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**Report of the Bills Committee on Promotion of Recycling and
Proper Disposal (Electrical Equipment and Electronic Equipment)
(Amendment) Bill 2015**

Purpose

This paper reports on the deliberations of the Bills Committee on Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment)(Amendment) Bill 2015 ("the Bills Committee").

Background

2. At present, about 70 000 tonnes of waste electrical and electronic equipment ("WEEE") are generated in Hong Kong annually, most of which are exported for reuse or recovery of valuable materials. With progressive economic development and tightening of import control over WEEE in the developing countries, and an expected decline in the demand for second-hand products in markets outside Hong Kong, the Administration has indicated that reliance on export as a major outlet for WEEE may not be sustainable in the long run.

3. In 2010, a public consultation was conducted on the introduction of legislation for the proper management of WEEE through a mandatory producer responsibility scheme ("the proposed mandatory PRS") based on the "polluter pays" principle and the community feedback was generally supportive. In February 2015, the Administration obtained approval by the Finance Committee of the Legislative Council ("LegCo") on a funding proposal for the

development of a WEEE treatment and recycling facility ("WEEETRF")¹ as an essential infrastructure for the launch of the proposed mandatory PRS.

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

4. The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment)(Amendment) Bill 2015 ("the Bill") was published in the Gazette on 13 March 2015 and received its First Reading at the Council meeting of 18 March 2015. The Bill seeks to amend mainly the Product Eco-responsibility Ordinance (Cap. 603) ("PERO") and the Waste Disposal Ordinance (Cap. 354) ("WDO") to provide for a statutory regulatory framework for the proposed mandatory PRS. The main provisions of the Bill are –

Clauses 3 to 9

5. Clauses 3 to 9 put in place necessary provisions in PERO including –
- (a) Part 4, Division 1 (i.e. section 31) that introduces various definitions such as "supplier", "seller", "distribute" and "use"², which are essential for the legislative proposal to come into operation upon the passage of the Bill;
 - (b) Part 4, Division 2 (i.e. sections 32 to 34) that provides for the matters relating to the registration of suppliers of regulated electrical equipment ("REE");
 - (c) Part 4, Division 3 (i.e. sections 35 to 40) that provides for the conditions under which a recycling fee (which was proposed to be changed to a recycling levy by the Administration during scrutiny of the Bill) will be payable in respect of a piece of REE and the obligations of registered suppliers of REE ("registered suppliers") and REE sellers ("sellers");
 - (d) Part 4, Division 4 (i.e. sections 41 to 43) that provides for the arrangement of removal services of REE by sellers; and

¹ The approved funding proposal is for the development of WEEETRF at an estimated capital cost of \$550 million and operating expenses of \$200 million per annum.

² The definitions referred to in paragraph 5(a) were proposed to be amended by the Administration during the scrutiny of the Bill, as explained in paragraphs 21, 22, 24, 32 and 91(a)(i) of this report.

- (e) Schedule 6 that defines the REE which are proposed to be regulated by the Bill.

Clauses 11 to 18

6. Clauses 11 to 18 amend WDO to put in place the licensing control for the disposal of waste generated from REE as defined under the proposed Schedule 6 to PERO ("regulated e-waste") and the permit control for import and export of regulated e-waste.

Clause 23

7. Clause 23 amends the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 L) for banning the disposal of regulated e-waste in landfills.

The Bills Committee

8. At the House Committee meeting on 20 March 2015, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Ir Dr Hon LO Wai-kwok, the Bills Committee has held eight meetings to discuss with the Administration, including one meeting to receive views from deputations. The Bills Committee has also received twelve written submissions from deputations. The list of deputations which have provided views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

9. The Bills Committee supports the Bill in principle. The main subjects deliberated by the Bills Committee are set out below :

- (a) Scope and definition of REE (paragraphs 10 – 11);
- (b) Charging of recycling fees (paragraphs 12 – 40);
- (c) Level of recycling fees (paragraphs 41 – 47);
- (d) Recycling label (paragraphs 48 – 61);

- (e) Removal service to be arranged by sellers (paragraphs 62 – 68); and
- (f) Proper treatment of regulated e-waste (paragraphs 69 – 90).

Scope and definition of REE

10. The Bills Committee notes that the proposed mandatory PRS will initially cover five broad categories of REE (in eight classes as set out in the proposed Schedule 6 to PERO) –

- (a) air conditioners;
- (b) refrigerators;
- (c) washing machines;
- (d) televisions; and
- (e) computer products viz. (i) computers (desktops, laptops and tablets), (ii) printers, (iii) scanners and (iv) monitors.

The above categories of REE account for about 85% of all WEEE generated in Hong Kong at present, and other similar schemes internationally also cover such equipment when they were first introduced. According to the Administration, as most of other electrical/electronic equipment that is not REE has an active local second-hand market, proper recycling of such equipment can be supported by voluntary recycling programmes. The Administration will review and consider the need of extending the proposed mandatory PRS to cover more classes of REE at a later stage.

11. The Bills Committee has enquired about how to decide whether a certain function of certain equipment is a "principal function" or "one of the principal functions" of the item for the purpose of the technical definitions of REE set out in Column 3 of the proposed Schedule 6 to PERO. There is a concern that the novelties in the functions and designs of certain electrical/electronic equipment, in particular notebook computers and tablet computers, may make it difficult to define in clear terms whether these products will be subject to the proposed mandatory PRS. The Administration has advised that whether a certain function is the principal function of an electrical/electronic equipment can be determined by objective factors, such as its design and primary use, and the equipment may have one or more principal functions. The Administration will keep in view the market developments to ensure that the proposed Schedule 6 is up-to-date.

Charging of recycling fees

Fee collection mechanism

12. The Bills Committee notes that recycling fees will be imposed on registered suppliers to recover the full costs of the proposed mandatory PRS. The suppliers may in turn recover such fees wholly or partially from other stakeholders along the supply chain. The proposed fee collection mechanism is outlined as follows –

- (a) *Registration of suppliers:* The proposed section 33 of PERO provides for the registration of a supplier (as defined by the proposed section 31) as a registered supplier by the Director of Environmental Protection ("DEP"). A supplier commits an offence under the proposed section 32(1) if, not being registered, the supplier carries on a business of distributing the REE for further distribution in Hong Kong. The proposed section 34 further provides for cancellation of the registration of a supplier if DEP is satisfied that the registered supplier is no longer a supplier. According to the Administration, a decision made by DEP to register a person as a registered supplier or cancel the registration of a supplier will be specified as appealable matters³ by the regulation to be made under the proposed section 44 of PERO ("the REE regulation").
- (b) *Recycling fee payable:* The proposed section 37 stipulates that a recycling fee is payable by a registered supplier for any piece of REE if –
 - (i) the equipment is manufactured in Hong Kong by the supplier in the course of the supplier's business; or the equipment is caused to be imported into Hong Kong by the supplier for distribution 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 (i.e. proposed section 37(1)(a)(i) and (ii)); and
 - (ii) the supplier distributes the equipment to a consumer, or distributes the equipment for further distribution in Hong

³ Under section 13(1) of PERO, a person who is aggrieved by a decision of a public officer relating to an appealable matter may, within 21 days after the date on which the notice about the matter is serviced on him, appeal to the Appeal Board by giving a notice of appeal to DEP stating the reasons for the appeal.

Kong to a consumer or uses the equipment for the first time (proposed section 37(1)(b)(i), (ii) and (iii)).

According to the Administration, recycling fees will not be collected for exports of locally manufactured REE and re-exports of imported REE as such REE will be used outside Hong Kong⁴.

- (c) *Submission and auditing of periodic returns and payment of recycling fees:* Under the proposed section 38, a registered supplier will have to submit to DEP periodic returns, setting out information⁵ that is necessary for the determination of the recycling fees payable, and will have to keep records to facilitate future inspection; whereas the proposed section 39 requires the registered supplier to arrange annual audit on the periodic returns. Within a specified period of time after receiving a payment notice from the Government, a registered supplier will have to pay the recycling fees to the Government.
- (d) *Provision of recycling labels:* A registered supplier and a seller must, for each item of REE distributed, provide a recycling label of the appropriate type as will be specified by DEP. The relevant requirements are set out in the proposed section 35.

