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Panel on Environmental Affairs

Meeting on 15 December 2014

**Updated background brief on "Environmental Levy Scheme on
Plastic Shopping Bags"
prepared by the Legislative Council Secretariat**

Purpose

This paper provides updated background information on the extension of the Environmental Levy Scheme on Plastic Shopping Bags ("the Levy Scheme") to retail outlets, and gives a summary of the views and concerns expressed by Members on the subject.

Background

The Levy Scheme

2. Introduced under the Product Eco-responsibility Ordinance (Cap. 603), the Levy Scheme was launched on 7 July 2009 as the first mandatory producer responsibility scheme in Hong Kong to discourage the indiscriminate use of plastic shopping bags ("PSBs"). It applies to some 3 500 registered retail outlets and the relevant registered retailers are required to charge their customers an amount of 50 cents as an environmental levy for each PSB provided to them. The registered retailers have to submit to the Administration quarterly returns setting out the number of PSBs distributed to customers in the non-exempted areas¹ in all of their registered retail outlets as well as the amount

¹ There are two types of exemption, one for non-specified goods (i.e. goods other than food or drink, medicine or first-aid item and personal hygiene or beauty product) and the other for third-party operators.

of levy collected for such bags. Further, the retailers have to pay to the Administration their levy income as stated in their returns on a quarterly basis.

3. According to the Administration, the Levy Scheme has, upon its first year of implementation, yielded positive results and has estimated to have reduced the excessive use of PSBs significantly by up to 90%. However, according to subsequent landfill surveys conducted by the Environmental Protection Department ("EPD"), the problem of excessive PSB use remains serious outside the current scope of the Levy Scheme. Within the retail categories other than the regulated sectors², PSB disposal at the landfills was found to have increased by about 6% between mid-2009 to mid-2010.

4. In May 2011, the Administration launched a three-month public consultation on whether and how to extend the Levy Scheme. On the whole, the community was supportive of extending the scope of Levy Scheme to further address the problem of excessive PSB use in Hong Kong. In particular, there was majority support for the Levy Scheme to cover also small and medium enterprises ("SMEs"). On the other hand, there were concerns about the potential implications on the operation of and compliance costs on SMEs.

The Product Eco-responsibility (Amendment) Bill 2013

5. Against the above background, the Product Eco-responsibility (Amendment) Bill 2013 ("the Bill") was introduced into the Legislative Council ("LegCo") on 8 May 2013. It sought to extend the charges on PSBs to all sales of goods by retail. The sellers might retain the charges collected from customers and would not be required to remit the charges to the Government. There would not be any requirement for registration, record keeping and submission of quarterly returns and any such existing provisions were proposed to be repealed. The Bill also introduced a fixed penalty system for the offence of failing to charge for PSBs provided at the time of sale concerned or offering any rebate or discount to offset the charge concerned.

6. The Bill had been scrutinized by a Bills Committee ("the Bills Committee") and was passed by LegCo on 19 March 2014 with amendments as proposed by the Administration. The commencement date of the extended Levy Scheme shall be 1 April 2015 as stipulated in the Product Eco-responsibility (Amendment) Ordinance 2014.

² Namely chain or large retailers such as supermarkets, convenience stores and medicare and cosmetic stores.

Members' views and concerns

7. Members in general supported the extended Levy Scheme in view of its remarkable effectiveness in promoting the "Bring Your Own Bag" habit and reducing the excessive use of PSBs. The major views and concerns expressed by Members at the meetings of the Panel on Environmental Affairs ("the Panel") and the Bills Committee are summarized in the ensuing paragraphs.

Discussions at the Panel

8. The Panel discussed the extension of the Levy Scheme at its meetings on 23 May, 20 July and 28 November 2011. It also received public views on the subject at the meeting on 20 July 2011.

9. At the Panel meeting on 28 November 2011, while indicating support for the extension of the Levy Scheme to cover all retailers in Hong Kong, some members requested the Administration to provide clear guidelines on the compliance requirements and exemption criteria for the PSB charges. The Administration advised that under the extended Levy Scheme, a PSB would not be subject to the PSB charge if it was used to contain solely "foodstuffs" which were not packaged in a way that they were securely segregated from the outside environment. Clear guidelines would be provided to facilitate the public and stakeholders in understanding the compliance requirements under the extended Levy Scheme.

