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Panel on Environmental Affairs

Meeting on 23 January 2017

**Background brief on Producer Responsibility Scheme on
Waste Electrical and Electronic Equipment
prepared by the Legislative Council Secretariat**

Purpose

This paper provides background information on the Producer Responsibility Scheme ("PRS") on Waste Electrical and Electronic Equipment ("WEEE"). It also gives a brief account of the views and concerns expressed by Members when issues related to the PRS and import control over electronic waste ("e-waste") were discussed by the relevant committees of the Legislative Council ("LegCo").¹

Background

Producer responsibility schemes

2. In the Policy Framework for the Management of Municipal Solid Waste (2005-2014) published in December 2005, the Administration proposed to introduce PRSs for six types of products including electrical and electronic equipment that would require manufacturers, importers, wholesalers, retailers and consumers to share the responsibility for the collection, recycling, treatment and disposal of end-of-life products in line with the "polluter pays" principle,

¹ In the context of this background brief, "e-waste" means electronic waste in general and covers WEEE or their parts (e.g. leftover materials generated from dismantling or recycling of WEEE), whereas "regulated e-waste" refers to, in relation to the PRS on WEEE, any electrical equipment or electronic equipment that, judging by its appearance, is an item set out in column 2 of Schedule 6 to be added to the Product Eco-Responsibility Ordinance (Cap. 603), and has been abandoned.

with a view to avoiding and reducing the environmental impacts caused by such products at the post-consumer stage.²

3. The Product Eco-responsibility Ordinance (Cap. 603) ("PERO") was enacted in July 2008 as a piece of enabling legislation to provide for the shared core elements of all PRSs and the fundamental regulatory requirements in respect of individual types of products concerned, while the operational details are prescribed by subsidiary legislation.

Management of waste electrical/electronic equipment

4. According to the Administration, about 70 000 tonnes of WEEE are generated in Hong Kong annually, most of which are exported for reuse or recovery of valuable materials. With progressive tightening of import control over WEEE in developing countries, and an expected decline in the demand for second-hand products in markets outside Hong Kong, reliance on export as a major outlet for WEEE is not sustainable in the long run. Besides, WEEE contains harmful materials which, if not properly treated or disposed, will be hazardous to the environment and human health.

5. Currently, the import and export of waste are regulated by the Waste Disposal Ordinance (Cap. 354) ("WDO") based on the requirements of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.³ Under the Convention, there are two types of e-waste, hazardous e-waste and non-hazardous e-waste. Import and export of non-hazardous e-waste are allowed for recycling and recovery purposes. For hazardous e-waste items, they are regarded as regulated hazardous waste under WDO and their import/export are subject to stringent permit control.

² The six types of products are plastic shopping bags, electrical/electronic equipment, beverage containers, vehicle tyres, packaging materials and rechargeable batteries. These products have been accorded priority because they can be a stable source of materials for developing the local recycling industry, and their diversion from landfills can help save landfill space. The Environmental Levy Scheme on Plastic Shopping Bags is the first PRS introduced under PERO.

³ The Convention came into force in 1992 and has 175 Parties at present. It aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes.

The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016

6. The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 ("Amendment Ordinance") was enacted in March 2016 to establish the regulatory framework for implementation of a PRS on WEEE with the following main features:⁴

- (a) *Scope of regulated electrical/electronic equipment ("REE")*: Eight types of products, namely air conditioner, refrigerator, washing machine, television, computer, printer, scanner and monitor, are defined as REE and subject to the PRS on WEEE;
- (b) *Proper treatment of REE*: The licensing control under section 16 of WDO is extended to the disposal (including storage, treatment, reprocessing and recycling) of REE that have been abandoned ("regulated e-waste").⁵ Disposal of regulated e-waste at designated waste disposal facilities, including landfills, is prohibited so as to divert e-waste from the waste stream to recycling facilities;⁶
- (c) *Import and export of regulated e-waste*: Permit control under WDO for the import and export of waste is applied to regulated e-waste to prevent such e-waste traded through Hong Kong from increasing the local waste burden or causing environmental hazards in other jurisdictions;
- (d) *Provision of removal services by sellers*: A REE seller must have a removal service plan endorsed by the Director of Environmental Protection ("DEP") under which for every piece of REE purchased by a consumer, an equivalent old product can be removed from a premises designated by the consumer for proper disposal at no extra charge; and

⁴ The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment)(Amendment) Bill 2015 was introduced into LegCo in March 2015, which sought to amend mainly PERO and WDO. A bills committee was formed to study the Bill. The relevant report is hyperlinked in the Appendix.

⁵ See footnote 1.

⁶ The Amendment Ordinance amends the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) for banning disposal of regulated e-waste in facilities listed in Schedule 1 to the Regulation.

- (e) *Charging of a recycling levy*: manufacturers and importers who distribute REE to the local market have to be registered as "registered suppliers". A registered supplier distributing any REE is required to provide a recycling label for the REE,⁷ pay a recycling levy,⁸ and submit returns and audit reports to DEP.

7. The Amendment Ordinance will come into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette. The Administration will introduce subsidiary legislation to provide for the operational details of the PRS on WEEE and prescribe the recycling levy.