13. The Bills Committee has examined the following definitions⁶ in the proposed section 31 of PERO which are pivotal to the operation of the proposed provisions on registration of suppliers, obligations of registered suppliers and sellers, and payment of recycling fees –

- (a) "supplier" – which is defined as a person who manufactures REE in Hong Kong in the course of the person's business; or a person who causes to be imported into Hong Kong REE for distribution 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;
- (b) "seller" – which is defined as a person who carries on a business of distributing REE to consumers;

⁴ Source: paragraph 13(c) of the Legislative Council Brief issued by the Administration in March 2015.

⁵ The detailed reporting requirements will be prescribed by the REE regulation.

⁶ As aforementioned, the definitions in paragraph 13(a) to (d) will be subject to Committee Stage amendments ("CSAs") to be discussed in the ensuing paragraphs of the report.

- (c) "distribute" – which, in relation to any REE, means to sell or lease the equipment; to exchange or dispose of the equipment for consideration; to transmit or deliver the equipment for any of the following activities – (i) selling; (ii) leasing; (iii) an exchange or disposal for consideration; or give the equipment to another person as a prize or gift for business purposes; and
- (d) "use" – which, in relation to any REE, includes (i) exhibit the equipment for business purposes; and (ii) give the equipment to another person as a prize or gift otherwise than for business purposes.

14. In response to the Bills Committee's enquiry, the Administration has clarified that manufacturers/sellers of REE operating outside Hong Kong and not importing REE into Hong Kong for distribution will not fall under the definition of "supplier". They will not be required to pay recycling fees if an individual in Hong Kong purchases REE from them for use. Besides, no recycling fees will be payable in respect of the distribution or use of any second-hand equipment.

15. As mentioned in paragraph 12(a) above, a supplier commits an offence under the proposed section 32(1) if, not being registered under section 33, the supplier carries on a business of distributing REE for further distribution in Hong Kong. After review, the Administration has advised that it will move Committee Stage amendments ("CSAs") to the proposed section 32(1) of PERO in clause 8 of the Bill to mandate also the registration of a supplier who distributes REE but may not carry on a business of doing so, or who only distributes REE directly to a consumer, with a view to plugging the loophole that a person may evade the relevant responsibilities of a registered supplier in these circumstances. The Administration has indicated that it will not mandate the registration at this stage if a person imports/manufactures REE for use but does not distribute the REE. The Administration will review this position taking into account practical experience upon implementation of the proposed mandatory PRS.

16. The Bills Committee notes that under the proposed section 40(1) of PERO, DEP may recover a recycling fee by assessment notice if a person distributes REE without being registered as a registered supplier as required by the proposed section 32(1); or distributes REE in the course of the person's business as a registered supplier, without having paid DEP the recycling fee payable (or any part of the fee). Under the proposed section 40(7), an assessment notice served in respect of the recycling fee payable for a period must be served within five years after the end of that period. An outstanding

amount of the recycling fee is recoverable as a civil debt to the Government under the proposed section 40(12).

17. In line with the requirement under the proposed section 37 of PERO on a registered supplier to pay a recycling fee if the supplier manufactures or imports REE into Hong Kong, and distributes the REE or uses the equipment for the first time, the Administration will move CSAs to clause 8⁷ such that recovery of recycling fees by DEP by assessment notice will also apply if a registered supplier manufactures or imports REE into Hong Kong and uses the REE for the first time without having paid DEP the recycling fee payable (or any part of the fee).

18. Noting that the proposed section 40(2) of PERO stipulates that "entering into an agreement to distribute does not constitute distribution" for the application of the proposed section 40(1) in respect of recovering recycling fees by assessment notice, the Bills Committee has requested the Administration to consider whether any similar provision should be provided in relation to any agreement to exhibit a piece of REE locally for business purposes. The Administration advises that, in the case of using a piece of REE by exhibiting it, the situation anticipated is that of a supplier exhibiting the supplier's own REE, and there will unlikely be an agreement to exhibit the REE concerned. As such, it is unnecessary to add the suggested provision.

Exhibition of REE without distribution

19. As a recycling fee is payable by a registered supplier who imports REE into Hong Kong and uses the equipment for the first time (and the provision on recovery of recycling fee by assessment notice will apply), and given the definition of "use" in the Bill includes, in respect of an item of REE, exhibition of the equipment for business purposes, the Bills Committee has sought clarification whether the recycling fee will be payable if a supplier, in the course of the supplier's business, imports a piece of REE and uses it in any way as the term "use" is defined under the Bill (for example, by exhibiting the REE for business purposes) but the supplier does not distribute the piece of REE after such use.

20. According to the Administration, the definition of supplier under the Bill includes a person who imports any piece of REE into Hong Kong for distribution in the course of the person's business. As such, in the above scenario, whether the person falls within the definition of "supplier" depends, among other things, on whether the REE is imported for distribution. If the REE is imported into Hong Kong by the person for distribution in the course of

⁷ The CSAs will be made to the proposed section 40(1)(b) of PERO.

the person's business, the person qualifies as a "supplier". In such case, the person must register under the proposed section 32(1) of PERO in order to distribute REE legally. The person will also have to pay recycling fee under section 37(1)(b)(iii) for the piece of REE concerned if the person, in the capacity as a supplier, uses the REE for the first time. The proposed section 40 (recovering recycling fees by assessment notice) will also apply to any part of the payable recycling fee which is outstanding upon expiry of the payment deadline. On the other hand, if the REE concerned is imported into Hong Kong by a person for use, the person is not considered as a supplier according to the relevant definition. Hence, no recycling fee in respect of the REE concerned is payable under the proposed section 37.

21. As regards how the proposed regulatory framework will apply to an overseas manufacturer who exhibits REE at a local trade fair but will not make local distribution of the REE at or after the fair, the Administration advises that in such circumstances, the REE exhibited for business purposes is "for use" instead of "for distribution", and hence the overseas manufacturer concerned does not fall within the definition of "supplier". The proposed regulatory framework does not apply and the overseas manufacturer will not be required to pay the recycling fee. To address concern about possible misunderstanding and to make it plainer that the reference "for distribution" in the Bill relates essentially to the act of import, the Administration will move CSAs to touch up on the English text in respect of the definition of "supplier" and the proposed section 37(1)(a)(ii). At the request of the Bills Committee, the Administration has also undertaken to address the Council on the scope of regulation in relation to the scenarios mentioned above, in particular whether the proposed recycling fee will be payable.

Transportation of REE by courier

22. The Bills Committee has examined whether a courier that provides services for transporting REE from a person to another which involves transmission or delivery of REE for sale etc. will constitute distribution of REE, and whether the courier providing such services will fall under the definition of "supplier" and hence will have to pay a recycling fee for the equipment. The Administration clarifies that its policy intent is 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". Nevertheless, to further clarify this policy intent, the Administration will move CSAs to clause 8⁸ to add an exclusion in the definition of "seller" (as in the case of the definition of "supplier") so that it will not include a person who only provides service for transporting REE that does not belong to the person for another person.

⁸ The CSAs will be made to the proposed section 31 of PERO.

Distribution of REE to overseas market

23. When considering the reference of "consumer" in the proposed section 37(1) of PERO⁹, the Bills Committee considers that it seems to include a consumer who is, at all material times, located outside Hong Kong as the provision does not specify otherwise. The Bills Committee has therefore sought clarification on whether a recycling fee will be payable by a registered supplier if the consumer concerned is an overseas consumer. Given that there is no reference to "local market" in the proposed section 37 nor in the proposed definition of "distribute", the Bills Committee has raised concern that a registered supplier, by referring to the Bill, may not be aware of the policy intent if the recycling fee is payable only when the REE is distributed to a consumer in the local market. The Bills Committee has requested the Administration to consider amending the proposed section 37 and/or any other relevant provision with a view to reflecting the policy intent clearly.

24. The Administration affirms that a recycling fee will be payable so long as the REE is distributed to a consumer in the local market, even if the consumer, say a tourist, subsequently leaves the territory with the REE or uses the item outside Hong Kong. On the other hand, if a registered supplier distributes REE directly to a consumer outside Hong Kong, the REE is not regarded as being distributed to the local market. According to the Administration, the Business Impact Assessment study conducted in February 2011 reveals that distribution of REE to overseas markets is not the main business of REE suppliers in Hong Kong. In the unlikely event that such a transaction arises, the REE is taken to be exported out of Hong Kong by the registered supplier, so the recycling fee will not be payable. To address the Bills Committee's concern about the lack of specific reference to the local market in the proposed section 37 of PERO, the Administration will move CSAs to clause 8¹⁰ to amend the definition of "distribute" to exclude the supply of REE to outside the local market¹¹.

