

**立法會**  
**Legislative Council**

LC Paper No. LS81/2024

**Paper for the House Committee Meeting  
on 3 January 2025**

**Legal Service Division Report on  
Ozone Layer Protection (Amendment) Bill 2024**

**I. SUMMARY**

- 1. The Bill**

The Bill seeks to amend the Ozone Layer Protection Ordinance (Cap. 403) and its subsidiary legislation to:

  - (a) implement the Kigali Amendment to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (“Protocol”) and to better implement the Protocol;
  - (b) provide for controls on hydrofluorocarbons (“HFCs”) with high global warming potential and on products and equipment containing, made with or designed to operate on those HFCs;
  - (c) provide for the safe handling of hazardous refrigerants that may be used as substitutes for those HFCs;
  - (d) empower the Secretary for Environment and Ecology to make regulations for the above purposes; and
  - (e) provide for related matters.
- 2. Public Consultation**

According to the Administration, over 3 000 stakeholders, including members of the public, trade unions, environmental groups and professional groups, were consulted on the legislative proposals in the public consultation conducted from 10 July to 9 September 2023. The responses were generally supportive. The Administration also consulted the Advisory Council on the Environment in February 2024, and its members generally supported the legislative proposals.
- 3. Consultation with LegCo Panel**

The Panel on Environmental Affairs was consulted on the legislative proposals at its meeting on 28 October 2024. Members in general supported the legislative proposals and discussed various issues with the Administration.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to provide a legal basis for implementing the phasing down of the production and consumption of HFCs with high global warming potential, Members may consider forming a Bills Committee to study the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 18 December 2024. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref.: EEB(EB)CR 9/150/49) issued by the Environment and Ecology Bureau in December 2024 for further details.

### Object of the Bill

2. The Bill seeks to amend the Ozone Layer Protection Ordinance (Cap. 403) and its subsidiary legislation to:

- (a) implement the Kigali Amendment to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (“Protocol”) and to better implement the Protocol;
- (b) provide for controls on hydrofluorocarbons (“HFCs”) with high global warming potential (“GWP”) and on products and equipment containing, made with or designed to operate on those HFCs;
- (c) provide for the safe handling of hazardous refrigerants that may be used as substitutes for those HFCs;
- (d) empower the Secretary for Environment and Ecology (“Secretary”) to make regulations for the above purposes; and
- (e) provide for related matters.

### Background

3. The Protocol is a global agreement to protect the Earth’s ozone layer by phasing out the chemicals that deplete it. Hong Kong has been implementing the requirements of the Protocol through Cap. 403 by, among others, imposing controls on the manufacture, import and export of the ozone-depleting substances listed in the Schedule to Cap. 403 (“scheduled substances”). In October 2016, an amendment was made to the Protocol by the Kigali Amendment with a view to phasing down the production and consumption of 18 HFCs with high GWP listed in Annex F to the Protocol (“Scheduled HFCs”). Parties<sup>1</sup> to the Kigali Amendment are required to, among others, implement a licensing system for the import and export of new, used, recycled and reclaimed Scheduled HFCs and to meet the relevant phasedown targets. According to paragraphs 5 and 6 of the LegCo Brief, the Central People’s Government accepted the Kigali Amendment in 2021. To prepare for the application of the Kigali Amendment to Hong Kong, the Bill is thus introduced to provide a legal basis for implementing the required phasing down of the production and consumption of the Scheduled HFCs. Key provisions of the Bill are summarized in the ensuing paragraphs.

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<sup>1</sup> As of end August 2024, there are 160 parties to the Kigali Agreement.

## **Provisions of the Bill**

### Expansion of the scope of the Ozone Layer Protection Ordinance (Cap. 403)

4. For the purpose of implementing the Kigali Amendment, clause 3 of the Bill seeks to amend the long title of Cap. 403 to expand its scope to include (a) controls on HFCs with high GWP, (b) controls on products and equipment containing, made with or designed to operate on HFCs with high GWP, and (c) the safe handling of hazardous refrigerants that may be used as substitutes for HFCs with high GWP.

5. Clause 22 of the Bill seeks to add the 18 HFCs with high GWP in the list of Scheduled HFCs as “scheduled substances” in the proposed new Part 10 of the Schedule<sup>2</sup> to Cap. 403 (“new Part 10”). The effect is that the manufacture, import and export of these new Scheduled HFCs would be subject to control under Cap. 403.

### Prohibition on the manufacture of Scheduled HFCs

6. Currently, section 3(1) of Cap. 403 provides that a person who manufactures a scheduled substance commits an offence and is liable to a fine of \$1,000,000 and imprisonment for two years, and a fine of \$100,000 for each day on which the offence continues. Clause 5 of the Bill seeks to amend section 3(1) of Cap. 403 to the effect that, starting from 1 December 2025, a person who manufactures any Scheduled HFCs listed in the proposed new Part 10 would commit an offence and be liable to the aforementioned penalties. It also seeks to add a new section 3(5) to Cap. 403 to provide that a scheduled substance would not be regarded as being manufactured if the scheduled substance is collected from any equipment, product or container during the servicing or before the equipment, product or container is scrapped, and the substance is subsequently recycled by way of purification or distillation, or by any other way, so as to make it suitable for reuse.