10. Some members were however of the view that instead of a full extension, consideration should be given to adopting an incremental approach to include retailers operating above a certain scale in the second phase of the Levy Scheme. Subject to the success of the second phase, further extension could then be considered. The Administration advised that according to the Census and Statistics Department, there were about 60 000 retail establishments in Hong Kong, most of which were operated by SMEs. Therefore, an incremental approach could only achieve modest extension as the vast majority of retail outlets would continue to fall outside the mandatory Product Responsibility Scheme.

11. To reduce PSBs at source, some members suggested restricting the import of PSBs or apply the levy to manufacturers and importers of PSBs direct, rather than extending the Levy Scheme to include all retailers. The Administration responded that the charging of levy direct on wholesalers, manufacturers and importers of PSBs could not achieve the intended purpose of the Levy Scheme which was to create a direct economic disincentive to encourage consumers to reduce the indiscriminate use of PSBs. Publicity and educational efforts would be stepped up to enhance public awareness on the need to avoid the indiscriminate use of PSBs.

Discussions at the Bills Committee

Exemptions under the Bill

12. In scrutinizing the Bill, the Bills Committee expressed serious concern that the scope of exemption³ under the extended Levy Scheme as proposed in the Bill was not clear. Conflicts between customers and retailers could arise over whether the PSB charges should apply to PSBs which contained foodstuff items and pre-packaged promotional items. The Bills Committee expressed particular concern about "temperature-controlled food" because such food would change its physical state due to temperature difference in the course of its conveyance and something might spill out of the packaging despite that such packaging would have already rendered no part of the food being exposed to the environment. As such, the Bills Committee requested the Administration to consider granting exemption to PSBs used for carrying "temperature-controlled food" across the board.

13. In the light of the Bills Committee's concern, the Administration moved Committee stage amendments, which were passed in Council, to the effect that a foodstuff item that was in chilled or frozen state would be entitled to food hygiene exemption such that a PSB containing such foodstuff item would not be subject to the mandatory charge irrespective of how the item concerned was packaged.

14. The Bills Committee noted that under the Bill, a bag "specifically designed for containing the goods" would be regarded as forming part of the goods concerned and would be exempted from the mandatory charge. The Bills Committee expressed concern that as the Bill did not provide for a definition for the term "specifically designed", it could be subject to different interpretations and the exemption criteria were confusing.

15. The Administration explained that in general, a bag which was specifically designed for containing the goods referred to (i) a bag, (ii) the bag carried certain design features (such as size, colour, material or shape) and (iii)

³ Under the Bill, charge would not apply to –

- (a) any PSB that only contained an item of food, drink or medicine for human or animal consumption. However, the charge was applicable to a PSB if any of those items contained in the bag was contained in air-tight packaging or the item was already in such packaging that no part of the item was exposed to the environment and nothing might spill out of the packaging in the course of its conveyance; and
- (b) any PSB which formed part of the goods concerned. Such bags included a PSB which was specifically designed for containing the goods or information on how to consume or use the goods contained in the PSB was found on the bag.

such design features were specific for the purpose of containing the goods. Whether a bag would be exempted would depend on actual circumstances.

Retention of the PSB charge by retailers

16. The Bills Committee noted that the first phase of the Levy Scheme had adopted a "remittance" approach, under which retailers were required to submit to the Government quarterly the levy income collected from distribution of PSBs. The Administration proposed to adopt a "retention" approach for the extended Levy Scheme under which retailers might retain the PSB charge without the need of remitting it to the Government. Moreover, the administrative requirements comprising registration of retailers and retail outlets, keeping of records as well as submission of quarterly returns to the Government would be removed. The Bills Committee expressed reservations about the "retention" approach and the removal of the record keeping requirements. It was concerned that there would not be any means to assess the effectiveness and monitor the compliance of the extended Levy Scheme.

17. Some members suggested that a "dual" system be implemented. The "remittance" approach should continue to apply to those retailers which had the ability to comply with the relevant requirements. The dividing line for adopting the "remittance" approach could be the retailer's business turnover and the retail floor area of the retail outlet that the retailer operated. However, some members did not support a "dual" system. They were of the view that differential treatment would be unfair and stressed the importance of maintaining a level playing field in the retail sector. They also considered it difficult to draw the dividing line and objected to using a retailers' scale of operation as the criterion for differential treatment.

