level, including the factors or parameters to be taken into account.

¹ Ref: Paragraph 11 of LegCo Paper No. CB(1)788/14-15(06) and paragraph 24 of LegCo Paper No. CB(1)996/14-15(02).

The Draft Committee Stage Amendments

5. The draft CSAs at Annex A include the following key items –
- (a) **Clause 2A:** this new clause is proposed to be included in the Amendment Bill to amend section 2(2)(c) of the PERO thus providing for the charging of a recycling levy. The rationale has been explained in paragraphs 23 and 24 of LegCo Paper CB(1)996/14-15(02). Consequential amendments have been proposed under the following proposed provisions of the PERO: sections 31, 36(3)(b), 37(1), 37(2), 37(3), 38(2), 38(3), 40(1)(b), 40(3)(a), 40(3)(b), 40(7), 40(8)(b), 40(9), 40(11)(a), 40(11)(b), 40(12), 40(13), 44(1)(c) and 44(1)(d).
 - (b) **Proposed section 31 of the PERO:** We propose to amend the following definitions –
 - (i) to replace “selling” in the definition of “consumer” with “distributing” for consistency with the definition of “seller”;
 - (ii) in the definition of “distribute” –
 - (A) to explicitly exclude the supply of regulated electrical equipment (“REE”) to outside the local market, as explained vide paragraph 2 of LegCo Paper CB(1)996/14-15(02). Consequential amendments have been proposed under sections 32(1), 35(1) and 37(1)(b);
 - (B) to replace “sell or lease the equipment” in paragraph (a) of the definition with “supply the equipment by way of sale, hire or hire-purchase”, which is more appropriate for the relevant transactions in the context of REE. Consequential amendments have also been proposed under paragraph (c) of the definition;
 - (C) to delete the proposed paragraph (d) of the definition so as to streamline with the definition of “use” which with the

corresponding amendments will cover the giving of REE to another person as a prize or gift whether or not for business purposes;

- (iii) to explicitly exclude logistics companies from the definition of “seller”, as explained in paragraph 19 of LegCo Paper CB(1)996/14-15(02);
 - (iv) to include a definition for “recycling levy” in place of the one for “recycling fee” and to include a definition for “tenant” which is originally provided for under section 35;
- (c) ***Proposed section 32(1) of the PERO:*** this section is proposed to be expanded to cover also 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. The rationale has been explained in paragraph 8 of LegCo Paper CB(1)996/14-15(02). Consequential amendments have been proposed under the definition of “supplier” in section 31 and section 37(1)(a)(ii);
- (d) ***Proposed section 33 and 34 of the PERO:*** We propose to revise “may register” under the proposed section 33 as “must register” and “may cancel the registration” under the proposed section 34 as “must cancel the registration” to avoid the uncertainty as to when the Director will not register the person or cancel the registration of the supplier;
- (e) ***Proposed section 35(4), 41(5A) and 42(9) of the PERO:*** these sections are proposed to be amended such that in the scenario involving property developers, landlords, interior design companies and etc. (collectively as “property developers and landlords”) as discussed under paragraphs 9, and 30 10 of LegCo Paper CB(1)996/14-15(02), such property developers and landlords would not have to comply with the proposed section 35(1), 41(1), 42(2), 42(4) and 42(5) under certain circumstances;
- (f) ***Proposed section 37(2) of the PERO:*** this section is proposed to be amended to address the Bills Committee’s concern about the potential confusion of “double charging” in cases under the proposed section 36(3)(b). The rationale

has been explained in paragraphs 14 and 15 of LegCo Paper CB(1)996/14-15(02);

- (g) ***Proposed section 38(5) and 42(6) of the PERO:*** We propose to revise these sections as two subsections;
- (h) ***Proposed section 40(11)(b):*** this section is proposed to be amended to change “and” to “or” to better reflect the policy intent, as explained in paragraph 27 of LegCo Paper CB(1)996/14-15(02);
- (i) ***Proposed section 44(1) of the PERO:*** We propose to slightly amend the proposed section 44(1) in order to provide a clearer basis for the making of future subsidiary legislation on the determination of an application for registration and the cancellation of registration;
- (j) ***Proposed Schedule 6 to the PERO:*** In the English text, we propose to amend the term “modulator” to “tuner (or a receiver)” in the definition of television in order to better align with the Chinese text.

