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**Paper for the House Committee Meeting  
on 16 November 2018**

**Legal Service Division Report on  
Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018**

**I. SUMMARY**

- 1. The Bill**

The Bill seeks to amend the Waste Disposal Ordinance (Cap. 354) and the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354M) to establish a charging scheme for the disposal of municipal solid waste ("MSW"); to make a related amendment to the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N); and to provide for related matters.
- 2. Public Consultation**

According to the Administration, it has set up liaison platforms with different stakeholder groups, including the property management sector, private waste collectors, chambers of commerce and Heung Yee Kuk, to tap their views on the implementation of MSW charging. Following the announcement of the related details in March and October 2017, the Environment Bureau and the Environmental Protection Department organized over 100 liaison sessions and forums etc. to brief the community and various stakeholders on the proposed arrangements and solicit their views.
- 3. Consultation with LegCo Panel**

As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted on the proposed introduction of MSW charging at a number of meetings between 2011 and 2017. Members generally supported in principle the launch of a quantity-based charging scheme for MSW but raised concerns and suggestions on various issues regarding the implementation arrangements.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to establish a new charging scheme for the disposal of MSW, Members may wish to form a Bills Committee to study the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 14 November 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: EP CR/9/65/3) issued by the Environment Bureau ("ENB") and the Environmental Protection Department ("EPD") on 31 October 2018 for further details.

### Object of the Bill

2. The Bill seeks to amend the Waste Disposal Ordinance (Cap. 354) and the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354M) to establish a charging scheme for the disposal of municipal solid waste ("MSW"); to make a related amendment to the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N); and to provide for related matters.

### Background

3. According to paragraph 42 of the LegCo Brief, the Administration seeks to take forward the Hong Kong Blueprint for Sustainable Use of Resources 2013 - 2022 published in 2013 and take actions to drive behavioural changes to reduce waste at source through policies and legislation, including the implementation of MSW charging in order to achieve waste reduction. The Administration thus introduces the Bill into LegCo to establish a charging scheme for the disposal of MSW.

### Provisions of the Bill

4. The major provisions of the Bill are summarized below.

#### Charging scheme for disposal of municipal solid waste by using designated bags or labels

5. Under Part 2 of the Bill, a new Part IVB is proposed to be added to Cap. 354 to establish a quantity-based charging scheme for the disposal of MSW, which is defined to mean any waste except chemical waste, clinical waste, and construction waste.<sup>1</sup> The new Part IVB seeks to provide for the mandatory use of designated bags ("DB") or designated labels ("DL")<sup>2</sup> when disposing of MSW. Under the Bill, MSW that neither is wrapped in a DB nor has a DL affixed to it is non-compliant waste ("NCW").

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<sup>1</sup> Under the existing section 2(1) of Cap. 354, waste means any substance or article which is abandoned and includes animal waste, chemical waste, clinical waste, construction waste, e-waste, household waste, livestock waste, street waste and trade waste.

<sup>2</sup> DB and DL are defined in clause 3(3) to mean respectively a bag and a label that is produced by the Director of Environmental Protection or an authorized person and meets the requirements specified under the new section 20T of Cap. 354.

6. Under the new section 20T of Cap. 354, the Director of Environmental Protection ("DEP") may, by notice published in the Gazette, specify requirements for DB and DL, including their sizes, shapes, designs and materials. The new section 20S of Cap. 354 seeks to provide for DEP's powers to produce, sell and supply for free DB or DL, and to authorize any person to produce, sell or supply for free DB or DL.

*Prices of designated bags and designated labels*

7. Clause 9 seeks to add the new Schedule 14 to Cap. 354 to prescribe the prices of DB and DL. The price of each DL is proposed to be \$11 and the proposed prices of each DB with reference to its capacity are as follows:

Capacity of DB (litres):	3	5	10	15	20	35	50	75	100	240	660
Price per DB (\$)	0.3	0.6	1.1	1.7	2.2	3.9	5.5	8.5	11	26	73

8. Under the new section 37(4) and (5) of Cap. 354 as added by clause 8, the Secretary for the Environment ("SEN") may, by notice published in the Gazette, amend the new Schedule 14 to revise the above prices of DB and DL. Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo.

9. Division 3 of the new Part IVB of Cap. 354 seeks to criminalize the sale of DB or DL by unauthorized persons or at prices other than the prices prescribed in the new Schedule 14. The relevant person would be liable to a fine at level 6 (i.e. \$100,000) on the first conviction, and to a fine of \$200,000 on a subsequent conviction.

*Offences and penalties in relation to designated bags, designated labels and non-compliant waste*

10. For enforcement purposes, various offences are proposed under the Bill. These include the following six offences:

- (a) depositing any NCW at a refuse collection point ("RCP"), onto a waste vehicle (i.e. a public waste vehicle or a private waste vehicle ("PrWV"<sup>3</sup>)) or into a specified bin<sup>4</sup> (the new section 20K(1));

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<sup>3</sup> Under clause 3(3), PrWV means a vehicle (other than a public waste vehicle) that is being used for removing MSW and disposing of it at a scheduled facility (see paragraph 15 below for the definition of scheduled facility), and has an enclosed compartment equipped with a device designed for compacting waste within the compartment. Public waste vehicle means a vehicle that is being used by, or on behalf of, the Director of Food and Environmental Hygiene for removing MSW and disposing of it at a scheduled facility.

