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**Paper for the House Committee Meeting
on 9 October 2015**

**Legal Service Division Report on
Promotion of Recycling and Proper Disposal
(Product Container) (Amendment) Bill 2015**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Product Eco-responsibility Ordinance (Cap. 603) to provide for the collection of a recycling levy on the containers of certain products, to amend the Waste Disposal Ordinance (Cap. 354) to regulate the disposal of such containers, and to provide for related matters.
- 2. Public Consultation**

The Administration conducted a public consultation exercise in 2013. While the community was supportive of introducing a mandatory producer responsibility scheme (PRS) on glass beverage containers, some members of the public expressed concerns regarding the implementation of the proposed scheme. According to the Administration, to address these concerns, it has implemented certain complementary measures. As the relevant trades remain concerned about the compliance cost, the Administration has agreed to keep the stakeholders closely engaged as it further works out the compliance system for the PRS.
- 3. Consultation with LegCo Panel**

The Panel on Environmental Affairs (EA Panel) was consulted at its meetings on 25 November 2013 and 27 April 2015. While members generally supported the proposal, some members have raised concerns on various matters, including that beverage suppliers might recover the recycling levy from consumers or such suppliers might switch to using plastic or aluminum containers.
- 4. Conclusion**

The Bill seeks to introduce a new regulatory regime and recycling levy in respect of glass beverage containers. In view of the concerns raised by members of the EA Panel, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 8 July 2015. Members may refer to the Legislative Council (LegCo) Brief (File Ref.: EP CR 9/150/35 Pt.4) issued by the Environment Bureau and the Environmental Protection Department in July 2015 for further details.

Object of the Bill

2. The Bill seeks to amend the Product Eco-responsibility Ordinance (Cap. 603) to provide for the collection of a recycling levy on the containers of certain products, to amend the Waste Disposal Ordinance (Cap. 354) to regulate the disposal of such containers, and to provide for related matters.

Background

3. Cap. 603 was enacted in 2008 to introduce measures to minimize the environmental impact of various types of articles (which may include plastic shopping bags (PSBs) and electrical and electronic equipment), and to introduce producer responsibility schemes (PRS) based on the "polluter pays" principle. At present, a mandatory PRS is provided in Cap. 603 to regulate the distribution of PSBs in relation to goods sold by retail, where a charge of at least 50 cents is collected in respect of each PSB if certain conditions are satisfied. In March 2015, the Administration introduced the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 (EE Bill) to amend Cap. 603 and Cap. 354. In gist, the EE Bill seeks to regulate the disposal of electrical and electronic equipment, and to impose a recycling fee on any such equipment. The EE Bill is currently under the scrutiny of a Bills Committee formed to study the Bill in detail.

4. According to paragraphs 2 and 3 of the LegCo Brief, most of the waste glass containers generated in Hong Kong are disposed of at landfills whereas such containers are often recycled and reused elsewhere in the world. The high logistic cost is one of the key impediments to efficient collection of waste glass containers for proper recycling. The Administration is of the view that only a mandatory PRS may offer a territory-wide solution for the proper management of waste glass beverage containers in Hong Kong. As such, the Administration considers it necessary to introduce legislation to provide for a statutory regulatory framework for a mandatory PRS in respect of certain types of product containers which will first cover glass beverage containers.

Key provisions of the Bill

Scope of regulation

5. At present, the recycling and disposal of glass containers are not subject to any statutory regulation or recycling levy. The Bill seeks to introduce a mandatory PRS to regulate any regulated article which is set out in Part 2 of the new Schedule 6 to Cap. 603. Glass container of beverage (which is defined to mean every type of drink and includes water) is the only type of container now proposed in the new Schedule 6. According to paragraph 7 of the LegCo Brief, it is the Administration's plan that other products held in glass containers may also be regulated in the future.

6. Under the new section 41 (proposed to be added to Cap. 603 by clause 7), the Secretary for the Environment (the Secretary) may, after consulting the Advisory Council on the Environment (ACE), amend Schedule 6 (in order to amend the scope of articles to be regulated) by notice published in the Gazette. Members may wish to note that such notice is subject to the approval of LegCo under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1) (i.e. the positive vetting procedure).

Proposed regulatory framework under Cap. 603

7. The Bill proposes to add, under clause 7, sections 31 to 41 to Cap. 603 to provide for a statutory framework in respect of certain types of containers, including the registration of suppliers, the collection of a recycling levy and matters relating to such collection.

Registration of suppliers

8. According to the new section 33, a supplier may apply to the Director of Environmental Protection (DEP) to be a registered supplier. The term "supplier" is defined to mean (a) a person who, in the course of the person's business of manufacturing a regulated article, undertakes in Hong Kong the process of sealing the container constituting part of the article or (b) a person who, in the course of the person's business, causes a regulated article to be imported into Hong Kong for distribution. However, the person referred in (b) is not considered as a supplier if the person does not own the regulated article and the person only provides a service for transporting the article into Hong Kong for another person. A supplier commits an offence if, not being a registered supplier, the supplier carries on a business of distributing regulated articles in Hong Kong. Upon conviction of the offence, the supplier is liable to a fine at level 6 (i.e. \$100,000).