**Environmental Protection Department
October 2015**

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

i

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

Contents

Clause	Page
Part 1	
Preliminary	
1.	Short title and commencement..... 1
Part 2	
Amendments to Product Eco-responsibility Ordinance	
2.	Product Eco-responsibility Ordinance amended 2
3.	Section 3 amended (interpretation) 2
4.	Section 4 amended (prescribed products to which Part 2 applies)..... 2
5.	Section 5 amended (general provisions as to regulations made under this Ordinance) 3
6.	Section 7 amended (powers to obtain information, enter places for routine inspection, etc.) 3
7.	Section 13 amended (appeals)..... 3
8.	Part 4 added 4

Part 4

Clause	Page
Regulated Electrical Equipment	
Division 1—Interpretation	
31.	Interpretation of Part 4..... 4
Division 2—Registration of Suppliers	
32.	Prohibition of carrying on business of distributing regulated electrical equipment without registration 6
33.	Registration of suppliers 6
34.	Cancellation of registration..... 7
Division 3—Obligations of Registered Suppliers and Sellers	
35.	Recycling label and receipt must be provided when distributing regulated electrical equipment 7
36.	Director must provide recycling labels 8
37.	Registered supplier must pay recycling fee levy..... 9
38.	Registered supplier must submit returns 10
39.	Registered supplier must submit annual audit report..... 11
40.	Recovering recycling fees levies by assessment notice 11
Division 4—Seller to Arrange for Removal Service	
41.	Seller must have endorsed removal service plan 14

Clause		Page
42.	Seller must arrange for removal service	15
43.	Proper disposal of electrical equipment or electronic equipment removed	18
Division 5—Regulations		
44.	Secretary may make regulations for Part 4	18
Division 6—Supplementary Provisions		
45.	Exemptions	19
46.	Secretary may amend Schedules 6 and 7	20
9.	Schedules 6 and 7 added	20
Schedule 6	Regulated Electrical Equipment to which this Ordinance Applies	20
Schedule 7	Regulated Electrical Equipment Exempted from Certain Provisions.....	28
Part 3		
Amendments to Waste Disposal Ordinance		
10.	Waste Disposal Ordinance amended.....	29
11.	Section 2 amended (interpretation)	29
12.	Section 16 amended (prohibition of unauthorized disposal of waste).....	30
13.	Section 18 amended (penalties for offences under sections 16, 16A, 16B, 16C and 17 and defences).....	31

Clause	Page
14.	Section 20A amended (permit required for the import of waste into Hong Kong) 31
15.	Section 20B amended (permit required for the export of waste from Hong Kong)..... 32
16.	Section 20G amended (defence of due diligence, etc.) 32
17.	Section 21A substituted 33
21A.	Circumstances under which waste disposal licence for chemical waste, clinical waste or e-waste is to be granted..... 33
18.	Section 33 amended (regulations)..... 34

Part 4

Amendments to Waste Disposal (Permits, Authorizations and Licences) (Fees)

Regulation

19.	Waste Disposal (Permits, Authorizations and Licences) (Fees) Regulation amended..... 35
20.	Section 5 added 35
5.	Amendment of Schedule 2..... 35
21.	Schedule 2 amended (fees) 35

Part 5

Amendment to Waste Disposal (Designated Waste Disposal Facility)

Regulation

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

Clause	Page
22. Waste Disposal (Designated Waste Disposal Facility) Regulation amended.....	36
23. Section 3AB added	36
3AB. Designated waste disposal facility must not accept e-waste	36

A BILL

To

Amend the Product Eco-responsibility Ordinance and the Waste Disposal Ordinance to provide for a scheme for the recycling and proper disposal of several types of electrical equipment and electronic equipment; and to make minor technical amendments to related legislation.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2015.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

Part 2

Amendments to Product Eco-responsibility Ordinance

2. Product Eco-responsibility Ordinance amended

The Product Eco-responsibility Ordinance (Cap. 603) is amended as set out in sections 3 to 9.

2A. Section 2 amended (Purposes of this Ordinance)

Section 2(2)(c), after “recycling”—

Add

“levy or”.

3. Section 3 amended (interpretation)

Section 3(1)—

Add in alphabetical order

“regulated electrical equipment” (受管制電器) means electrical equipment or electronic equipment that—

- (a) is set out in column 2 of Schedule 6 and is defined in column 3 of that Schedule; and
- (b) has not been used by any consumer as defined by section 31,

but does not include e-waste as defined by section 2(1) of the Waste Disposal Ordinance (Cap. 354);”.

4. Section 4 amended (prescribed products to which Part 2 applies)

Section 4, after “bags”—

Add

“and regulated electrical equipment”.

5. Section 5 amended (general provisions as to regulations made under this Ordinance)

(1) Section 5(1), after “29”—

Add

“or 44”.

(2) After section 5(2)(f)—

Add

“(fa) specify an appealable matter mentioned in section 13;”.

6. Section 7 amended (powers to obtain information, enter places for routine inspection, etc.)

Section 7(2)—

Repeal

“information relating to any levy, charge or fee imposed under this Ordinance that is in the possession”

Substitute

“any information that is in the possession or under the control”.

7. Section 13 amended (appeals)

Section 13(2), definition of *appealable matter*—

Repeal

everything after “that is”

Substitute

“specified in this Ordinance as a matter on which an appeal may be made under this section.”.