<sup>4</sup> Under clause 3(3), a specified bin means a container that, in the way prescribed under the new section 20X(1)(c), exhibits the sign prescribed under that section.

- (b) depositing any NCW at RCP or onto a waste vehicle whilst acting in the course of providing removal services (other than by a waste collection officer ("WCO")<sup>5</sup>) (the new section 20L(1));
- (c) delivering any NCW to a WCO or another person who is acting in the course of providing removal services at a RCP or by a waste vehicle (the new section 20M(1));
- (d) depositing onto a PrWV any MSW that has a DL attached to it but that is not wrapped in a DB (the new section 20N(1));
- (e) delivering to a person acting in the course of providing removal services by a PrWV any MSW that has a DL attached to it but that is not wrapped in a DB (the new section 20O(1)); and
- (f) depositing NCW in a common area of any premises that is used for depositing waste pending removal from the premises for disposal (the new section 20P(1)).

11. Under the new section 20R of Cap. 354, a person who commits an offence under the new section 20K, 20M, 20O or 20P would be liable to a fine at level 4 (i.e. \$25,000) and to imprisonment for six months on the first conviction, and to a fine at level 5 (i.e. \$50,000) and to imprisonment for six months on a subsequent conviction. A person who commits an offence under the new section 20N otherwise than acting in the course of providing removal services by PrWV would also be liable to the same level of penalty. As regards the offence under the new section 20N concerning someone acting in the course of providing removal services or under the new section 20L, the maximum penalty is proposed to be a fine at level 2 (i.e. \$5,000).

12. Clause 6 seeks to amend section 31 of Cap. 354 to the effect that it shall not be necessary for the prosecution to prove that the defendant's acts or omissions in question were accompanied by any intention, knowledge or negligence as to any element of the six offences proposed under the Bill.

13. Clauses 36 and 37 seek to amend the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) to provide for a fixed penalty (i.e. \$1,500) for the above six proposed offences. The effect is that an alleged offender would be offered an opportunity to discharge his liability to conviction for that offence by payment of the fixed penalty for that offence.

14. Various defences are proposed in the Bill for the above six proposed offences. Details of the proposed defences are provided in the new section 20Q of Cap. 354.

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<sup>5</sup> Under clause 3(3), WCO means a person who is employed by the Government and carries out the duty of loading MSW onto a public waste vehicle or moving MSW at a RCP.

Charging scheme under Cap. 354M as amended in respect of disposal of municipal solid waste at scheduled facilities

15. The existing Cap. 354M provides for a charging scheme for the disposal of waste at the refuse transfer stations ("RTSs") as stated in its Schedule by private waste collectors ("PWCs"), with different charging rates based on the weight of waste disposed and the particular RTS used. Part 3 of the Bill seeks to amend Cap. 354M to provide for a new charging scheme and related registration and billing systems for MSW disposal at landfills, RTSs and transfer facilities ("scheduled facilities"). Set out below are some of the features of the new charging scheme:

- (a) under the proposed registration system, DEP may register two types of registered account-holders with respect to vehicle-based and non-vehicle-based accounts (called "Type A account-holders" and "Type B account-holders" respectively for disposing MSW at one or more scheduled facilities (see new sections 6A and 6B of Cap. 354M under clause 18)); and
- (b) the disposal of MSW at a scheduled facility would require the relevant account-holder to pay to DEP charges specified in the proposed Schedule to Cap. 354M. The charging level would be based on the weight of MSW disposed of at those facilities. For example, PWCs which would use waste collection vehicles without waste compactors to dispose of one tonne of MSW at the Island East Transfer Station would have to pay \$395 under the Bill (currently \$30).

Miscellaneous and related amendments

16. The Bill also seeks to provide for miscellaneous and related amendments. These include providing for the amended title of Cap. 354M as "Waste Disposal (Charge for Disposal of Municipal Solid Waste at Scheduled Facilities) Regulation", providing that a DB is not a plastic shopping bag to which the Product Eco-responsibility Ordinance (Cap. 603) applies, providing SEN with the power to amend the Schedule to Cap. 354N to revise the charges for disposal of construction waste which could be set at above cost recovery level, and providing for transitional arrangements.

**Commencement**

17. The Bill, if passed, would come into operation on a day to be appointed by SEN by notice published in the Gazette. According to paragraph 13 of the LegCo Brief, the Administration proposes a preparatory period of 12 to 18 months before the actual implementation of MSW charging after the passage of the Bill.

## **Public Consultation**

18. According to paragraph 40 of the LegCo Brief, the Administration has set up liaison platforms with different stakeholders, e.g. the property management sector, PWCs, chambers of commerce and Heung Yee Kuk, to tap their views on implementing MSW charging. Following the announcement of the relevant details in March and October 2017, ENB and EPD organized over 100 liaison sessions and forums to solicit the views of the community and various stakeholders on the proposed arrangements.

## **Consultation with LegCo Panel**

19. As advised by the Clerk to the Panel on Environmental Affairs, the Administration consulted the Panel on the proposed implementation arrangements of MSW charging at a number of Panel meetings between 2011 and 2017. The Panel received related public views at the meetings in December 2013 and May 2017. Panel members generally supported in principle the launch of a quantity-based MSW charging, but raised various concerns and suggestions, including the charging mechanism and level of fees, uses of revenue arising from MSW charging, complementary measures and enforcement issues.

## **Conclusion**

20. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to establish a new charging scheme for the disposal of MSW, Members may wish to form a Bills Committee to study the Bill in detail.

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