

**Promotion of Recycling and Proper Disposal
(Product Container) (Amendment) Bill 2015**

This note serves to provide supplementary information about the Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Bill 2015 (“the Bill”) in response to the letter from the Assistant Legal Adviser dated 14 September 2015.

(a) *It is noted that the Bill proposes to amend the Product Eco-responsibility Ordinance (Cap. 603) to provide for the collection of a recycling levy on glass containers of certain products. Paragraph 8 of the LegCo Brief states, among other things, that “No service is directly provided to the registered suppliers in relation to the regulated articles. Having regard to the nature of the monies to be collected, it is more appropriate to refer to the amount as a recycling levy rather than a fee.” In light of the aforesaid, please clarify whether any service would be indirectly provided to the registered suppliers.*

2. The crux of paragraph 8 of the LegCo Brief is that no service is rendered to the registered suppliers in return for their payment to the Director of Environmental Protection (“DEP”) under the mandatory producer responsibility scheme (“PRS”) on product containers. As a “fee” is an amount of money paid for a particular service or right or for a particular piece of work, it is more appropriate to refer to the amount to be collected from the suppliers under the Bill as “levy”. For further information, it is our intention that this recycling levy will be set at an appropriate level to recover the full costs of the PRS, which will be mainly incurred in hiring the Glass Management Contractors (“GMCs”), including –

- (a) to coordinate with Community Green Stations (“CGSs”) to manage the glass container collection services provided to residential buildings/estates in the catchment region so that the glass containers gathered by CGSs will be efficiently delivered to the collection/recovery facilities of the GMC;
- (b) to maintain a sufficient network of collection points so that waste producers (mainly pubs/bars and other food

and beverage operators) may conveniently participate in waste glass container recycling;

- (c) to accept all properly rinsed waste glass containers (including food/sauce containers if any) with a view to meeting a recovery target which will ramp up over time to ultimately a territory-wide total of about 50 000 tonnes per year; and
- (d) to arrange gainful reuse of the waste glass containers, or properly treat them in its own plant or through outsourcing until they become reusable materials.

(b) *It is noted that supplier is defined under clause 7 of the Bill. Paragraph (a) of the definition refers to a person who "undertakes in Hong Kong the process of" (emphasis added). The corresponding Chinese rendition refers to "在香港進行以下工序的人....". Please clarify whether a person who merely commits oneself to or gives a formal promise or pledge to perform the relevant process in Hong Kong will be considered as a supplier under the Bill.*

3. A person who merely commits oneself or gives a formal promise or pledge to perform the relevant process in Hong Kong is not a "supplier" under the Bill, which is defined as a person who manufactures a regulated article or causes the article to be imported into Hong Kong for distribution. Under paragraph (a) of the definition of "supplier", the act of "undertakes" occurs *in the course of the person's business of manufacturing the article*. With this context, "undertakes" means to do or begin to do something (*Cambridge Dictionary*). Hence only the person who performs the relevant process in the course of his/her business will be regarded as a supplier.

(c) *Please provide information on the amount of the application fee under the proposed section 40(2)(a) (in clause 7) and clarify whether the fee is refundable if the application concerned is refused by the Director of Environmental Protection (DEP).*

4. It is our intention to charge an application fee to recover the full costs incurred in handling an application for exemption. As the

handling costs would have been incurred irrespective whether the application was approved, the fee is not refundable even if the application is eventually refused by DEP. We will determine the operational details after further engagement with the trades and, on that basis, conduct necessary costing before we can come up with a specific fee proposal.

(d) It is noted that clause 11(2) of the Bill proposes to add section 16(2A) to the Waste Disposal Ordinance (Cap. 354). In gist, the section provides that although a person has satisfied any of the criteria in the proposed section 16(2)(ea) to (ec), the person may apply to DEP for a licence to use any land or premises for the disposal of container waste.

(i) Please clarify if a fee is payable in respect of the application for a licence and explain to Members the circumstances to which the proposed section 16(2A) would be applicable.

(ii) Please also explain to Members the rationale for applying for a licence under the proposed section 16(2A) even though section 16(1) does not apply to the use of land or premises under the circumstances in the proposed section 16(2)(ea) to (ec).

5. Section 16(1) of the Waste Disposal Ordinance (Cap. 354) (“WDO”) prohibits the use of land or premises for the disposal of waste without licence. The imposition of the licensing requirement seeks to enhance the control on the disposal of regulated container waste. Yet some practitioners in the recycling industry may undertake part of the treatment process, for example simple crushing of regulated container waste for logistic handling or small-scale stockpiling. Such process, if conducted on a small scale, does not cause material adverse environmental impacts. In order to avoid undue impact on such small-scale operations, we have proposed that the prohibition under section 16(1) does not apply to the use of land or premises for the disposal/depositing activities referred to in section 16(2) (including those under the proposed section 16(2)(ea) to (ec)).

6. We envisage that with the implementation of the PRS, there will be market demand for proper container waste recycling services by duly licensed recyclers. Despite the proposed section 16(2A), a person may still wish to apply to DEP for a waste disposal licence for other business

considerations, even though he or she is not prohibited to use land or premises for the disposal of regulated container waste without licence. This will provide an avenue for small-scale recyclers who are not subject to the licensing requirement to operate as licensed container waste recyclers after completing the necessary application procedures and meeting all relevant terms and conditions.

7. Under section 21(3) of the WDO, an application for a waste disposal licence must be accompanied by the fee as prescribed in item 2 in Schedule 2 to the Waste Disposal (Permits, Authorizations and Licences) (Fees) Regulation (Cap. 354D). Thus, a fee is payable for applications under section 21(2) for the licences referred to in section 16(1) or the proposed section 16(2A). For further information, we will determine the operational details after further engagement with the trades and, on that basis, consider whether the existing fee level is applicable or a new fee should be prescribed.

**Environmental Protection Department
October 2015**