25. The Bills Committee notes that, with the CSAs proposed by the Administration to the Bill as set out in paragraphs 21 and 24 above, in gist, the recycling fee is payable if –

⁹ Please refer to paragraph 12(b) of this report for information on the proposed section 37(1) of PERO.

¹⁰ The CSAs will be made to the proposed section 31 of PERO.

¹¹ Consequential to this amendment, the Administration will move CSAs to streamline the proposed section 37(1)(b)(i) and (ii) of PERO.

- (a) the equipment is manufactured in Hong Kong by the supplier in the course of the supplier's business; or is imported into Hong Kong by the supplier in the course of the supplier's business for distribution, but is not imported during the course of a service provided by the supplier for transporting articles into Hong Kong for another person; and
- (b) the supplier distributes the equipment; or uses the equipment for the first time.

Online purchase of REE and distribution of the equipment in Hong Kong by parallel trading

26. Some members are concerned that a person may circumvent payment of recycling fee if he/she purchases REE from overseas websites and distributes the REE in Hong Kong by parallel trading. The Administration reiterates that a person falling within the definition of "supplier" is required to be registered under the proposed section 32(1) of PERO and has to pay the recycling fee under the proposed section 37, regardless of how the REE is imported/purchased by the person. Given the nature of REE which usually requires the provision of warranty service by a registered supplier or seller, the likelihood of online shopping of REE followed by parallel trading of these products is small.

27. The Bills Committee observes that as REE purchased directly from overseas websites for personal use in Hong Kong will ultimately be disposed of at WEEETRF or other licensed recycling plants when they are abandoned, these REE will be treated for free as no recycling fee has to be paid in such circumstances. The Bills Committee is concerned that such arrangement may be unfair to those stakeholders along the local supply chain who shoulder the costs for disposal of REE where the recycling fees are payable by registered suppliers. In line with the "polluter pays" principle, some members are of the view that if an individual (who is not a "supplier") purchases REE directly from overseas through online shopping or parallel import for personal use, the person should pay the recycling fee. By the same token, if a person has paid a recycling fee but does not use the treatment services provided by the WEEETRF operator or other licensed recyclers, the person should be refunded.

28. The Administration reiterates that the recycling fee will not be payable if a person, who is not a "supplier", purchases a piece of REE from overseas (including overseas websites) for personal use. Under the proposed mandatory PRS, regulated e-waste will be disposed of at WEEETRF or other licensed recycling facilities regardless of the channels through which it is collected or whether a financial contribution (including payment of recycling fee) has been previously made towards its disposal.

Provision of REE by property developers or landlords as a package in the course of sale

29. The Bills Committee notes that REE may be provided by property developers or landlords to an owner or tenant of a residential property under an agreement for sale and purchase, tenancy agreement or renovation agreement, and has sought clarification on the legal obligations where the property developers or landlords in question import REE directly from an overseas manufacturer, or purchase REE from a supplier in Hong Kong.

30. The Administration explains that by way of the proposed section 35(4) of PERO, if property developers, landlords, interior design companies, etc. (collectively referred to 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 for the purposes of the proposed section 35 and will not be liable to payment of recycling fees and provision of recycling label and receipt to the property owners/tenants. In this connection, the Bills Committee notes that the Administration will move CSAs to clause 8 such that the proposed section 35(4) will also cater for the scenario where property developers and landlords are "suppliers" of REE. In such transactions, if the REE is manufactured or imported into Hong Kong by the property developers and landlords, it is the policy intent that the property developers and landlords should register as registered suppliers and pay the recycling fees. The Administration points out that in practice, REE will more likely be purchased from a registered supplier in Hong Kong by the property developers and landlords and the recycling fees will be or have been paid by that registered supplier.

Leasing of REE

31. The Bills Committee notes that a recycling fee is payable by a registered supplier in respect of a piece of REE leased to a consumer for the first time or transmitted/delivered for leasing for the first time, but not when any used REE product is distributed through subsequent leases or subsequent transmission/delivery for leasing. The Bills Committee has enquired about 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.

32. The Administration has explained that under the proposed definition of REE, REE does not include an item that has been used by a consumer. Therefore, when a new, unused item of REE is leased (or transmitted/delivered for leasing) by a registered supplier in Hong Kong, it involves distribution of an item of REE to a consumer. The supplier must, among other obligations, pay

the recycling fee under 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, it has been explicitly prescribed in the proposed section 37(2) that the recycling fee is payable only once in respect of any REE. Under the 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 by the proposed mandatory PRS and a recycling fee has been or will be paid to the Government by a registered supplier. The Bills Committee further notes that the Administration will move CSAs to clause 8¹² to replace "sell or lease the equipment" in the definition of "distribute" with "supply the equipment by way of sale, hire or hire-purchase" as the latter is more appropriate for the relevant transactions in the context of REE.

Alternative mechanism to collect recycling fees

33. The Bills Committee has explored whether the recycling fee may be charged at a percentage of the retail price of REE. The Administration advises that it will not be appropriate to set the recycling fee as suggested given that the fee had to be reviewed from time to time to ensure that it is determined at an appropriate level to achieve the relevant environmental objectives in addition to seeking full recovery of the costs of the proposed mandatory PRS.

34. There is a suggestion from some members that, instead of imposing the recycling fees on registered suppliers, the Administration may consider imposing an end-of-life fee requiring consumers to purchase a sticker at the time of disposal of end-of-life REE, with a view to ensuring that the polluters pay. The Administration points out that internationally, only Japan adopts such a charging mechanism. Among the different charging methods, an end-of-life fee may lead to more illegal dumping and free-riding by placing regulated e-waste in the municipal waste system, which will in turn discourage consumers to pay the fee and dispose of regulated e-waste properly.

Sharing of recycling fees along the supply chain

35. Some members have raised concerns that if a percentage of the recycling fees to be borne by different stakeholder groups along the supply chain will not be stipulated in the REE regulation, a major part of the fees may ultimately be borne by consumers.

36. The Administration has advised that the five broad categories of REE covered by the proposed mandatory PRS are mainly imported from outside

¹² The CSAs will be made to the proposed section 31 of PERO.

Hong Kong through import agents, and it is not common for consumers to purchase bulky REE directly from overseas. It is therefore considered appropriate to collect the recycling fees from registered suppliers who distribute REE to the local market for sale. As to how a registered supplier may recover the recycling fees wholly or partially along the supply chain and ultimately from consumers, it is determined entirely by market forces. That said, in order to give effect to a visible fee, the proposed section 35(2)(b) of PERO will require a seller who distributes REE to provide to the consumer a receipt with standard wording to be prescribed by the REE regulation, tentatively as follows –

本產品是《產品環保責任條例》（第 603 章）所指的受管制電器。
一名登記供應商已經或將會向政府支付\$ _ 循環再造費用。

This equipment is an item of regulated electrical equipment within the meaning of the Product Eco-responsibility Ordinance (Cap. 603). A recycling fee of \$ _ has been or will be paid to the Government by a registered supplier.

37. To explain how the recycling fees will be shared among different stakeholders along the supply chain, the Administration has provided a chart on the flow of recycling fees for members' reference, which is attached at **Appendix III**.

Verification of amount of recycling fees payable

38. The Bills Committee has examined whether and how the quantities of REE imported into or manufactured in Hong Kong by registered suppliers will be verified against the periodic returns to be submitted by the registered suppliers to DEP for determination of the recycling fees payable. The Administration has advised that a registered supplier must submit an audit report to DEP every year in respect of the periodic returns submitted by the supplier. The audit report must be prepared by an independent certified public accountant (practising). The registered supplier must keep records and documents relating to the periodic returns for a period of five years. In addition, DEP may conduct inspections for enforcement purposes under section 7 of PERO.