8. Part 4 added

After Part 3—

Add

“Part 4

Regulated Electrical Equipment

Division 1—Interpretation

31. Interpretation of Part 4

In this Part—

consumer (消費者) means a person who acquires any regulated electrical equipment otherwise than for ~~selling~~ distributing it in the course of business;

distribute (分發), in relation to any regulated electrical equipment, means—

- (a) ~~supply sell or lease~~ the equipment by way of sale, hire or hire-purchase;
- (b) exchange or dispose of the equipment for consideration; or
- (c) transmit or deliver the equipment for any of the following activities—
 - (i) supplying by way of sale, hire or hire-purchase ~~selling~~;
 - (ii) ~~leasing~~;
 - (ii) an exchange or disposal for consideration; ~~or~~
- (d) ~~give the equipment to another person as a prize or gift for business purposes~~;

but does not include any such act done with a view that the equipment is to be exported in the course of business;

recycling fee (循環再造費) means the fees prescribed for the purposes of this Part by the REE Regulation;

recycling label (循環再造標籤) means a label provided under section 36(1) or (3);

recycling levy (循環再造徵費) means a levy prescribed for the purposes of this Part by the REE Regulation;

REE Regulation (《受管制電器規例》) means regulations made under section 44;

registered supplier (登記供應商) means a supplier who is registered under section 33;

removal service plan (除舊服務方案) means a plan endorsed under section 41;

residential property (住宅物業) means any real property constituting a separate unit used, or intended to be used, solely or principally for human habitation;

return (申報) means a return submitted under section 38;

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;

supplier (供應商) means—

- (a) a person who manufactures regulated electrical equipment in Hong Kong in the course of the person's business; or

- (b) a person who ~~causes to be imported into Hong Kong~~ regulated electrical equipment into Hong Kong in the course of the person's business for distribution or use in the course of the person's business, but does not include a person who only provides service for transporting the equipment that does not belong to the person into Hong Kong for another person;

tenant (租客) includes a person who occupies a residential property under a licence, and *tenancy agreement* (租賃協議) is to be construed accordingly;

use (使用), in relation to any regulated electrical equipment, includes—

- (a) exhibit the equipment for business purposes; and
- (b) give the equipment to another person as a prize or gift ~~otherwise than~~ whether or not for business purposes.

Division 2—Registration of Suppliers

32. Prohibition of carrying on business of distributing regulated electrical equipment without registration

- (1) 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~~.
- (2) A person who is convicted of an offence under subsection (1) is liable to a fine at level 6.

33. Registration of suppliers

If—

- (a) a person applies to be registered as a registered supplier in accordance with the REE Regulation; and
- (b) the Director is satisfied that the application complies with this Ordinance,

the Director ~~may~~must register the person as a registered supplier.

34. Cancellation of registration

If the Director is satisfied that a registered supplier ~~no longer carries on a business mentioned in section 32(1)~~is no longer a supplier, the Director ~~may~~must cancel the registration of the supplier.

Division 3—Obligations of Registered Suppliers and Sellers

35. Recycling label and receipt must be provided when distributing regulated electrical equipment

- (1) If a registered supplier distributes to a person any regulated electrical equipment mentioned in section 37(1)(a) ~~for further distribution in Hong Kong to a consumer~~, the supplier must, in accordance with the REE Regulation, provide to the person a recycling label that is appropriate for the equipment.
- (2) If a seller distributes any regulated electrical equipment to a consumer, the seller must, in accordance with the REE Regulation, provide to the consumer—
 - (a) a recycling label that is appropriate for the equipment; and

- (b) a receipt with the wording prescribed by the Regulation.
- (3) For the purposes of subsection (1) or (2), entering into an agreement to distribute does not constitute distribution.
- (4) For the purposes of subsection (1) or (2), providing regulated electrical equipment to an owner or tenant of a residential property under an agreement for sale and purchase, tenancy agreement, or renovation agreement, for the property without charging specifically for the equipment does not constitute distributing the equipment.
- (5) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 5.

~~(6) In subsection (4)—~~

~~*tenant* (租客) includes a person who occupies a residential property under a licence, and *tenancy agreement* (租賃協議) is to be construed accordingly.~~

36. Director must provide recycling labels

- (1) If a registered supplier applies to the Director in a form specified by the Director for recycling labels of a particular class, the Director must, subject to subsection (2), provide those labels to the supplier.
- (2) If 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 section 35, the Director may refuse the application.
- (3) If a person—

- (a) requests to be provided with recycling labels of a particular class at a location specified by the Director; and
 - (b) pays to the Director a recycling fee-levy that is appropriate for the labels,
the Director must, subject to subsection (4), provide those labels to the person.
- (4) The Director may set a limit on the number of recycling labels that may be provided to a person under subsection (3) for each request.