18. The Administration explained that as the extended Levy Scheme would cover all retailers, the "remittance" approach with its elaborated compliance system would be too burdensome and the compliance costs too high for SMEs. Besides, the record keeping and reporting requirements of the first phase of the Levy Scheme were in essence measures to protect the Government's revenue as the relevant records could be used for assessing the levy receivable in case of doubts or non-compliance. The requirements were proposed to be removed under the extended Levy Scheme on account of operational feasibility and equality to all retailers. Notwithstanding this, the Administration undertook to implement a voluntary reporting system, whereby the registered retailers covered by the first phase of the Levy Scheme would be encouraged to provide their PSBs usage to the Hong Kong Retail Management Association ("HKRMA") on a yearly basis. HKRMA would then act as a single platform to collate figures provided by those retailers and help release the aggregate figures to EPD, and EPD would release the collated figures on an annual basis.

19. The Bills Committee welcomed the voluntary measures and urged the Administration to work with HKRMA to encourage more retailers to participate in the voluntary reporting system and to monitor the effectiveness of the extended Levy Scheme through different means, including increasing the frequency of landfill surveys to obtain more accurate and up-to-date data on PSB disposal.

Fixed penalty system

20. The Bills Committee noted that the Bill provided for a fixed penalty system, under which a person committed an offence for failing to charge for PSBs provided at the time of sale might be required to pay a fixed penalty of \$2,000. Considering that the level of penalty would be too high for SMEs, the Bills Committee requested the Administration to lower the penalty level.

21. The Administration responded that the penalty level was set at \$2,000 having regard to the level of penalty for offences. The penalty level should reflect the seriousness of the offence rather than the offender's readiness to pay. Besides, a fixed penalty system gave an offender an opportunity to discharge liability by paying a fixed fine rather than attending a court hearing, provided that the offender accepted guilt. The expenses and opportunity costs for going through court hearings could be even higher.

Latest development

22. The Administration will brief members on the implementation of the extension of the PSB charging to all retail outlets at the Panel meeting on 15 December 2014.

Relevant papers

23. A list of relevant papers is set out in the **Appendix**.

List of relevant papers

| Council/ Committee | Date of meeting | Paper |
|--------------------------------------|-----------------|--|
| Panel on Environmental Affairs | 23 May 2011 | <p>Administration's paper on "Public consultation on the Extension of the Environmental Levy Scheme on Plastic Shopping Bags" (LC Paper No. CB(1)2193/10-11(04)) http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea0523cb1-2193-4-e.pdf</p> <p>Background brief on "The Environmental Levy Scheme on Plastic Shopping Bags" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)2193/10-11(05)) http://www.legco.gov.hk/yr10-11/english/panels/ea/papers/ea0523cb1-2193-5-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)2964/10-11) http://www.legco.gov.hk/yr10-11/english/panels/ea/minutes/ea20110523.pdf</p> |
| Panel on Environmental Affairs | 20 July 2011 | <p>Minutes of meeting (LC Paper No. CB(1)228/11-12) http://www.legco.gov.hk/yr10-11/english/panels/ea/minutes/ea20110720.pdf</p> |

| Council/ Committee | Date of meeting | Paper |
|--------------------------------|------------------------|--|
| Panel on Environmental Affairs | 28 November 2011 | <p>Administration's paper on "Extension of the Environmental Levy Scheme on Plastic Shopping Bag" (LC Paper No. CB(1)424/11-12(05)) http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-424-5-e.pdf</p> <p>Updated background brief on "The Environmental Levy Scheme on Plastic Shopping Bags" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)424/11-12(06)) http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-424-6-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)853/11-12) http://www.legco.gov.hk/yr11-12/english/panels/ea/minutes/ea20111128.pdf</p> <p>Administration's supplementary paper on "Extension of the Environmental Levy Scheme on Plastic Shopping Bag" (LC Paper No. CB(1)2667/11-12(01)) http://www.legco.gov.hk/yr11-12/english/panels/ea/papers/ea1128cb1-2667-1-e.pdf</p> |
| Legislative Council | 19 March 2014 | <p>Report of the Bills Committee on Product Eco-responsibility (Amendment) Bill 2013 (LC Paper No. CB(1)1075/13-14) http://www.legco.gov.hk/yr12-13/english/bc/bc09/reports/bc090319cb1-1075-e.pdf</p> |