Obligation to pay the recycling levy

9. Under the new section 35(1), a registered supplier must pay to DEP a container recycling levy for a regulated article if the supplier distributes or consumes the article in Hong Kong. According to the new section 32(2), such levy is not payable in respect of a regulated article if the article is imported by a supplier into Hong Kong solely for export. Any outstanding amount of the levy payable under the new section 35 is recoverable as a civil debt due to the Government. A registered supplier who does not pay the levy in accordance with a payment notice served under the new section 36(2) commits an offence and is liable on the first conviction to a fine at level 6 (i.e. \$100,000), and to a fine of \$200,000 on a subsequent conviction.

10. Under the new section 39(1)(c), the container recycling levy may be prescribed by regulations made by the Secretary after consulting ACE. Any such regulation made under the new section 39 is subject to the approval of LegCo (i.e. the positive vetting procedure). According to paragraph 10 of the LegCo Brief, the Administration has indicated that the levy may be set at around \$1 per one litre-container volume, based on overseas experience.

Obligations to submit annual audit reports and periodic returns and to keep records

11. Under the new sections 36 and 37, a registered supplier is required, in accordance with the relevant regulations to be made under the new section 39, to submit periodic returns and annual audit reports to DEP and to keep records. According to paragraph 9(b) of the LegCo Brief, such regulations may prescribe the information that is required to be contained in a return, and the requirements in respect of annual audit reports and records to be kept by a registered supplier. Members may wish to note that such regulations are subject to the approval of LegCo (i.e. the positive vetting procedure).

12. A registered supplier who does not submit a return in accordance with the prescribed regulations commits an offence and is liable to a fine at level 6 (i.e. \$100,000) on the first conviction and a fine of \$200,000 on a subsequent conviction. A registered supplier who does not submit an annual audit report or keep the relevant records in accordance with the prescribed regulations commits an offence and, upon conviction, the person is liable to a fine at level 5 (i.e. \$50,000).

Exemption

13. The Bill proposes that a registered supplier may apply for an exemption from payment of the levy, submission of periodic returns or

submission of annual audit reports if certain conditions are satisfied. According to the new section 40(2), the application must be accompanied by a container waste reduction plan specifying the arrangement for the recovery and reuse or recycling of the containers concerned and an application fee. The application must be refused if DEP considers that the plan submitted by the applicant is impracticable or cannot ensure the recovery and reuse or recycling of the containers concerned in an environmentally sound manner. An applicant who is aggrieved by DEP's refusal may lodge an appeal to the Appeal Board in accordance with section 13 of Cap. 603.

Amendments to Cap. 354

14. Section 16 of Cap. 354 currently provides that a person shall not use, or permit to be used, any land or premise for the disposal of waste unless the person has a licence from DEP to use the land or premises for that purpose. Under section 2(1) of Cap. 354, "waste" is defined to mean any substance or article which is abandoned and includes animal waste, chemical waste, clinical waste, construction waste, household waste, livestock waste, street waste and trade waste.

15. The Bill proposes to amend section 16 of Cap. 354 so that storage, treatment, reprocessing and recycling of waste glass beverage containers (known as container waste) are subject to the requirement under section 16. The Bill further proposes to amend sections 20A and 20B of Cap. 354 so that any container waste may not be imported or exported without a permit. In addition, the Bill proposes to amend section 21A of Cap. 354 to provide for the conditions in respect of granting a waste disposal licence for container waste.

Commencement

16. The Bill, if passed, would come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

Public Consultation

17. According to paragraph 24 of the LegCo Brief, a public consultation was conducted in 2013 and the community was supportive of introducing a mandatory PRS on glass beverage containers. Some members of the public expressed concerns including the collection network of glass beverage containers, the proper treatment of waste glass containers locally generated and adequate reuse or recycling outlets for the recycled materials. The Administration considered that the measures which were implemented

largely addressed the concerns. Such measures include expanding the glass container collection network, hiring glass management contractors to serve certain catchment regions, drawing up certain technical specifications which help determine the necessary treatment process to be deployed for crushing glass containers and encouraging the private sector to adopt "green procurement" in their works projects. As the relevant trades remain concerned about the compliance cost, the Administration has agreed to keep the stakeholders closely engaged as it further works out the compliance system and other complementary measures for the PRS.

Consultation with LegCo Panel

18. As advised by the Clerk to the Panel on Environmental Affairs (EA Panel), at the meetings on 25 November 2013 and 27 April 2015, the EA Panel was consulted on the proposal to introduce a mandatory PRS on glass beverage bottles ("GBBs"). While members generally supported the proposal, some members expressed concerns that beverage suppliers might recover the recycling fee wholly or partially from consumers, or the suppliers might switch to using aluminum cans or plastic bottles for their beverages. Members also made enquiries on certain issues, including the targets to be achieved by the PRS on GBBs, the collection of GBBs, appointment of glass management contractors, the collection of the recycling fee and its related exemptions, and the level playing field for other waste glass recyclers.

Conclusion

19. The Legal Service Division has written to the Administration to seek clarification on certain legal and drafting issues of the Bill. In the light of the views and concerns expressed at the above meetings of the EA Panel, Members may wish to form a Bills Committee to study the Bill in detail.

Prepared by

LEE Hoi-see, Evelyn
Assistant Legal Adviser
Legislative Council Secretariat
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