37. Registered supplier must pay recycling feelevy

- (1) Subject to subsection (2), a registered supplier must pay to the Director a recycling fee-levy for any regulated electrical equipment if—
- (a) the equipment—
 - (i) is manufactured in Hong Kong by the supplier in the course of the supplier's business; or
 - (ii) is ~~caused to be~~ imported into Hong Kong by the supplier in the course of the supplier's business for distribution or use~~in the course of the supplier's business~~, but is not imported ~~into Hong Kong~~ during the course of a service provided by the supplier for transporting articles into Hong Kong for another person; and
 - (b) the supplier—
 - (i) distributes the equipment to a ~~consumer~~person; or

~~(ii) distributes the equipment for further distribution in Hong Kong to a consumer; or~~

(iii) uses the equipment for the first time.

- (2) The recycling fee-levy is payable only once under this section in respect of any regulated electrical equipment.
- (3) An outstanding amount of recycling fee-levy payable under this section is recoverable as a civil debt due to the Government.

38. Registered supplier must submit returns

- (1) A registered supplier must, in accordance with the REE Regulation, periodically submit returns to the Director.
- (2) On receiving a return, the Director must—
 - (a) determine the amount of recycling feelevy payable under section 37 by the registered supplier; and
 - (b) serve a payment notice on the supplier.
- (3) A registered supplier must, within the prescribed period after the date the payment notice is served, pay to the Director in the prescribed manner the recycling feelevy payable under section 37 stated in the payment notice.
- (4) If a registered supplier submits a return in respect of a period in a calendar year, the supplier must keep the prescribed records and documents relating to the return during the 5 years after that year.
- (5) A person who contravenes subsection (1) ~~or (3)~~ commits an offence and is liable—
 - (a) on the first conviction, to a fine at level 6; and
 - (b) on a subsequent conviction, to a fine of \$200,000.

(5A) A person who contravenes subsection (3) commits an offence and is liable—

(a) on the first conviction, to a fine at level 6; and

(b) on a subsequent conviction, to a fine of \$200,000.

- (6) A person who contravenes subsection (4) commits an offence and is liable to a fine at level 5.
- (7) A payment notice under subsection (2)(b) is regarded as duly served on a registered supplier when it is sent by post to the last address provided by the supplier to the Director.
- (8) In subsections (3) and (4)—
prescribed (訂明) means prescribed by the REE Regulation.

39. Registered supplier must submit annual audit report

- (1) A registered supplier must, in accordance with the REE Regulation, submit an audit report to the Director every year in respect of the returns submitted by the supplier.
- (2) The audit report must be prepared by a certified public accountant (practising) as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50), who must not be an employee of the registered supplier.
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

40. Recovering recycling fees-levies by assessment notice

- (1) This section applies if a person (*relevant person*)—
- (a) distributes or uses regulated electrical equipment in contravention of section 32(1); or

- (b) distributes or uses regulated electrical equipment in the course of the person's business as a registered supplier, without having paid the Director the recycling fee-levy payable under section 37 for the equipment (or any part of the fee).
- (2) For the purposes of subsection (1), entering into an agreement to distribute does not constitute distribution.
- (3) The Director may assess—
 - (a) for regulated electrical equipment mentioned in subsection (1)(a), the amount of recycling fee-levy that would have been payable under section 37 for any regulated electrical equipment if the equipment was distributed or used in compliance with section 32(1); or
 - (b) for regulated electrical equipment mentioned in subsection (1)(b), the amount of recycling feelevy payable under section 37.
- (4) The Director may serve an assessment notice (***assessment notice***) on the relevant person demanding payment of—
 - (a) the assessed amount; or
 - (b) if the relevant person has already paid part of that amount under section 37, the outstanding part of that amount.
- (5) The Director may replace an assessment notice with another assessment notice served for that purpose.
- (6) The Director may at any time withdraw an assessment notice by serving a withdrawal notice to that effect.

- (7) An assessment notice served in respect of the recycling feelevy payable under section 37 for a period must be served within 5 years after the end of that period.
- (8) An assessment notice must state—
 - (a) the reasons for serving the notice;
 - (b) how the amount of recycling feelevy assessed by the Director is calculated;
 - (c) when and how the relevant person must pay; and
 - (d) the right of the relevant person to appeal against the notice.
- (9) The relevant person must pay the amount of recycling fee-levy demanded under an assessment notice within the period prescribed by the REE Regulation.
- (10) A person who contravenes subsection (9) commits an offence and is liable—
 - (a) on the first conviction, to a fine at level 6; and
 - (b) on a subsequent conviction, to a fine of \$200,000.
- (11) 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 feelevy 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 feelevy and—or the surcharge mentioned in paragraph (a) that ~~are~~is outstanding at the expiry of 6 months after the period mentioned in subsection (9).

- (12) An outstanding amount of recycling ~~fee—levy~~ or surcharges payable under this section is recoverable as a civil debt due to the Government.
- (13) If an appeal is made under Division 5 of Part 2 against an assessment notice, any amount of recycling ~~fee—levy~~ or surcharges that is outstanding remains payable under this section pending the determination of the appeal unless the Director decides otherwise.
- (14) A notice under this section is regarded as duly served on a relevant person when it is sent by post—
 - (a) if the relevant person is a registered supplier, to the last address provided by the person to the Director; or
 - (b) if the relevant person is not a registered supplier, to the last known address of the person.