7. Under the existing section 3(2) of Cap. 403, section 3(1) does not apply where the scheduled substance is manufactured solely for the purpose of research or academic instruction and the person manufactures no more than 1 kg of the substance in any 12 month period. Clause 5(3) of the Bill seeks to add new sections 3(3) and 3(4) to Cap. 403 to provide that the burden of establishing the above exception would lie on the person charged with the offence under section 3(1) and the burden would be an evidential burden.<sup>3</sup>

### Licensing and registration concerning the import and export of Scheduled HFCs

8. Under the existing section 4 of Cap. 403, a person who imports or exports a scheduled substance without a licence issued by the Director of Environmental Protection (“EP”) under section 6 of Cap. 403 commits an offence and is liable to a fine of \$1,000,000 and imprisonment for two years. Clause 6 of the Bill seeks to amend section 4 of Cap. 403 to

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<sup>2</sup> If the Bill is passed, the Secretary for Environment and Ecology may, after consultation with the Advisory Council on the Environment, amend the proposed new Part 10 of the Schedule to Cap. 403 by notice published in the Gazette under section 17 of Cap. 403 (clause 20 of the Bill). Such notice would be subsidiary legislation subject to the scrutiny of LegCo pursuant to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

<sup>3</sup> Under the proposed new section 3(4) of Cap. 403, a person would be taken to have established the exemption if there is sufficient evidence to raise an issue that the scheduled substance meets the description in section 3(2) and the contrary is not proved by the prosecution beyond reasonable doubt.

the effect that, starting from 1 December 2025, a person who imports or exports the Scheduled HFCs listed in the proposed new Part 10 without a licence would commit an offence and be liable to the aforementioned penalties.

9. Currently, the Director of EP may register a person as an importer or exporter of scheduled substances if specified conditions are met under section 5 of Cap. 403. Clause 7 of the Bill seeks to amend section 5 of Cap. 403 to the effect that the Director of EP may register a person if the Director of EP is satisfied that the person was, before 1 December 2025, an importer or exporter of the Scheduled HFCs listed in the proposed new Part 10.

#### Expansion of regulation-making powers of the Secretary for Environment and Ecology

10. Clause 19 of the Bill mainly seeks to amend section 16 of Cap. 403 to give the Secretary further powers to, after consultation with the Advisory Council on the Environment (“ACE”), make regulations to provide for, among others:

- (a) the types of products that are subject to prohibition and control in order to reduce the production and consumption of HFC (“regulated HFC products”) and a GWP limit for each of these regulated HFC products;
- (b) the criteria to determine whether a refrigerant is a hazardous refrigerant;
- (c) the duties and obligations of persons who own, manage or control specified refrigerant<sup>4</sup> equipment, hazardous refrigerant equipment, or specified fire suppressant<sup>5</sup> equipment (“SFS equipment”) when the equipment is installed in non-domestic premises, and matters concerning the registration of specified refrigerant equipment and SFS equipment;
- (d) matters relating to the duties, obligations and registration of any persons who undertake to carry out any work in relation to any equipment mentioned in subparagraph (c) above (“regulated work”), and the requirement for a certified technician to be present on site when any regulated work is carried out;
- (e) the establishment of a Refrigerant Technical Advisory Committee to advise the Director of Electrical and Mechanical Services (“EMS”) on matters relating to the use, management and handling of refrigerants contained or used in specified refrigerant equipment and hazardous refrigerant equipment (“specified matters”), and the training of persons who wish to be certified technicians;
- (f) the power of the Director of EMS to issue codes of practice (which would not be subsidiary legislation and therefore would not be subject to the negative vetting procedure of LegCo) to provide practical guidance in respect of the specified matters, and any related ancillary work required to be carried out; and
- (g) the power of the Director of EP or the Director of EMS to grant exemptions from any requirement imposed under the regulations made under section 16 of Cap. 403.

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<sup>4</sup> “Specified refrigerant” is proposed under clause 4(6) of the Bill to mean a refrigerant that contains one or more scheduled substances other than a controlled refrigerant as defined by section 2 of the Ozone Layer Protection (Controlled Refrigerants) Regulation (Cap. 403B).

<sup>5</sup> “Specified fire suppressant” is proposed under clause 4(6) of the Bill to mean a fire suppressant containing one or more scheduled substances.