Additional surcharge in relation to recycling fees

39. Under the proposed section 40(11)(b) of PERO, a 10% additional surcharge will be imposed if a person has not paid the whole or any part of the total amount of the recycling fee demanded under an assessment notice issued by DEP and the whole or any part of the 5% surcharge under the proposed section 40(11)(a) six months after the period mentioned in the proposed

section 40(9)¹³. Given the policy intent that the proposed additional surcharge will be imposed on any amount remaining outstanding six months after the period mentioned in the proposed section 40(9), irrespective of whether the outstanding amount includes the whole (or any part) of the recycling fee and/or the 5% surcharge, the Bills Committee has suggested the Administration consider whether it is necessary to amend the proposed section 40(11)(b) and/or any other relevant provisions with a view to reflecting the said policy intent.

40. The Administration has clarified that the proposed additional surcharge will be imposed on any amount remaining outstanding six months after the period mentioned in the proposed section 40(9) of PERO, irrespective of whether the outstanding amount includes the whole (or any part) of the recycling fee and/or the 5% surcharge. After consideration, the Administration has taken on board the Bills Committee's suggestion to introduce a CSA to amend, among others, "and" to "or" in the proposed section 40(11)(b) under clause 8 to better reflect the policy intent.

Level of recycling fees

41. While the Administration claims that the recycling fees will be prescribed at full cost recovery basis taking into account the development and operation costs for WEEETRF, the Bills Committee notes that the proposed section 44(3) of PERO provides that "the amount of recycling fees 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". The Bills Committee has therefore enquired about the types of "other cost" incurred (or likely to be incurred) that are not "administrative" in the proposed section 44(3); and whether the recycling fees are solely for the purpose of achieving a full cost recovery; and if so, the legal justification of not limiting the amount of recycling fee payable by reference to the costs that are referred to in the proposed section 44(3). The Bills Committee has also sought information on the estimated level of the proposed recycling fee for each of the five broad categories of REE. Members urge the Administration to set the recycling fees carefully taking into account the potential cost impact on consumers and other stakeholders in the supply chain.

42. The Administration has responded that the use, recycling and disposal of REE will not only result in the direct administrative costs for the proposed mandatory PRS but will also entail other economic, environmental and social costs associated with the relevant activities. By charging a recycling fee, the Administration may raise funds to finance the proper waste management of

¹³ The period within which a person must pay an amount of recycling fee demanded under an assessment notice is to be prescribed by the REE regulation.

regulated e-waste. The PRS costs will mainly be incurred for the operating expenses of the contract awarded to the appointed WEEETRF operator in accordance with the result of the open tender. The actual levels of recycling fee have yet to be determined. During the public consultation stage, an indicative range of recycling fees based on overseas experience was around \$100 for a smaller item of REE and around \$200 to \$250 for a bulky item.

43. The Administration further advises that the recycling fees will be paid into the General Revenue. The WEEETRF operator will be paid with approved funding out of the appropriate government expenditure account in accordance with the contract provisions taking into account the amount of e-waste (regulated e-waste or otherwise) collected and treated by WEEETRF. As the specific levels of recycling fees will be prescribed by the REE regulation after consultation with the Advisory Council on Environment and is subject to LegCo's positive vetting procedure, the determination of the recycling fees will be transparent and take all relevant factors into consideration. The Administration stresses that it will review the levels of recycling fees from time to time to ensure that they are set at appropriate levels.

44. Some members have suggested that the specific levels of recycling fees should be stipulated in the Bill (instead of by way of the REE regulation which will be made at a later stage) for members' consideration of the proposed mandatory PRS in totality. The Administration has explained that as the fee levels will be reviewed regularly, it is considered more flexible to prescribe the specific levels of fees by regulation, rather than in the principal ordinance, for LegCo's approval. Besides, it is not feasible for the Administration to prescribe the fee levels in the Bill at this stage before the development and operation costs for WEEETRF have been fully ascertained.

45. After reviewing the nature of the monies to be collected, the Administration considers it more appropriate to refer to the payment by the registered suppliers as a recycling levy rather than a recycling fee since no service is directly provided to registered suppliers in relation to the REE they distribute. The Administration will move CSAs to clause 8¹⁴ so that the references to "recycling fee" in the Bill will be amended as "recycling levy" to better reflect the nature of the monies to be collected.

46. In the light of the proposed CSAs to replace "recycling fee" by "recycling levy" in the Bill, the Administration will propose a CSA to remove the proposed section 44(3)¹⁵ of PERO as the latter will no longer be necessary.

¹⁴ The CSAs will be made to (a) the proposed section 31 to delete the definition for "recycling fee" and include a definition for "recycling levy" instead; and (b) various provisions throughout the Bill to replace the reference of "recycling fee" by "recycling levy".

¹⁵ See paragraph 41 above for information on the proposed 44(3) of PERO

Arising from this proposed CSA, members have requested the Administration to advise whether different factors will be taken into account in setting the recycling levy, and whether these factors will be specified in the REE regulation.

47. The Administration reiterates that consistent with its position since the public consultation in 2010, the aim of charging a recycling fee or levy on the distribution or use of REE remains to recover the full costs of the proposed mandatory PRS. The Administration does not consider it necessary or appropriate to prescribe any details of the methodology in determining the fee/levy levels, including the factors or parameters to be taken into account.

Recycling label

Provision of recycling label by registered supplier or seller

48. Under the proposed section 35(1) of PERO, if a registered supplier distributes to a person any REE for further distribution in Hong Kong to a consumer, the supplier must provide to the person a recycling label that is appropriate for the equipment. Similarly, under the proposed section 35(2), if a seller distributes any REE to a consumer, the seller must provide to the consumer a recycling label that is appropriate for the equipment and a receipt with the wording to be prescribed by the REE regulation.

49. The Bills Committee notes that a registered supplier who distributes an item of REE to a consumer directly in Hong Kong will also be required to satisfy the requirement in respect of the provision of recycling label. Given that "supplier" and "seller" are respectively defined in the Bill and, according to the respective definitions, a supplier may not fall within the definition of "seller", the Bills Committee has suggested the Administration 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.

50. The Administration explains that the definitions of "supplier" and "seller" under the proposed section 31 of PERO 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. If disputes arise as to whether a registered supplier should also be regarded as a seller, it will be for the court to decide having regard to the facts and circumstances of individual cases. Nevertheless, to address the concern that a registered supplier may also distribute REE to a consumer directly, the Administration will move a CSA to clause 8 to omit "for further distribution in Hong Kong to a consumer" in the proposed section 35(1).

51. The Bills Committee is aware of the trade's concern about the operational constraints in the provision of recycling labels by the registered

supplier or the seller. In this regard, the Administration advises that the recycling label does not necessarily have to be affixed to the REE in question or the related invoice or user manual. The recycling label can be delivered to consumer at the time of sale or delivery of the equipment. The Administration will exercise flexibility to implement the measure by making reference to different modes of operation in the trade.

52. As regards the design of the recycling label, the Administration advises that it will be worked out and specified by the REE regulation after consultation with the recycling trade and other relevant stakeholders. The Administration has taken note of some members' views that the design should incorporate security features to minimize the risk of counterfeiting of recycling labels.

Application for recycling labels

53. The proposed section 36 of PERO provides for the circumstances under which DEP must provide recycling labels if (a) a registered supplier applies to DEP in a form specified by DEP for recycling labels of a particular class (i.e. section 36(1)), or (b) a person requests to be provided with recycling labels of a particular class at a location specified by DEP and pays to DEP a recycling fee that is appropriate for the labels (i.e. section 36(3)). According to the proposed section 36(4), DEP may set a limit on the number of recycling labels that may be provided to a person under section 36(3) for each request. The Bills Committee has sought explanation on how the recycling labels of a particular class of REE will be provided by DEP under the above scenarios.

54. The Administration has advised that there will be a particular recycling label for each of the eight classes of REE. If a registered supplier distributing, for example, air conditioners applies to DEP in a form specified by DEP for recycling labels for air conditioners (i.e. proposed section 36(1) of PERO), DEP will provide those labels to the supplier unless DEP 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. No handling charges will be collected for such application for recycling labels. On the other hand, if a person requests to be provided with a certain number of recycling labels for air conditioners at a location specified by DEP and pays to DEP a sum that is equivalent to the recycling fees for that number of air conditioners (i.e. proposed section 36(3)), then DEP will provide the requested number of labels to the person subject to any limit that DEP may set under the proposed section 36(4).

