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By Fax (2136 3304)

4 December 2018

Mr Kenneth CHAN  
Assistant Director (Charging Preparation)  
Environmental Protection Department  
15/F, East Wing  
Central Government Offices  
2 Tim Mei Avenue  
Tamar, Hong Kong

Dear Mr CHAN,

**Waste Disposal (Charging for Municipal Solid Waste)  
(Amendment) Bill 2018**

We are scrutinizing the legal and drafting aspects of the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018 ("Bill"). We should be grateful if you could clarify the following matters:

**General matters**

Dual modes of charging under Part 2 and Part 3 of the Bill

2. It is stated in paragraph 4 of the Legislative Council ("LegCo") Brief (File Ref: EP CR/9/65/3) issued by the Environment Bureau and the Environmental Protection Department on 31 October 2018 that charges on municipal solid waste ("MSW") are proposed to be levied through the dual modes of charging by (a) designated bags ("DB")/designated labels ("DL") and (b) weight-based "gate-fee". It is also stated that the charging mode applicable to a waste producer would depend on the waste collection service used by him/her. Part 2 (clauses 3 to 10) of the Bill seeks to establish a quantity-based charging scheme for MSW disposal by the mandatory use of DB or DL,

whereas Part 3 (clauses 11 to 34) of the Bill seeks to amend the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354M) to provide for a charging scheme and related registration and billing systems for MSW disposal at landfills, transfer stations and transfer facilities. In order to facilitate members' understanding of the Bill, please clarify in detail how the policy objectives as stated in the LegCo Brief could actually be reflected in the provisions of the Bill. Please clarify in particular whether Part 2 and Part 3 of the Bill are meant to deal with entirely different matters in the sense that there would not be an overlap in charging for MSW disposal.

#### Application to the Government

3. It is stated in the existing section 36(7) of the Waste Disposal Ordinance (Cap. 354) that no fee or charge prescribed for the purposes of Cap. 354 shall be payable by the Crown. Please clarify whether the proposed MSW charging regime under the Bill would apply to Government premises, departments and/or employees etc.

#### Commencement

4. Clause 3(3) seeks to amend section 2(1) of Cap. 354 by adding, among others, the definition of "scheduled facility" which refers to section 2 of Cap. 354M, while clause 3(4) seeks to replace the term "Refuse Transfer Station" in the proposed definition of "scheduled facility" with the term "Charge for Disposal of Municipal Solid Waste at Scheduled Facilities". Please clarify when and how clauses 3(3) and 3(4) are expected to take effect if the Bill is passed.

5. It is stated in paragraph 13 of the LegCo Brief that a preparatory period of 12 to 18 months is proposed to be put in place after the passage of the Bill before the actual implementation of MSW charging. Please explain to members the intended commencement of the Bill, in particular whether and when different clauses of the Bill are expected to take effect in phases, if the Bill is passed.

#### Meaning of "dispose" and "disposal" etc.

6. It is noted that the terms "dispose" and "disposal" etc. are used in the Bill, see e.g. the proposed sections 20J(1), 20J(2) and 20Q(3)(a) of Cap. 354 and the proposed section 4(1)(a) of Cap. 354M. Please clarify the meaning of the terms "dispose" and "disposal" etc. in the above proposed provisions. Reference may be made to the definitions of "disposal" in the existing sections 2(1) and 20I(1) of Cap. 354.

### **Clause 3(3) – definition of "municipal solid waste"**

7. Please clarify whether it is the policy intent that the term MSW (which means any waste except chemical waste, clinical waste and construction waste under clause 3(3)) may include municipal waste in semi-solid or purely liquid form. If so, please clarify why MSW is not (a) referred to as "municipal waste" (i.e. omitting the word "solid") in the Bill or (b) expressly defined to include semi-solid and liquid forms for the avoidance of doubt.

### **Clause 4**

#### Proposed section 20K(1) of the Waste Disposal Ordinance (Cap. 354)

8. Please clarify the meaning of the terms "deposits" and "deposited" in the proposed section 20K(1) of Cap. 354, which seeks to provide that a person commits an offence if the person deposits, or causes or permits to be deposited, any non-compliant waste ("NCW") at a refuse collection point, onto a waste vehicle or into a specified bin. Reference may be made to the definition of "depositing" in section 2(1) of the Summary Offences Ordinance (Cap. 228).

9. Please clarify the meaning of the term "causes or permits to be deposited" in the proposed section 20K(1).

10. In the case of citizens voluntarily picking up waste which does not pose danger to the public on the street and depositing it without using DB or DL at a refuse collection point (e.g. after a strong typhoon), please clarify whether they would commit an offence under the proposed section 20K(1)(a).