Major views and concerns expressed by Members

8. In the Fifth LegCo, the Panel on Environmental Affairs ("the Panel") was briefed on the Administration's plan to implement the PRS on WEEE and construct a WEEE treatment and recycling facility ("WEEETRF") at the meetings on 28 April 2014 and 26 January 2015. The funding proposal for WEEETRF was discussed by the Public Works Subcommittee and the Finance Committee on 23 January 2015 and 27 February 2015 respectively. The Bills Committee formed to scrutinize the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment)(Amendment) Bill 2015 held eight meetings from April to December 2015. On 27 June 2016, the Panel discussed with the Administration the import and export control on recyclables including WEEE. The major views and concerns expressed by Members in respect of the PRS and import control over e-waste at the above meetings are summarized in the ensuing paragraphs.

Scope and definition of regulated electrical/electronic equipment

9. Members expressed concern that it might be difficult to define clearly whether certain products were subject to the PRS on WEEE in view of the novelties in the functions and designs of products, in particular electrical/electronic products. The Administration advised that it had made

⁷ The purpose of the recycling label is to facilitate identification of REE which is covered by the PRS on WEEE with the recycling levy paid or to be paid by the relevant registered supplier.

⁸ The recycling levy is payable if (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.

reference to the Mandatory Energy Efficiency Labelling Scheme when formulating the definitions for REE in PERO. As for computers, a specific definition was given for the purpose of the PRS instead of relying on other existing definitions. The Administration would keep in view the market developments to ensure that the relevant definitions were up-to-date, and consider the need to extend the scope of REE at a later stage in the light of experience gained from implementation.

Recycling levy

Registered suppliers

10. Some Members were concerned that a person might circumvent payment of the recycling levy if the person purchased REE from an overseas website and distributed it in Hong Kong by parallel trading. The Administration explained that if a piece of REE was imported for distribution, regardless of how the REE was imported/purchased, the person would fall under the definition of "supplier" and must apply for registration as a registered supplier in order to distribute the REE legally. Besides, the person would have to pay a recycling levy for the REE concerned even if the person, in the capacity as a supplier, used the REE for the first time. On the other hand, if REE was imported into Hong Kong by a person for personal use and not for distribution, the person was not considered a supplier and hence would not be subject to the recycling levy.

Level of recycling levy

11. Members were concerned about the levels of the recycling levy on different classes of REE and the financial impact on the stakeholders. The Administration advised that an indicative range based on overseas experience was around \$200 to \$250 for a bulky item of REE, and around \$100 for a smaller item. The Administration also explained that the levy had to be reviewed from time to time to ensure that it was set at an appropriate level to achieve the relevant environmental objectives and full recovery of the costs of the PRS on WEEE, including the capital and operating costs of WEEETRF.⁹ It was therefore inappropriate to set the levy at a percentage of the retail prices of REE as suggested by some Members.

Sharing of recycling levy along the supply chain

12. Some Members suggested that the Administration should stipulate the percentage of the recycling levy to be borne by different parties in the supply

⁹ WEEETRF is scheduled for commissioning in mid-2017.

chain of REE so as to avoid passing the costs of the recycling levy from registered suppliers onto consumers. The Administration pointed out that whether a registered supplier would recover the recycling levy wholly or partially along the supply chain and ultimately from consumers would be determined entirely by market forces. The Administration also emphasized that the PRS on WEEE was meant to drive behavioural change of the community to reduce e-waste in the long run, thus fostering the reuse and recycling of electrical/electronic equipment.

Provision of regulated electrical/electronic equipment by property developers and landlords

13. As REE might be provided by property developers or landlords to owners or tenants of residential properties under agreements for sale and purchase, tenancy agreements or renovation agreements, Members sought clarification on the legal obligations where the property developers or landlords in question imported REE directly from overseas manufacturers, or purchase REE from suppliers in Hong Kong.

14. The Administration explained that if a property developer or landlord provided 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 would not be regarded as having distributed REE, and would not be required to pay recycling levy and provide recycling labels for the REE concerned. In practice, property developers and landlords would likely purchase REE from registered suppliers in Hong Kong, and the recycling levy would be paid by the latter.

Recycling labels and removal services to be provided by sellers

15. Members relayed the trade's concern about the potential operational difficulties in providing recycling labels to consumers. The Administration advised that the recycling label did not necessarily have to be affixed to the REE in question, or the related invoice or user manual. The label could be delivered to the consumer at the time of sale or delivery of the equipment. The Administration would exercise flexibility in implementation having regard to the trade's different modes of operation.

16. Members sought elucidation on the operation of the seller-arranged removal services required by the PRS on WEEE, such as whether a seller was obliged to remove an old item of REE from a premises designated by the consumer if the recycling label of that product was lost. The Administration explained that the removal services were to be arranged by sellers on a "new for old" basis. When a seller distributed an item of REE to a consumer, the seller

would be required to arrange for the removal of an item of the same class (if any), irrespective of whether the item to be removed was distributed by the same seller. Therefore, the loss of the recycling label of an old item of REE would not deprive a consumer of the benefit of utilizing the service. Besides, the seller must notify the consumer in writing its obligation in relation to the removal service before entering into any contract of REE distribution. However, it was not a mandatory requirement for a consumer to use the removal service and no fee would be reimbursed to the consumer if the removal service was not used.