55. According to the Administration, the amount of 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 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 only once 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 Bills Committee has requested the Administration to clarify the policy intent in respect of the application of the proposed section 36(3), and whether the person making the request under the proposed section 36(3) will be required to provide any justifications.

56. The Administration has advised that 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). 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. Besides, a person making the request under the proposed section 36(3) will not be required to provide justifications for such a request. In order to provide the relevant trades with more operational flexibility, the Administration considers it unnecessary and undesirable to include explicit provisions spelling out the anticipated circumstances for which the proposed section 36(3) is intended.

57. As regards the issue of double-charging, the Administration clarifies it is not the case 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 labels 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 will be charged a recycling fee and the supplier will only be charged once by virtue of the proposed section 37(2); and
- (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 the Administration's 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 as 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 distribution of REE in

Hong Kong, he or she may have incentives to source REE from suppliers who are not registered.

58. Notwithstanding the above explanation, the Administration advises that it will move CSAs to clause 8 to revise the drafting of the proposed 37(2) of PERO so as to minimize the potential confusion of "double charging".

59. Members have further enquired about how a request made pursuant to the proposed section 36(3) of PERO 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. Given that the periodic returns will only capture aggregate data which does not enable tracking down to individual items of REE, the Administration considers that 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.

60. Noting that DEP may refuse an application for recycling labels under the proposed section 36(2) of PERO if DEP 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, the Bills Committee has enquired whether the DEP's decision is appealable pursuant to the proposed section 44 (or any other provision under the Bill or PERO).

61. The Administration has advised that it will engage the trades in determining the operational details on how recycling labels may be provided under the proposed section 36(1). The Administration will consider whether a decision made by DEP under the proposed section 36(2) should be prescribed as an appealable matter at the stage of preparing the REE regulation, taking into account feedback from the trades.

Removal service to be arranged by sellers

62. Under the proposed section 42 of PERO, sellers are required to arrange for removal services, whereby for every item of REE distributed to a consumer, another piece of 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.

63. Some members are concerned that a consumer may not request a seller to provide the removal service because he/she is not aware of the availability of such service. There is also a concern that consumer may not know whether and when a request for the removal service should be made to a seller (e.g. whether the request can 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

whether a seller will still remove any relevant equipment from a premises designated by the consumer if the recycling label is lost.

64. The Administration has advised that under the proposed section 41(1) of PERO, a seller must have a removal service plan endorsed by DEP. The Administration will make available relevant information relating to the endorsed removal service plans (e.g. the details of the collector who has undertaken to provide removal service and of the recycler who has undertaken to provide treatment, reprocessing or recycling service) for public inspection or checking. The proposed section 42(4) and (5) also requires that a seller must notify the consumer in writing of the seller's obligation in relation to removal services, and any applicable removal terms, before entering into the relevant contract of distribution. Coupled with publicity and public education, these notification requirements should help inform the consumers of the availability of the removal services.

65. The Administration has further advised that, in order for a consumer to claim the removal service, he/she must under the proposed section 42(2)(b) of PERO request for removal service in accordance with the relevant terms regarding removal in the contract of distribution and any applicable requirements in the REE regulation. The Administration will engage the trade and other stakeholders with a view to determining the relevant procedures for consumers to claim the service. Preliminarily, subject to further trade engagement and any removal terms between a seller and a consumer to the extent they are consistent with the legislation, the Administration believes that a request for removal service should be considered valid if, for example, it is made by a consumer in writing within a certain deadline say a few days after the date on which the consumer takes possession of the REE. Besides, the loss of a recycling label for a piece of equipment will not deprive a consumer of the benefit of utilizing the service to remove the item.

66. The Bills Committee observes that no removal service will be provided to the consumer if, at the time when the consumer wishes to remove a piece of equipment, the consumer has not been distributed any piece of REE which belongs to the same class of the equipment by the seller. The Administration stresses that the removal service under the proposed section 42(2) of PERO is to be arranged by sellers on a "new for old" basis. When a seller distributes to a consumer a piece of REE, the seller will be required to arrange for the removal of any equipment of the same class (if any), irrespective of whether the equipment to be removed was distributed by the same seller. The fee will not be reimbursed even if the consumer does not use the removal service. The Administration points out that availability of seller-arranged removal service does not mean that a consumer must use such service. A consumer has a choice to, for example, keep the old equipment for continued use, donate to charity or make separate removal arrangements at his or her own cost.

67. Some members suggest the Administration design a standard form for sellers to set out their removal service plans for endorsement by DEP, require sellers to display the endorsed removal service plans in a conspicuous position in their retail shops and/or promulgate the plans online, and lay down the detailed arrangements for the removal services on the receipts to their customers. The Administration has taken note of these suggestions for consideration at a later stage when it will determine the detailed requirements in respect of the removal services. As regards the suggestion that sellers should be required to specify on the receipt issued to consumers upon the sale of REE the exact amount of payment for the removal services to be provided by the sellers or their appointed providers of the removal services, the Administration has advised that while the recycling fees paid by registered suppliers will be specified in the receipts issued by sellers to consumers, it is not feasible to provide a breakdown of the fee for individual PRS service (e.g. REE removal service) given that the recycling fee is meant to recover the full costs of the proposed mandatory PRS.

68. The Bills Committee further notes that the Administration will move CSAs to clause 8¹⁶ to make it clear that property developers and landlords providing REE as a package in the course of sale, letting or renovation of a residential property, are excluded from the liabilities under the proposed sections 35(1), 41(1), 42(2), 42(4) and 42(5) in relation to the provision of recycling labels and receipts with prescribed wording for distribution of REE and in relation to removal services¹⁷.

Proper treatment of regulated e-waste

Waste disposal licence and exemptions

69. The Bill amends section 16 of WDO to extend the waste disposal licensing control to the disposal of regulated e-waste where "disposal", in relation to regulated e-waste, includes storage, treatment, reprocessing and recycling. In general, proper treatment, reprocessing and recycling of e-waste involves various dismantling, detoxification and recovery processes. Under the proposed licensing control, a waste disposal licence will only be issued when the operations (including dismantling and detoxification) can demonstrably be conducted in environmentally sound procedures to turn regulated e-waste into reusable materials. The WEEETRF and private recyclers undertaking recycling of regulated e-waste will have to obtain a waste disposal licence.

¹⁶ The CSAs will be made to the proposed sections 35, 41 and 42 of PERO.

¹⁷ See also paragraphs 29 and 30 of this report.

70. The proposed licensing requirement is meant to enhance the control on the disposal of regulated e-waste. The Administration however observes that some practitioners in the recycling industry may undertake part of the treatment process, for example simple dismantling of regulated e-waste for logistic handling. Such process if conducted on a small scale does not cause adverse environmental impacts. In order to avoid undue impact on these operations, which facilitate the collection of regulated e-waste for full treatment by licensed recyclers, disposal of regulated e-waste that is not chemical waste on land or premises with an area of not more than 100 square metres ("m²") will be eligible for exclusion from the licensing requirement. On the other hand, storage site of regulated e-waste will require a licence and for that purpose have to satisfy certain housekeeping requirements pertinent to the safety and environmental conditions at the site concerned. For example, there should be a roofed structure and paved areas, a maximum stack height, fire prevention and security measures as well as record-keeping arrangements. In addition, the following exclusions will apply –

- (a) *storage on premises located inside multi-storey buildings*, because these are already proper storage locations where the relevant hardware requirements intended to be imposed as licensing conditions should have been met; or
- (b) *small quantity of stockpiling*, as provided for in the proposed section 16(2)(eb) of WDO to be regulated e-waste with a total volume of not more than 50 m³¹⁸.

71. Members are concerned that private recyclers of regulated e-waste may break down the treatment processes into several parts or undertake the processes on a small scale such that their operation will not be subject to the proposed licensing control. Members urge the Administration to be mindful of the hazardous nature of regulated e-waste even if the treatment processes are conducted on a small scale or the regulated e-waste is stored on premises of multi-storey buildings. Members have also sought the estimated number of private recyclers undertaking recycling of regulated e-waste who will be exempted from obtaining a waste disposal licence.