11. Please clarify what a "specified bin" under the proposed section 20K(1)(c) is intended to be and whether it would include the ordinary rubbish bins currently put in public places by the Government.

12. Please clarify whether a person who unties the opening of a DB inside a specified bin in order to take away the cartons and soft drink cans inside the DB and then leaves without re-tying the DB would be considered as "depositing" that DB and the remaining waste therein, thereby contravening the proposed section 20K(1)(c).

13. It is stated in paragraph 8 of the LegCo Brief that charging for oversized waste collected by the Food and Environmental Hygiene Department that cannot be wrapped into a DB would be imposed through requiring the

oversized waste to be affixed with a DL before disposal. Please clarify how this policy is reflected in the provisions of the Bill.

14. Please clarify whether a person would commit an offence under the proposed section 20K(1) for depositing at a refuse collection point MSW which is:

- (a) different dismantled parts of the same abandoned furniture firmly tied together by a rope which is attached with one DL; and
- (b) a table and some chairs firmly tied together with one DL attached.

Proposed section 20L(1) of the Waste Disposal Ordinance (Cap. 354)

15. Please clarify whether a person (other than a waste collection officer) who is acting in the course of providing removal services would commit an offence for depositing NCW under the proposed section 20L(1) of Cap. 354 if the person deposits onto a waste vehicle DBs which have been damaged (e.g. by dogs or rats) so that solid waste inside the DB would escape during the handling process.

16. Please clarify whether employees of an outsourced contractor of the Government who are acting in the course of providing removal services by a waste vehicle on behalf of the Government would commit an offence under the proposed section 20L(1) for depositing NCW onto a waste vehicle. If so, please explain to members the rationale for this offence and why this is not applicable to waste collection officers who are employed by the Government.

17. Please also clarify whether employees of a removal services provider who are acting in the course of providing removal services by a waste vehicle (other than a waste collection officer) would generally have a positive duty to check whether the waste is NCW before depositing the waste onto the waste vehicle under the proposed section 20L(1).

Proposed section 20M(1) of the Waste Disposal Ordinance (Cap. 354)

18. Please clarify whether cleaning staff employed by the management company of a building would have a positive duty to check whether the waste is NCW before delivering it to a waste collection officer in order to avoid committing an offence under the proposed section 20M(1).



Proposed section 20N(1) of the Waste Disposal Ordinance (Cap. 354)

19. Under the proposed section 20N(1) of Cap. 354, a person would commit an offence if the person deposits onto a private waste vehicle any MSW that has a DL attached to it but that is not wrapped in a DB. Please explain to members the rationale for this proposed offence. Please also clarify why it would not be an offence if the waste vehicle involved is a public one.

Proposed section 20O(1) of the Waste Disposal Ordinance (Cap. 354)

20. Under the proposed section 20O(1) of Cap. 354, a person would commit an offence if the person delivers to another person acting in the course of providing removal services by a private waste vehicle any MSW that has a DL attached to it but that is not wrapped in a DB. Please explain to members the rationale for this proposed offence. Please also clarify why it would not be an offence if the waste vehicle involved is a public one.

Proposed section 20P of the Waste Disposal Ordinance (Cap. 354)

21. Please clarify whether:

- (a) residents of a building would commit an offence under the proposed section 20P(1) of Cap. 354 for depositing MSW into large DBs which are put at the common area of each floor of that building by the management company, which would eventually be tied up before disposal;
- (b) the residents would commit an offence under the proposed section if they cause their domestic helpers or underaged children to deposit the waste in the same manner; and
- (c) the management company would commit an offence under the proposed section for causing the residents to deposit the waste into the DBs, if the company instructs or asks the residents to deposit the waste in that manner (e.g. by posting relevant written notices in the common area).

22. Please also clarify whether a big DB (e.g. a 100-litre DB) placed at the common area at each floor of a residential building by its management company may be considered as a "litter container" under the proposed section 20P(3)(a) of Cap. 354, so that depositing NCW into this DB would not be an offence.

23. Please also clarify what would amount to "a small quantity" of "small-sized" MSW under the proposed section 20P(3)(a).

24. It is stated in the proposed section 20P(3)(c) of Cap. 354 that the proposed section 20P(1) would not apply if the NCW is deposited by any person in providing services connected with the removal of MSW from the premises. Please clarify the meaning of "connected with the removal of [MSW] from the premises" and what situations the proposed section 20P(3)(c) is intended to cover.

25. It is stated in the proposed section 20P(3)(d) that the proposed section 20P(1) would not apply if the NCW is (i) reasonably suitable for recycling; and (ii) deposited into a container, or in an area, that is reasonably used for depositing materials for recycling. Please clarify the meaning of the terms "reasonably suitable for recycling" and "materials for recycling".