Division 4—Seller to Arrange for Removal Service

41. Seller must have endorsed removal service plan

- (1) A seller must not distribute regulated electrical equipment to a consumer in the absence of a removal service plan that has been endorsed by the Director.
- (2) Without limiting any other ground on which the Director may refuse to endorse a removal service plan, the Director must not endorse a plan unless the Director is satisfied that the plan meets the requirements specified in subsection (3).
- (3) The requirements are—
 - (a) a collector undertakes to the seller in writing to provide an electrical equipment or electronic

equipment removal service for distributing regulated electrical equipment by the seller to a consumer;

- (b) a recycler undertakes to the seller in writing to provide a treatment, reprocessing or recycling service for the electrical equipment and electronic equipment removed by the collector; and
 - (c) the applicable requirements in the REE Regulation have been complied with.
- (4) The collector mentioned in subsection (3)(a) must hold a business registration certificate issued under section 6 of the Business Registration Ordinance (Cap. 310).
- (5) The recycler mentioned in subsection (3)(b) must hold a waste disposal licence within the meaning of the Waste Disposal Ordinance (Cap. 354) that authorizes the person to treat, reprocess or recycle e-waste within the meaning of that Ordinance.

(5A) For the purposes of subsection (1), providing regulated electrical equipment to an owner or tenant of a residential property under an agreement for sale and purchase, tenancy agreement or renovation agreement for the property without charging specifically for the equipment does not constitute distributing the equipment.

- (6) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 6.

42. Seller must arrange for removal service

- (1) In this section—

removal terms (除舊條款) means the terms—

-
- (a) agreed between a consumer and a seller who distributes an item of regulated electrical equipment to the consumer; and
 - (b) the purpose of which is to provide for the removal, in accordance with subsection (2), of electrical equipment or electronic equipment of the same class as that item of equipment.
- (2) If—
- (a) a seller distributes an item of regulated electrical equipment (*former*) to a consumer;
 - (b) the consumer requests, in accordance with the removal terms and any applicable requirements in the REE Regulation, the seller to remove another item of electrical equipment or electronic equipment (*latter*); and
 - (c) the former and the latter fall within the descriptions of the same item of electrical equipment or electronic equipment set out in column 2 of Schedule 6,
- the seller must arrange for the removal of the latter in accordance with the seller's removal service plan. The seller must not charge the consumer for the arrangement.
- (3) A person who contravenes subsection (2) commits an offence and is liable—
 - (a) on the first conviction, to a fine at level 6; and
 - (b) on a subsequent conviction, to a fine of \$200,000.
 - (4) If a seller distributes any regulated electrical equipment to a consumer, the seller must notify the consumer in writing of the seller's obligation under subsection (2) before entering into the relevant contract of distribution.

- (5) If—
- (a) a seller is to distribute any regulated electrical equipment to a consumer; and
 - (b) the relevant contract of distribution is to be subject to certain removal terms,
- the seller must notify the consumer in writing of the terms before entering into the contract.

- (6) A person who contravenes subsection (4) ~~or (5)~~ commits an offence and is liable—
- (a) on the first conviction, to a fine at level 2; and
 - (b) on a subsequent conviction, to a fine at level 3.

(6A) A person who contravenes subsection (5) commits an offence and is liable—

(a) on the first conviction, to a fine at level 2; and

(b) on a subsequent conviction, to a fine at level 3.

- (7) The removal terms that are applicable to the distribution of regulated electrical equipment to a consumer form part of the terms of the relevant contract of distribution.
- (8) The removal terms are void to the extent to which they are inconsistent with the provisions of this Ordinance.

(9) For the purposes of subsection (2), (4) or (5), providing regulated electrical equipment to an owner or tenant of a residential property under an agreement for sale and purchase, tenancy agreement or renovation agreement for the property without charging specifically for the equipment does not constitute distributing the equipment.

43. Proper disposal of electrical equipment or electronic equipment removed

- (1) If a collector provides an electrical equipment or electronic equipment removal service for a seller in accordance with the seller's removal service plan, the collector must ensure that the equipment—
 - (a) is transferred to a recycler specified in the plan within a reasonable time; and
 - (b) is accepted by the recycler.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
 - (a) on the first conviction, to a fine at level 6; and
 - (b) on a subsequent conviction, to a fine of \$200,000.
- (3) It is a defence to a charge under subsection (2) for the person charged to prove that the person exercised due diligence to avoid committing the offence.