72. The Administration assures members that while exemptions will be granted under the proposed licensing control, it remains that the treatment and storage of regulated e-waste will be governed by different legislation. As regards the number of recycling practitioners who may be exempted from the

¹⁸ According to the Administration, this is the approximate quantity of e-waste usually stored in a 40-foot cargo container.

licensing requirements, the Administration has indicated that it does not have an estimate because the practitioners can be collectors or other associated businesses which do not form a distinct sector. However, it is envisaged that private recyclers undertaking full treatment of regulated e-waste will unlikely be eligible for such exclusion. If the e-waste concerned is classified as chemical waste, the exemption in the proposed section 16(2)(ea) of WDO (disposal on land or premises of not more than 100 m²) will not apply.

73. The Bills Committee further notes that the proposed section 16(2A) of WDO provides that despite a person has satisfied any of the requirements to be exempted from the licensing requirement on disposal of regulated e-waste, the person may still apply to DEP for a licence to use any land or premises for such disposal. The Bills Committee has enquired about the circumstances to which the proposed section 16(2A) will be applicable.

74. The Administration has responded that, with the implementation of the proposed mandatory PRS and in particular the licensing requirement in respect of disposal of regulated e-waste under the proposed section 41(5) of PERO (i.e. a recycler of a removal service plan must hold a waste disposal licence), there will be increasing demand for services on proper recycling of regulated e-waste provided by duly licensed recyclers. Given the proposed section 16(2A) of WDO, a person may still apply to DEP for a waste disposal licence even though he or she is not prohibited to use land or premises for the disposal of regulated e-waste without licence. This will provide an avenue for small-scale recyclers to operate as a licensed e-waste recycler after completing the necessary application procedures and meeting all relevant terms and conditions. Without such arrangements, some of these small-scale recyclers may not be able to compete with other licensed e-waste recyclers for businesses if the market so demands.

75. Members have expressed concern about the problem of "cherry-picking" in the collection of regulated e-waste as private collectors may tend to dismantle the e-waste to obtain component parts of higher commercial value for sale and dispose the non-marketable parts to WEEETRF for treatment, or without proper treatment (e.g. detoxification) by persons with waste disposal licences.

76. The Administration has responded that as required under contract, the WEEETRF operator will be responsible for both the collection and treatment of regulated e-waste and will be paid based on the amount collected and treated, measured by tonnage. The WEEETRF operator is duty bound to accept regulated e-waste that has been partially dismantled, even if the component parts of higher commercial value have been removed. The Administration stresses that if a regulated e-waste is also chemical waste (e.g. containing components that are classifiable as chemical waste, such as CRT monitors

containing lead), any treatment process including dismantling of the regulated e-waste must be undertaken by a licensed person.

Import/export control in relation to regulated e-waste

77. To further ensure that any regulated e-waste traded through Hong Kong will not increase the territory's waste burden or cause environmental hazards in other jurisdictions, the Bill has incorporated amendments to sections 20A and 20B of WDO to impose permit control such that the import and export of regulated e-waste will require a permit. With the enhanced export control, no regulated e-waste can be exported unless, among other things, the competent authority of the state of import and of each state of transit have consented to the import or transit of such regulated e-waste, and it can be demonstrated as genuinely reusable second-hand products or requiring treatment overseas through sophisticated processes not otherwise available in Hong Kong. For imports, the required permit will be granted only if there is a licensed local recycler undertaking the proper treatment of the relevant shipments. The enhanced import control will guard against international dumping and prevent regulated e-waste intended for re-export ending up in Hong Kong.

78. In connection with the proposed amendments to sections 20A and 20B of WDO, the Bills Committee has requested the Administration to consider whether it is necessary to amend the reference of "any e-waste" (任何電器廢物) in these provisions to clearly reflect the policy intent that such e-waste is confined to electrical/electronic equipment that, judging by its appearance, is an item set out in Column 2 of the proposed Schedule 6 to PERO and has been abandoned.

79. The Administration has advised that the references to "any" in conjunction with "e-waste" (as proposed to be defined in section 2(1) of WDO) in the English text of the proposed sections 20A(1)(c) and 20B(1)(c) of WDO do not expand those provisions to cover anything other than regulated e-waste. The Administration considers that the current wording already reflects the policy intent. As for the Chinese text, the Administration has indicated that it will move CSAs to clauses 14 and 15 to amend the proposed sections 20A(1)(c) and 20B(1)(c) to: "(c) 任何不符合(a)或(b)段的描述的電器廢物。".

Offences against licensing control and import/export control

80. Clause 13 of the Bill amends section 18 of WDO to provide for a defence to be established by a person who is charged under section 16 of WDO for the storage, treatment, reprocessing or recycling of any regulated e-waste that is not chemical waste. The proposed section 18(5) provides that the person is taken to have established a fact that needs to be established for the

defence if there is sufficient evidence to raise an issue with respect to the fact and the contrary is not proved by the prosecution beyond reasonable doubt. Whereas the proposed sections 20G(5) and 20G(6) provide for a similar defence in relation to a person who is charged with an offence under section 20E for the import or export of any regulated e-waste that is not chemical waste. The Bills Committee has sought the legal consideration for requiring the person to discharge an evidential burden in the respective proposed sections 18(5) and 20G(6), instead of requiring the person to establish that, on the balance of probabilities, a fact which needs to be established for the defence exists.

81. The Administration has advised that the proposed amendments to WDO target at regulated e-waste, and the enhanced control will not apply to disposal (including storage, treatment, re-processing and recycling) as well as import and export of waste that is not regulated e-waste or is not covered by the existing WDO. However, it is envisaged that at the waste stream, there will be practical difficulties in establishing that an item of e-waste satisfies the technical definitions of REE as contained in Column 3 in the proposed Schedule 6 to PERO because that item of e-waste may be in defective forms or the verification process will require complicated testing methods. To address these concerns, the Administration has proposed under the Bill that, if an item of e-waste appears to be an item set out in Column 2 of the proposed Schedule 6 to PERO but may not satisfy the technical definition in Column 3, a person who is accused of having contravened section 16 or section 20E of WDO ("the defendant") may have a defence by establishing that that item of e-waste does not satisfy the technical definition in column 3 of the proposed Schedule 6 to PERO ("the relevant fact"). Under the proposed section 18(5) or 20G(6) of WDO, the defendant will be taken to have established the relevant fact if there is sufficient evidence to raise an issue with respect to the fact and the contrary is not proved by the prosecution beyond reasonable doubt. Since the item of e-waste in question will have been in the possession or control of the accused, he/she should be in a better position to identify and produce evidence for the purpose of raising an issue with respect to the relevant fact (e.g. by producing relevant information such as the model number and functions of the item in question). Hence, the Administration considers it appropriate to impose an evidential burden on the accused to adduce or point to sufficient evidence to raise an issue that the item of e-waste in question does not fit the technical definition in Column 3. This is consistent with the right to be presumed innocent until proved guilty according to law protected under Article 11 of the Hong Kong Bill of Rights. In the context of the Bill, the Administration envisages that it is feasible for the prosecution to prove the relevant facts to the contrary, so it is not justifiable or necessary to impose a legal burden on the accused to prove the relevant fact on a balance of probabilities.

82. Given that the existing section 20G(1) of WDO also provides for a defence by a person if he proves that he has taken all reasonable precautions and

exercised all due diligence to avoid the commitment of the offence under Part IVA, i.e. import or export of regulated e-waste (among other wastes) without a permit, and as the Administration has indicated 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), the Bills Committee has requested the Administration to consider amending "the defence" to "the defence under subsection (5)" in the proposed section 20G(6) to reflect the policy intent. The Administration has taken on board the Bills Committee's suggestion and will move CSAs to amend the proposed section 20G(6) accordingly.

Disposal ban

83. The Bill introduces amendments to Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) such that regulated e-waste will be banned from disposal at the designated waste disposal facilities. A refuse collection vehicle which is found to be delivering regulated e-waste to a designated waste disposal facility may be rejected entry to the facility. According to the Administration, this will have the effect of diverting regulated e-waste from the waste stream to proper recycling facilities, including notably the WEEETRF.

84. The Bills Committee notes some deputations' concerns about the potential difficulties in implementing the disposal ban. The Administration has advised that at present, only an insignificant amount of WEEE is disposed of at the landfills and hence no major implementation problems are envisaged. With the enhancements to the present system under the proposed mandatory PRS, the Administration expects that increasingly more WEEE (regulated e-waste or otherwise) can be channelled into the collection network for processing by the WEEETRF or other competent recyclers.