Proposed section 20Q(1)(b) of the Waste Disposal Ordinance (Cap. 354)

26. Under the proposed section 20Q(1)(b) of Cap. 354, it would be a defence for a person charged with an offence under section 20K, 20L, 20M, 20N, 20O or 20P to prove that the person (i) did the act constituting the offence at the instruction of the person's employer etc., and (ii) took all steps reasonably open to the person to avoid committing the offence. Please clarify the meaning of the phrase "took all steps reasonably open to the person to avoid committing the offence".

Proposed section 20S of the Waste Disposal Ordinance (Cap. 354)

27. Regarding the proposed section 20S of Cap. 354, please clarify whether (a) there would be a system in place for a company to apply to be authorized to produce DB or DL, and (b) any authorization granted may be suspended instead of revoked. Reference may be made to the existing section 20C(1) of Cap. 354 on the suspension or revocation of the relevant permit.

Proposed sections 20U, 20V and 20W of the Waste Disposal Ordinance (Cap. 354)

28. Under the proposed section 20U(1) of Cap. 354, a person who sells, offers to sell or exhibits for the purpose of sale any DB or DL without authorization would commit an offence. Please clarify whether it would be an offence if the person, instead of selling, "causes or permits" DB or DL to be sold without authorization. Please also clarify a similar scenario under the proposed sections 20V(1) and 20W(1) of Cap. 354.

29. In the case of a person periodically running errands for people with mobility difficulties for a monthly charge, please clarify whether the person would commit an offence under the proposed section 20U(1) or 20W(1) for respectively selling DBs or supplying DBs at no extra charge to those people without authorization.

#### Anti-counterfeit measures

30. It is stated in paragraph 7 of the LegCo Brief that each DB would bear an anti-counterfeit label to deter forgery. Please clarify whether it would be an offence if a person sells, offers to sell, or exhibits for sale any counterfeit bags or uses counterfeit DBs for disposal of waste. Reference may be made to Articles 9 to 11 of a similar legislation in Taipei on MSW charging ("臺北市一般廢棄物清除處理費徵收自治條例" in Chinese). Please also clarify whether DLs would bear any anti-counterfeit features, and whether there would be any corresponding offences.

#### Proposed sections 20Y and 20Z of the Waste Disposal Ordinance (Cap. 354)

31. The proposed sections 20Y(1) and 20Y(2) of Cap. 354 respectively seek to provide that the driver of a public waste vehicle and of a private waste vehicle must ensure the relevant sign (prescribed under the proposed section 20X of Cap. 354) is exhibited on the vehicle in the prescribed way. The proposed section 20Y(3)(a) of Cap. 354 seeks to provide that, if in contravention of the proposed section 20Y(1) or 20Y(2), the driver would commit an offence. Please clarify:

- (a) whether the prosecution would need to prove the relevant knowledge on the part of the driver; and
- (b) while noting the defence under the proposed section 20Y(4) of Cap. 354, whether the common law defence of "honest and reasonable mistaken belief" would be applicable to the offences under the proposed section 20Y.

32. Please also clarify the similar scenario in relation to the proposed section 20Z of Cap. 354.

#### **Clause 6**

33. Please explain to members the rationale of clause 6 which seeks to amend section 31 of Cap. 354 to the effect that the prosecution needs not prove that the defendant's acts or omissions in question were accompanied by any

intention, knowledge or negligence as to any element of the proposed offences under the proposed sections 20K, 20L, 20M, 20N, 20O and 20P.

**Clauses 7, 8, 33 and 35 - charges set at above cost recovery level**

34. Please explain to members the rationale for the proposed power to set charges at above cost recovery level under clauses 7, 8, 33 and 35.

35. Please provide existing statutory examples (if any) which empower the setting of charges at above cost recovery level.

36. Please also clarify why the notices to amend the relevant Schedules to revise the charges would only be subject to the negative vetting procedure instead of the positive vetting procedure.

**Charging for MSW disposal at scheduled facilities under Part 3**

37. To facilitate members' understanding, please illustrate in tabular form the proposed changes in the charges for disposal of waste at each and every refuse transfer station and proposed scheduled facility by comparing the respective charges under the existing Cap. 354M and the proposed provisions under Part 3 of the Bill.

38. Please also explain to members how the proposed charges under clause 34 (including the proposed charges at \$365 and \$395) are arrived at.

We look forward to receiving your reply in both English and Chinese as soon as possible, preferably before the second meeting of the Bills Committee.

Yours sincerely,



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