Division 5—Regulations

44. Secretary may make regulations for Part 4

- (1) The Secretary may, after consulting the Advisory Council on the Environment, make regulations in respect of all or any of the following matters—
 - (a) an application for registration under section 33 and the determination of the application;
 - (ab) the cancellation of registration under section 34;
 - (b) the provision of recycling labels for each class of regulated electrical equipment by registered suppliers and sellers;

- (c) the recycling ~~fee~~levy for each class of regulated electrical equipment;
 - (d) the payment of recycling ~~fees~~levies by registered suppliers;
 - (e) the submission of returns by registered suppliers;
 - (f) the information to be contained in the returns;
 - (g) the records and documents to be kept by registered suppliers;
 - (h) the submission of audit reports by registered suppliers;
 - (i) the prescribed wording for the purposes of section 35(2)(b);
 - (j) the requirements of the removal service plan;
 - (k) the removal service required by section 42.
- (2) A regulation made under subsection (1) is subject to the approval of the Legislative Council.
- ~~(3) 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.~~

Division 6—Supplementary Provisions

45. Exemptions

The regulated electrical equipment set out in column 3 of Schedule 7 is exempted from the provisions set out opposite to it in column 2 of that Schedule.

46. Secretary may amend Schedules 6 and 7

- (1) The Secretary may, after consulting the Advisory Council on the Environment, by notice published in the Gazette, amend Schedule 6 or 7.
- (2) A notice made under subsection (1) is subject to the approval of the Legislative Council.”.

9. Schedules 6 and 7 added

After Schedule 5—

Add

“Schedule 6 [ss. 3, 42 & 46]

Regulated Electrical Equipment to which this Ordinance Applies

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
1.	Air conditioner	A room air conditioner within the descriptions in Division 1 of Part 2 of Schedule 1 to the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598).
2.	Refrigerator	A refrigerating appliance within the descriptions in Division 2 of

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
3.	Washing machine	Part 2 of Schedule 1 to the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598). A washing machine within the descriptions in Division 4 of Part 2 of Schedule 1 to the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598).
4.	Television	(1) An electronic apparatus that falls within the following descriptions— (a) the apparatus comprises a modulator tuner (or a receiver) and a display screen that are encased in a single casing; (b) the principal function of the apparatus is to receive and display television signals transmitted by an antenna or signal cable; (c) the size of the display

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

Part 2

Clause 9

22

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
		screen of the apparatus does not exceed 254 cm (100 inches) (measured diagonally); and
		(d) (if the apparatus has any other audio visual device attached to it) the device attached to the apparatus is encased in that casing and, together with other components, is connected with the electricity socket by one power cable.
		(2) A television that falls within the definition of <i>monitor</i> in item 8 of this Schedule is nevertheless regarded, for the purposes of this Ordinance, as a television.
5.	Computer	(1) An electronic apparatus that is— (a) used for the storage,

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

Part 2

Clause 9

23

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
		processing and retrieval of electronic data; and
		(b) generally called “personal computer”, “PC”, “desktop computer”, “tablet computer”, “laptop computer” or “notebook computer” or by a name with a similar meaning in the course of marketing.
		(2) A portable electronic apparatus that falls within the descriptions in paragraph (1) is nevertheless not regarded, for the purposes of this Ordinance, as a computer, if—
		(a) one of the principal functions of the apparatus is for mobile communication through a cellular radio network;

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

Part 2

Clause 9

24

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
6.	Printer	<p>(b) the apparatus has the standard voice function of a telephone;</p> <p>(c) the apparatus is connected to the public switched telephone network (PSTN); and</p> <p>(d) the apparatus is generally called “telephone” or “phone” or by a name with a similar meaning in the course of marketing.</p> <p>(3) A computer that falls within the definition of other electrical equipment or electronic equipment in this Schedule is nevertheless regarded, for the purposes of this Ordinance, as a computer.</p> <p>(1) An electronic apparatus that falls within the following descriptions—</p>

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
		<p>(a) the weight of the apparatus does not exceed 30 kg (excluding any consumables, power cable and data cable that are designed to be removable with bare hands); and</p> <p>(b) the principal function of the apparatus is to print, by using electronic data from a computer connected to the apparatus, words or images on paper.</p>
		<p>(2) A printer that can be used as a photocopier, facsimile transmitter or scanner is nevertheless regarded, for the purposes of this Ordinance, as a printer.</p>
		<p>(3) A facsimile transmitter that can only print words or images on paper by using</p>

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
7.	Scanner	<p data-bbox="659 528 1014 695">electronic data transmitted via a telephone signal network is not regarded, for the purposes of this Ordinance, as a printer.</p> <p data-bbox="594 735 1014 831">An electronic apparatus that falls within the following descriptions—</p> <ul data-bbox="659 847 1014 1412" style="list-style-type: none"><li data-bbox="659 847 1014 1158">(a) the weight of the apparatus does not exceed 30 kg (excluding any consumables, power cable and data cable that are designed to be removable with bare hands); and<li data-bbox="659 1174 1014 1412">(b) the principal function of the apparatus is to generate, by an optical scanning of any word or image on a surface placed immediately against a transparent

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
8.	Monitor	<p data-bbox="723 531 1014 699">panel of the apparatus, electronic data from which the word or image can be reproduced.</p> <p data-bbox="594 735 1014 834">An electronic apparatus that falls within the following descriptions—</p> <ul style="list-style-type: none"><li data-bbox="659 850 1014 986">(a) the apparatus does not have the function of storing electronic data or computing;<li data-bbox="659 1002 1014 1412">(b) the principal function of the apparatus is to generate, by using electronic data from a computer connected to the apparatus, words or images on a display screen by means of cathode-ray tube (CRT), liquid crystal display (LCD), plasma, light emitting diode

Column 1	Column 2	Column 3
Item	Electrical equipment or electronic equipment	Definition in this Ordinance
		(LED) or laser technology; and
		(c) the size of the display screen of the apparatus is not smaller than 13.97 cm (5.5 inches) (measured diagonally) but does not exceed 254 cm (100 inches) (measured diagonally).