WEEETRF and other e-waste recyclers

85. While expressing support for the development of WEEETRF to provide proper treatment of regulated e-waste, some members are concerned that the WEEETRF operator 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. Some other members however doubt whether there will be a ready supply of regulated e-waste for treatment at WEEETRF given the high market value of some electrical/electronic equipment in the second-hand market. There is also a concern that non-viability of WEEETRF may lead to imposition

of high recycling fees on registered suppliers. Members have urged the Administration to ensure that the operation of WEEETRF will be cost-efficient.

86. The Administration advises that as the proper treatment of regulated e-waste is capital intensive, and the current treatment capacity in Hong Kong is well below what is needed for a territory-wide mandatory PRS after careful review of the market situation¹⁹, it is necessary to develop WEEETRF through a Design-Build-and-Operate contractual arrangement, in order to facilitate the effective collection and recycling of regulated e-waste in support of the proposed mandatory PRS. Part and parcel of its functions, the WEEETRF operator must also proactively source and collect regulated e-waste to ensure a ready supply of e-waste for treatment at WEEETRF. Upon request by the sellers, the WEEETRF operator will also provide removal services to collect regulated e-waste from consumers' premises.

87. The Administration points out that as both the WEEETRF operator and other recyclers undertaking storage, treatment, reprocessing and recycling of regulated e-waste will have to obtain a waste disposal licence, there should be a level-playing field for all e-waste recyclers in Hong Kong. In fact, the WEEETRF operator may also engage or collaborate with private recyclers and second-hand dealers in the collection of regulated e-waste. With a design capacity of about 30 000 tonnes per annum, the WEEETRF will not crowd out any existing or prospective recyclers because at present, about 70 000 tonnes of WEEE are generated in Hong Kong annually. The enhanced import and export control under the proposed mandatory PRS and other measures to facilitate efficient collection of regulated e-waste will help retain the majority of WEEE within Hong Kong and channel them to proper recycling facilities. This can enhance the business opportunities for WEEE collection and treatment in the local recycling market as a whole. The Administration envisages that private recyclers will more likely focus their businesses on WEEE of higher residual value (such as air conditioners and computer products) or "off-specification" equipment from commercial or industrial sources, while WEEETRF will undertake the recycling of regulated e-waste which has relatively lower commercial value or requires complicated treatment processes.

88. The Administration has indicated that it will provide financial support to assist local recyclers including e-waste recyclers to upgrade or enhance their operation through the Recycling Fund²⁰. The Administration will also

¹⁹ According to the Administration, since 2011, the overall e-waste 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 the proposed mandatory PRS on a territory-wide scale.

²⁰ At its meeting on 17 July 2015, the Finance Committee approved the creation of a new commitment of \$1 billion for setting up the Recycling Fund to promote the recovering and

continue to provide support in terms of land and funding to non-profit-making organizations operating voluntary WEEE recycling programmes. Members call upon the Administration to closely communicate with the recycling industry with a view to ensuring an effective and smooth implementation of the proposed mandatory PRS while minimizing any possible adverse impact on the private recyclers.

89. As regards the viability of WEEETRF, the Bills Committee notes that the Administration will monitor the operation of WEEETRF through contractual arrangements²¹. The Administration will conduct audits to monitor the WEEETRF's incomes and expenditures. As the WEEETRF operator does not have to pay land premium or rental expenses for its site provided by the Government, the Administration expects that the operation of WEEETRF should be sustainable as long as it can secure and enhance its sources of regulated e-waste.

90. The Bills Committee further notes that, in response to the suggestions of several deputations, the Administration will promote the reuse of used REE by requiring the WEEETRF operator to refurbish and donate certain amount of usable and good quality items to charitable organizations.

Committee Stage amendments to be moved by the Administration

91. The Bills Committee notes that apart from the CSAs mentioned in paragraphs 15, 17, 21, 22, 24, 30, 32, 40, 45, 46, 50, 58, 68, 79 and 82 above, the Administration will move other CSAs to the Bill relating to technical aspects to improve the drafting of provisions or which are consequential in nature. The major ones are as follows:

Clauses 8 and 9 in relation to PERO

- (a) CSAs to the proposed section 31 to –
 - (i) streamline the definition of "use" in respect of giving of REE as prize or gift;
 - (ii) amend the definition of "consumer" for consistency with the definition of "seller";

recycling of waste by facilitating the recycling industry to upgrade its operational capabilities and efficiency for sustainable development.

²¹ The Bill does not specifically provide for the operation of WEEETRF.

- (iii) include a definition for "tenant" (previously in the proposed section 35(6)) and "recycling levy";
- (b) CSAs to the proposed sections 33 and 34 to give certainty as to when DEP will register a person as a registered supplier or cancel the registration of the supplier;
- (c) CSAs to the proposed sections 38(5) and 42(6) to revise each of these sections as two subsections;
- (d) CSAs to the proposed section 44(1) to provide a clearer basis for the making of future subsidiary legislation on the determination of an application for registration of a supplier and the cancellation of the registration;
- (e) CSAs to the proposed Schedule 6 to amend the definition of "television" in the English text in order to better align with the Chinese text; and

Clause 23 in relation to the Waste Disposal (Designated Waste Disposal Facility) Regulation

- (f) CSAs to touch up the proposed section 3AB in the Chinese text.

92. The Bills Committee has examined and agreed to the CSAs to be moved by the Administration. A full set of the CSAs is in **Appendix IV**. The Bills Committee will not propose any CSAs to the Bill.

Resumption of Second Reading debate on the Bill

93. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 3 February 2016.

Advice sought

94. Members are invited to note the deliberations of the Bills Committee.

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

Membership list

Chairman Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Members Hon Vincent FANG Kang, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Dr Hon Kenneth CHAN Ka-lok
Hon KWOK Wai-keung

(Total: 11 Members)

Clerk Ms Angel SHEK

Legal Adviser Miss Evelyn LEE

Appendix II

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

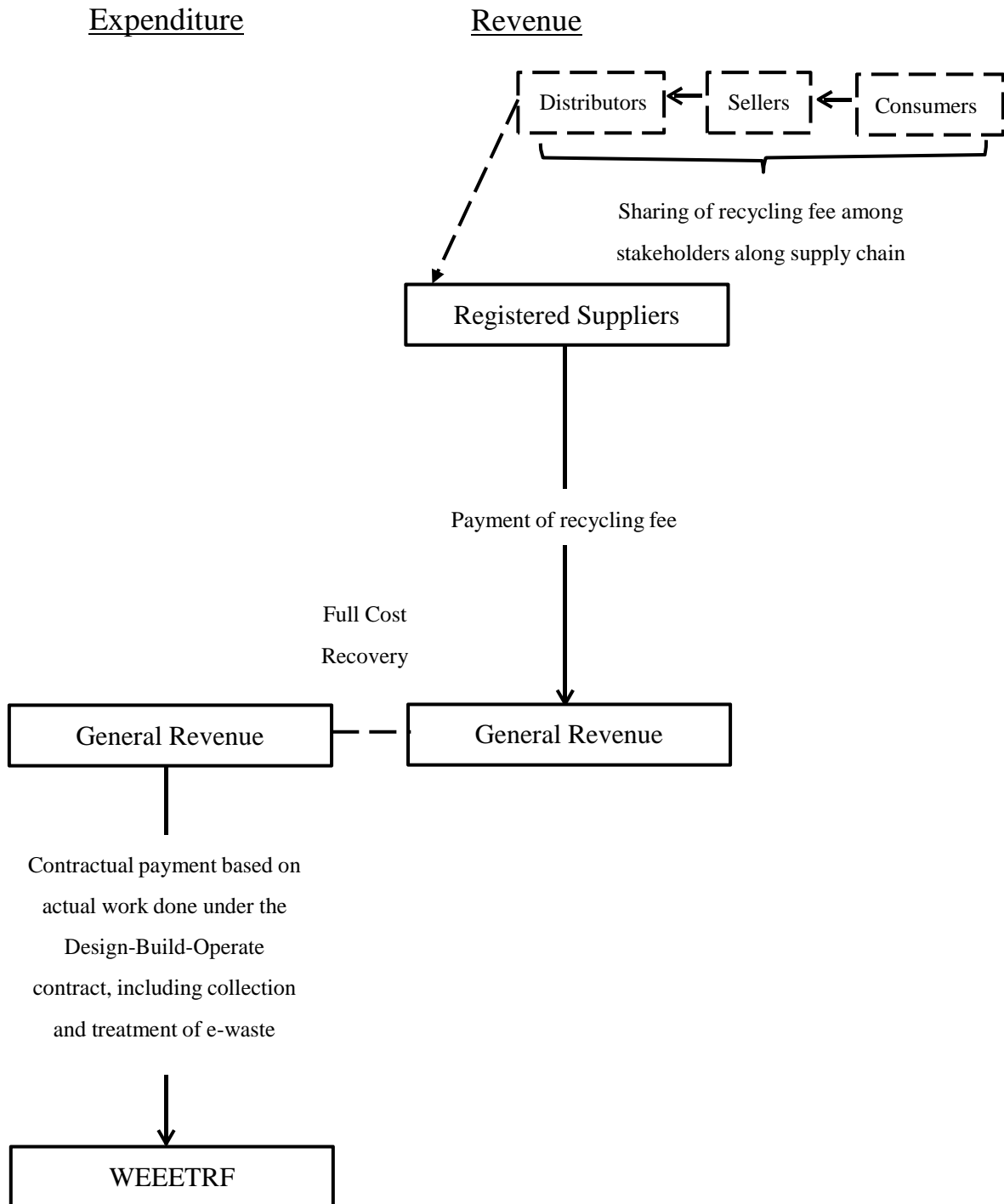
List of deputations and individuals who have submitted views to the Bills Committee