Licensing control on disposal of waste electrical and electronic equipment

17. Members noted that exemptions from licensing control would be granted for the use of land or premises for (a) disposal of regulated e-waste that was not chemical waste on land or premises with an area of not more than 100 m²; (b) storage of regulated e-waste with a total volume of not more than 50 m³; or (c) storage of regulated e-waste on premises located inside a multi-storey building. Members expressed concern that private recyclers might break down the treatment processes for regulated e-waste into several parts of a smaller scale in order to circumvent the said licensing control.

18. The Administration assured Members that while exemptions would be granted in respect of the licensing control, the treatment and storage of regulated e-waste would remain subject to other relevant regulatory requirements. For instance, the storage, packing, labelling, delivery and disposal of regulated e-waste classified as chemical waste were subject to control under the Waste Disposal (Chemical Waste) (General) Regulation (Cap. 354C). Chemical waste disposal licences should be obtained for disposal of such e-waste, and the exemption for disposal on land or premises of not more than 100 m² would not apply.

Enforcement actions against illegal import of electronic waste

19. In the light of reports of illegal import of hazardous e-waste, Members urged the Administration to put in place effective measures and step up enforcement actions against such illegal practices. Some Members criticized that the frequency of inspections conducted by the Environmental Protection Department ("EPD") on containers of imported recyclables and e-waste recycling yards was inadequate. A Member suggested that the Administration should consider introducing measures to intercept illegally-imported e-waste at source, such as introducing a pre-declaration requirement to help detect abnormalities systematically.

20. The Administration stressed that import and export of hazardous e-waste were subject to stringent permit control. EPD had initiated investigations into reported cases of illegal imports, including inspecting the recycling yards concerned to gather evidence for enforcement actions. The Administration also advised that EPD and the Customs and Excise Department adopted a risk-based and intelligence-led approach in monitoring imported recyclables. All shipments of illegally-imported e-waste would be returned to their places of origin. EPD would also send information on each case to the relevant overseas enforcement agencies to strengthen interception of illegally imported e-waste at source.

Council questions

21. At the Council meetings of 24 April 2013 and 6 July 2016, Hon CHAN Hak-kan, Hon CHAN Han-pan and Hon Kenneth LEUNG raised questions on the Administration's internal policy on procurement and disposal of electrical/electronic equipment, and the control on import of e-waste as well as enforcement actions against illegal imports. The questions and the Administration's replies are hyperlinked in the **Appendix**.

Latest development

22. At the meeting on 23 January 2017, the Administration will update the Panel on the progress of the preparatory work for the implementation of the PRS on WEEE.

Relevant papers

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

**Producer Responsibility Scheme on
Waste Electrical and Electronic Equipment**

List of relevant papers

Date	Event	Paper
28 April 2014	Meeting of the Panel on Environmental Affairs	<p>Administration's paper on "Handling of waste electrical and electronic equipment (WEEE) and WEEE Treatment and Recycling Facility" (LC Paper No. CB(1)1292/13-14(03))</p> <p>Minutes of meeting (LC Paper No. CB(1)1812/13-14)</p> <p>Administration's follow-up paper (LC Paper No. CB(1)1499/13-14(01))</p>
23 January 2015	Meeting of the Public Works Subcommittee	<p>Administration's paper on "180DR Development of the Waste Electrical and Electronic Equipment Treatment and Recycling Facility" (PWSC(2014-15)39)</p> <p>Minutes of meeting (LC Paper No. PWSC115/14-15)</p> <p>Administration's follow-up paper (LC Paper No. PWSC107/14-15(01))</p>
26 January 2015	Meeting of the Panel on Environmental Affairs	<p>Administration's paper on "Producer Responsibility Scheme on Waste Electrical and Electronic Equipment" (LC Paper No. CB(1)454/14-15(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)674/14-15)</p>

Date	Event	Paper
13 March 2015	The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 ("the Bill") was introduced into the Legislative Council	The Bill Legislative Council Brief (File Ref: EP CR 9/150/28 Pt.4) Legal Service Division Report (LC Paper No. LS52/14-15)
April to December 2015	The Bills Committee on Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015	Report of the Bills Committee (LC Paper No. CB(1)489/15-16)
17 March 2016	The Bill was passed by the Legislative Council	Bill passed
27 June 2016	Meeting of the Panel on Environmental Affairs	Administration's paper on "Import and Export Control on Recyclables" (LC Paper No. CB(1)1054/15-16(02)) Minutes of meeting (LC Paper No. CB(1)1168/15-16) Administration's follow-up paper (LC Paper No. CB(1)1172/15-16(02))

Hyperlinks to relevant Council Questions:

Date	Council Question
24 April 2013	Press release on Council question (written) raised by Hon CHAN Hak-kan
6 July 2016	Press release on Council question (written) raised by Hon CHAN Han-pan
6 July 2016	Press release on Council question (written) raised by Hon Kenneth LEUNG