Schedule 7 [ss. 45 & 46]

Regulated Electrical Equipment Exempted from Certain Provisions

Column 1	Column 2	Column 3
Item	Provision	Regulated electrical equipment”.

Part 3

Amendments to Waste Disposal Ordinance

10. Waste Disposal Ordinance amended

The Waste Disposal Ordinance (Cap. 354) is amended as set out in sections 11 to 18.

11. Section 2 amended (interpretation)

(1) Section 2(1)—

Repeal the definition of *disposal*

Substitute

“*disposal* (處置)—

- (a) in relation to chemical waste and clinical waste, includes treatment, reprocessing and recycling; and
- (b) in relation to e-waste, includes storage, treatment, reprocessing and recycling, but does not include repair;”.

(2) Section 2(1), definition of *waste*, after “construction waste,”—

Add

“e-waste;”.

(3) Section 2(1)—

Add in alphabetical order

“*e-waste* (電器廢物) means any electrical equipment or electronic equipment that, judging by its appearance, is an item set out in column 2 of Schedule 6 to the Product

Eco-responsibility Ordinance (Cap. 603) and has been abandoned;”.

12. Section 16 amended (prohibition of unauthorized disposal of waste)

(1) After section 16(2)(e)—

Add

- “(ea) the disposal of e-waste that is not chemical waste on land or premises with an area of not more than 100 m²;
- (eb) 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);
- (ec) the storage of e-waste on premises located inside a multi-storey building;”.

(2) After section 16(2)—

Add

- “(2A) Despite subsection (2)(ea), (eb) and (ec), a person may apply to the Director for a licence to use any land or premises for the disposal of e-waste.
- (2B) The Secretary may, after consulting the Advisory Council on the Environment and subject to the approval of the Legislative Council, by notice published in the Gazette, amend—
 - (a) subsection (2)(ea) by varying the area mentioned in that subsection; or
 - (b) subsection (2)(eb) by varying the total volume mentioned in that subsection.”.

13. Section 18 amended (penalties for offences under sections 16, 16A, 16B, 16C and 17 and defences)

After section 18(2)—

Add

- “(3) Subsection (4) applies to a person charged with an offence under section 16 for the storage, treatment, reprocessing or recycling of any e-waste that is not chemical waste.
- (4) It is a defence to the charge for the person to establish that the electrical equipment or electronic equipment concerned did not fall within the definition of that equipment in column 3 of Schedule 6 to the Product Eco-responsibility Ordinance (Cap. 603).
- (5) The person is taken to have established a fact that needs to be established for the defence if—
- (a) there is sufficient evidence to raise an issue with respect to the fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

14. Section 20A amended (permit required for the import of waste into Hong Kong)

(1) Section 20A(1)(a)—

Repeal

“; or”

Substitute a semicolon.

(2) Section 20A(1)(b)—

Repeal

“Sixth Schedule,”

Substitute

“Sixth Schedule; or”.

- (3) After section 20A(1)(b)—

Add

“(c) any e-waste that does not fall within the description of paragraph (a) or (b),”.

15. Section 20B amended (permit required for the export of waste from Hong Kong)

- (1) Section 20B(1)(a)—

Repeal

“; or”

Substitute a semicolon.

- (2) Section 20B(1)(b)—

Repeal

“Sixth Schedule,”

Substitute

“Sixth Schedule; or”.

- (3) After section 20B(1)(b)—

Add

“(c) any e-waste that does not fall within the description of paragraph (a) or (b),”.

16. Section 20G amended (defence of due diligence, etc.)

After section 20G(3)—

Add

- “(4) Subsection (5) applies to a person charged with an offence under section 20E for the import or export of any e-waste that is not chemical waste.
- (5) It is a defence to the charge for the person to establish that the electrical equipment or electronic equipment concerned did not fall within the definition of that equipment in column 3 of Schedule 6 to the Product Eco-responsibility Ordinance (Cap. 603).
- (6) The person is taken to have established a fact that needs to be established for the defence under subsection (5) if—
- (a) there is sufficient evidence to raise an issue with respect to the fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

17. Section 21A substituted

Section 21A—

Repeal the section

Substitute

“21A. Circumstances under which waste disposal licence for chemical waste, clinical waste or e-waste is to be granted

Without limiting section 21(4), if a person applies for a waste disposal licence in respect of any land or premises, the licensing authority must not grant the licence in respect of chemical waste, clinical waste or e-waste under that section unless the licensing authority is satisfied that the land or premises has a waste disposal facility that—

- (a) has the capacity to dispose of such minimum quantity of chemical waste, clinical waste or e-waste (as the case requires) and within such period as may be prescribed; or
- (b) is capable of disposing of chemical waste, clinical waste or e-waste (as the case requires) in such other manner as may be prescribed.”.