1. Apple Inc.
2. Caritas Computer Workshop
3. Civic Party
- *4. CO2 Feeds The World
5. Consumer Council
6. Dr CHUNG Shan-shan, Hong Kong Baptist University
7. EcoSage Limited
8. Environmental Contractors Management Association
9. Friends of the Earth (HK)
10. Green Technology Consortium
11. Hewlett-Packard Company
12. Hong Kong & Kowloon Electrical Appliances Merchants Association Limited
13. Hong Kong Waste Disposal Industry Association
14. Hong Kong Waste Management Association
15. Hong Kong WEEE Recycling Association
- *16. Information Technology Industry Council
17. Liberal Party
18. Professor POON Chi-sun, The Hong Kong Polytechnic University
- *19. Professor Winco K C YUNG, The Hong Kong Polytechnic University
20. Radio Association of Hong Kong
21. St. James' Settlement
22. Surface Mount Technology Limited
23. The Chamber of Hong Kong Computer Industry
24. The Chinese Manufacturers' Association of Hong Kong
25. World Green Organisation

* submitted written views only

Appendix III

Flow of recycling fee



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

Committee Stage

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting “3” and substituting “2A”.
New	By adding— “2A. Section 2 amended (purposes of this Ordinance) Section 2(2)(c), after “recycling”— Add “levy or”.”.
8	In the proposed section 31— (a) in the definition of <i>consumer</i> , by deleting “selling” and substituting “distributing”; (b) by deleting the definition of <i>distribute</i> and substituting— “ <i>distribute</i> (分發), in relation to any regulated electrical equipment, means— (a) supply 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; (ii) an exchange or disposal for consideration, but does not include any such act done with a view that the

equipment is to be exported in the course of business;”;

- (c) in the definition of *seller*, by adding “, but does not include a person who only provides service for transporting the equipment that does not belong to the person for another person” after “consumers”;
- (d) in the definition of *supplier*, in paragraph (b), by deleting “causes to be imported into Hong Kong regulated electrical equipment for distribution in the course of the person’s business” and substituting “, in the course of the person’s business, imports regulated electrical equipment into Hong Kong for distribution”;
- (e) in the definition of *use*, in paragraph (b), by deleting “otherwise than for business purposes”;
- (f) by deleting the definition of *recycling fee*;
- (g) by adding in alphabetical order to the proposed definitions—
 - “*recycling levy* (循環再造徵費) means a levy prescribed for the purposes of this Part by the REE Regulation;
 - 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;”.

8 In the proposed section 32—

- (a) in the heading, by deleting “**carrying on business of**”;
- (b) in subsection (1), by deleting “carries on a business of distributing regulated electrical equipment for further distribution in Hong Kong” and substituting “distributes regulated electrical equipment”.

8 In the proposed section 33, by deleting “may” and substituting “must”.

8 In the proposed section 34, by deleting “no longer carries on a business mentioned in section 32(1), the Director may” and substituting “is no

longer a supplier, the Director must”.

- 8 In the proposed section 35—
- (a) in subsection (1), by deleting “for further distribution in Hong Kong to a consumer”;
 - (b) in subsection (4), by adding “(1) or” after “subsection”;
 - (c) in the English text, in subsection (4), by deleting “, or renovation agreement,” and substituting “or renovation agreement”;
 - (d) by deleting subsection (6).

- 8 In the proposed section 36(3)(b), by deleting “fee” and substituting “levy”.

- 8 In the proposed section 37—
- (a) in the heading, by deleting “fee” and substituting “levy”;
 - (b) in subsection (1), by deleting “fee” and substituting “levy”;
 - (c) in subsection (1)(a)(ii), by deleting “caused to be imported into Hong Kong by the supplier for distribution in the course of the supplier’s business, but is not imported into Hong Kong” and substituting “, in the course of the supplier’s business, imported into Hong Kong by the supplier for distribution, but is not imported”;
 - (d) in subsection (1)(b)(i), by deleting “to a consumer;” and substituting “; or”;
 - (e) by deleting subsection (1)(b)(ii);
 - (f) in subsection (2), by deleting “fee is payable only once” and substituting “levy is payable only once under this section”;
 - (g) in subsection (3), by deleting “fee” and substituting “levy”.

- 8 In the proposed section 38—
- (a) in subsection (2)(a), by deleting “fee” and substituting “levy”;

- (b) in subsection (3), by deleting “fee” and substituting “levy”;
- (c) in subsection (5), by deleting “or (3)”;
- (d) by adding—
 - “(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.”.

8

In the proposed section 40—

- (a) in the heading, by deleting “fees” and substituting “levies”;
- (b) in subsection (1)(b), by deleting “regulated electrical equipment in the course of the person’s business as a registered supplier,” and substituting “or uses regulated electrical equipment”;
- (c) in subsections (1)(b), (3)(a) and (b), (7), (8)(b), (9) and (11)(a), by deleting “fee” (wherever appearing) and substituting “levy”;
- (d) in subsection (11)(b), by deleting “total amount of recycling fee and the surcharge mentioned in paragraph (a) that are” and substituting “amount of recycling levy or the surcharge mentioned in paragraph (a) that is”;
- (e) in subsections (12) and (13), by deleting “fee” and substituting “levy”.

8

In the proposed section 41, by adding—

- “(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.”.

8

In the proposed section 42—

- (a) in subsection (6), by deleting “or (5)”;

- (b) by adding—
 - “(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.”;
- (c) by adding—
 - “(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.”.

- 8 In the proposed section 44—
- (a) in subsection (1)(a), by adding “and the determination of the application” after “33”;
 - (b) in subsection (1), by adding—
 - “(ab) the cancellation of registration under section 34;”;
 - (c) in subsection (1)(c), by deleting “fee” and substituting “levy”;
 - (d) in subsection (1)(d), by deleting “fees” and substituting “levies”;
 - (e) by deleting subsection (3).
- 9 In the proposed Schedule 6, in the English text, in item 4, in column 3, in paragraph (1)(a), by deleting “modulator” and substituting “tuner (or a receiver)”.
- 14(3) In the proposed section 20A(1)(c), in the Chinese text, by deleting “不符合(a)或(b)段的描述的任何” and substituting “任何不符合(a)或(b)段的描述的”.
- 15(3) In the proposed section 20B(1)(c), in the Chinese text, by deleting “不符

合(a)或(b)段的描述的任何” and substituting “任何不符合(a)或(b)段的描述的”.

- 16 In the proposed section 20G(6), by adding “under subsection (5)” after “defence”.
- 23 In the proposed section 3AB, in the Chinese text, by adding “廢物” after “該電器”.