11. Under section 16(3) of Cap. 403, such regulations (other than those that only prescribe fees) would be subsidiary legislation subject to the approval of LegCo (i.e. the positive vetting procedure). According to paragraph 22(e) and footnote 18 of the LegCo Brief, two new pieces of subsidiary legislation for effecting the regulation of the supply of products and equipment using HFCs with high GWP, and the mandatory recovery of refrigerants and fire suppressants<sup>6</sup> would be made by the Secretary after the Bill is passed by LegCo.

#### Granting certain powers to the Director of Electrical and Mechanical Services

12. To provide for the role of the Director of EMS under Cap. 403, the Bill seeks to empower the Director of EMS, in addition to the Director of EP, to exercise certain powers and perform certain functions under Cap. 403. These include the appointment of authorized officers under section 9 of Cap. 403 (clause 11 of the Bill) and allowing prosecutions for offences under Cap. 403 to be brought in the name of the Director of EMS under section 15 of Cap. 403 (clause 18 of the Bill).

#### Refining certain enforcement powers of authorized officers

13. Currently, Cap. 403 does not require an authorized officer to have a warrant when exercising the general powers under section 10 or the special powers under section 11 of Cap. 403. Clause 12 of the Bill seeks to amend section 10 of Cap. 403 to the effect that for the purposes of carrying out a routine inspection, the authorized officer may exercise any general powers (including the power to enter and inspect non-domestic premises occupied by a licence holder) without a warrant. Clause 13 of the Bill seeks to amend section 11 of Cap. 403 to the effect that a warrant issued by a magistrate would be required for the authorized officer to exercise any special powers (including the power to enter and search any premises if there are reasonable grounds to suspect that an offence under Cap. 403 has been committed), unless a delay caused by obtaining a warrant would be likely to result in the loss or destruction of the evidence of the suspected offence contained in any non-domestic premises or it would not be reasonably practicable to obtain a warrant.

#### Increase in maximum penalties

14. Clauses 26 to 29 of the Bill seek to increase the maximum penalties for the offences under the Ozone Layer Protection (Controlled Refrigerants) Regulation (Cap. 403B) from the existing level of a fine at level 6 (i.e. \$100,000) to a fine of \$200,000 and imprisonment for six months, and in the case of a continuing offence to a further fine of \$10,000 for each day during which the offence continues. These offences relate to the prohibition on releasing controlled refrigerants, the control of recycling of controlled refrigerants, and the record-keeping requirements in relation to refrigeration equipment and motor vehicle air-conditioners under the existing sections 5, 6, 7 and 8 of Cap. 403B.

#### Related and consequential amendments

15. Clauses 30 and 31 of the Bill seek to amend the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) Regulation (Cap. 403C) to adopt certain terms defined in the Bill. Clause 32 of the Bill seeks to amend the Schedule to the

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<sup>6</sup> According to the subheadings “Control Strategy 2” and “Control Strategy 3” on pages 4 and 5 of the LegCo Brief, the target commencement dates of the two new pieces of subsidiary legislation would be progressively from mid-2026 and in the fourth quarter of 2026 respectively.

Specification of Public Offices Notice (Cap. 1C) to specify the Director of EMS to be a public officer for the purposes of Cap. 403. Clause 33 of the Bill seeks to amend the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) by adding a decision of the Director of EP or the Director of EMS to item 36 of that Schedule to the effect that such a decision would be subject to appeal to the Administrative Appeals Board.

### Commencement

16. Except clauses 5(2), 6(2) and 22(2) (relating to the offences concerning the manufacture, unlicensed import or export of the Scheduled HFCs, as well as references to certain sections in the Schedule to Cap. 403) which would come into operation on 1 December 2025, the Bill, if passed, would come into operation on the day on which it is published in the Gazette as an ordinance.

### **Public Consultation**

17. According to paragraphs 27 and 28 of the LegCo Brief, the Administration conducted a two-month public consultation from 10 July to 9 September 2023. Over 3 000 stakeholders, including members of the public, relevant products and equipment importers, suppliers, service providers and users, chemical waste collectors, trade associations, property management companies, engineering consultants, trade unions, environmental groups and professional groups, were consulted. The responses were generally supportive. Except requesting sufficient time to adjust their operational practices and expressing varied views over the ban of a few types of refrigerating equipment, the trade generally expressed no major difficulties in complying with the legislative proposals. The Administration also consulted ACE in February 2024, and its members generally supported the legislative proposals.

### **Consultation with LegCo Panel**

18. As advised by the Clerk to the Panel on Environmental Affairs (“Panel”), the Panel was consulted on the legislative proposals at its meeting on 28 October 2024. Members in general supported the legislative proposals. Matters discussed at the meeting included the cost of compliant products/equipment and impact on the relevant trades. Members suggested that the Administration should step up publicity of the new requirements, and provide appropriate support and subsidies in respect of technical training to the relevant trades (e.g. skills for handling refrigerants and fire suppressants).

### **Conclusion**

19. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to provide a legal basis for implementing the phasing down of the production and consumption of HFCs with high GWP, Members may consider forming a Bills Committee to study the Bill in detail.

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