18. Section 33 amended (regulations)

- (1) Section 33(6)(b)—

Repeal

“or”.

- (2) After section 33(6)(b)—

Add

“(ba) the fees for permits, authorizations or licences; or”.

Part 4

Amendments to Waste Disposal (Permits, Authorizations and Licences) (Fees) Regulation

19. Waste Disposal (Permits, Authorizations and Licences) (Fees) Regulation amended

The Waste Disposal (Permits, Authorizations and Licences) (Fees) Regulation (Cap. 354 sub. leg. D) is amended as set out in sections 20 and 21.

20. Section 5 added

After section 4—

Add

“5. Amendment of Schedule 2

The Secretary may, by notice published in the Gazette, amend Schedule 2.”.

21. Schedule 2 amended (fees)

Schedule 2—

Repeal

“[s. 4]”

Substitute

“[ss. 4 & 5]”.

Part 5

Amendment to Waste Disposal (Designated Waste Disposal Facility) Regulation

22. Waste Disposal (Designated Waste Disposal Facility) Regulation amended

The Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L) is amended as set out in section 23.

23. Section 3AB added

After section 3A—

Add

“3AB. Designated waste disposal facility must not accept e-waste

A person must not accept for disposal any e-waste at any designated waste disposal facility.”.

Explanatory Memorandum

This Bill seeks to implement a mandatory producer responsibility scheme on certain electrical equipment and electronic equipment. The Bill contains 5 Parts.

Part 1—Preliminary

2. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Product Eco-responsibility Ordinance (Cap. 603) (*Cap. 603*)

3. Clause 3 introduces the definition of *regulated electrical equipment (REE)*.
4. Clauses 4 to 7 contain related technical amendments to Cap. 603.
5. Clause 8 adds a new Part 4 to Cap. 603 for implementing the mandatory producer responsibility scheme. That Part consists of 6 Divisions.
6. Division 1 adds definitions for the new Part 4.
7. Division 2 provides for the registration of suppliers of REE. Under the new section 32, a person who carries on a business of distributing REE for further distribution in Hong Kong without registration commits an offence.
8. Division 3 provides for the obligations of registered suppliers and sellers. The new sections 35, 36, 37, 38 and 39 require a registered supplier distributing REE to provide a recycling label, pay a recycling fee for the REE and submit returns and an audit report to the Director of Environmental Protection (*Director*).
9. Division 4 provides for the arrangement of electrical equipment and electronic equipment removal services by sellers. Under the new section 41, a removal service plan must first be endorsed by the

Director before a seller can distribute the REE to a consumer. The new section 43 requires a collector of REE to ensure that the REE is accepted by a recycler.

10. Division 5 empowers the Secretary for the Environment (*Secretary*) to make regulations for the new Part 4.
11. Division 6 contains supplementary provisions.
12. Clause 9 adds Schedule 6 to Cap. 603 to define the REE to which Cap. 603 applies. Schedule 7 is also added to set out the exempted REE (if any).

Part 3—Amendments to Waste Disposal Ordinance (Cap. 354) (Cap. 354)

13. Clause 11 defines the electrical equipment or electronic equipment listed in Schedule 6 to Cap. 603 as *e-waste* under Cap. 354. The definitions of *disposal* and *waste* in Cap. 354 are amended accordingly.
14. Clause 12 amends section 16 of Cap. 354 to control the unauthorized disposal of e-waste.
15. Clause 13 introduces a defence to a charge concerning storage, treatment, reprocessing or recycling of any e-waste that is not chemical waste.
16. Clauses 14 and 15 introduce requirements for a permit for importing e-waste into, and exporting e-waste out of, Hong Kong.
17. Clause 16 introduces a defence to a charge concerning importing e-waste that is not chemical waste into, and exporting such e-waste out of, Hong Kong.
18. Clause 17 substitutes section 21A of Cap. 354 to provide for the circumstances under which a waste disposal licence for e-waste is to be granted.

Part 4—Amendments to Waste Disposal (Permits, Authorizations and Licences) (Fees) Regulation (Cap. 354 sub. leg. D) (*Cap. 354D*)

19. Part 4 amends Cap. 354D to empower the Secretary to amend the fees in Schedule 2 to Cap. 354D.

Part 5—Amendment to Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L) (*Cap. 354L*)

20. Clause 23 amends Cap. 354L to prohibit the disposal of e-waste at any designated waste disposal facility.