立法會
Legislative Council

LC Paper No. CB(1)1185/2025

Ref: CB1/BC/6/25

Report of Bills Committee on Promotion of Recycling and Proper Disposal of Products (Miscellaneous Amendments) Bill 2025

Purpose

This paper reports on the deliberations of the Bills Committee on Promotion of Recycling and Proper Disposal of Products (Miscellaneous Amendments) Bill 2025 ("the Bills Committee").

Background

Producer responsibility schemes

2. Producer responsibility scheme ("PRS") is one of the key policy tools in the waste management strategy in Hong Kong. Based on the principle of "polluter-pays" and the concept of "eco-responsibility", PRSs require relevant stakeholders to share the responsibility for the collection, recycling, treatment and disposal of end-of-life products. Since the enactment of the Product Eco-responsibility Ordinance (Cap. 603)[1] in July 2008, the Government has fully implemented PRSs for plastic shopping bags, regulated electrical and electronic equipment ("REE") and regulated articles (i.e. glass beverage containers) respectively.

Establishing a common legislative framework for producer responsibility schemes

3. At present, the Product Eco-responsibility Ordinance stipulates detailed provisions for the PRS for each type of products. To implement new PRSs more expeditiously and effectively, the Chief Executive has proposed in the 2023 Policy Address the establishment of a common legislative framework applicable

[1] Unless otherwise stated, the relevant provisions or proposed provisions mentioned in this report refer to those of the Product Eco-responsibility Ordinance.

to PRSs for different products. This framework will set out, among others, the general operational mechanism and responsibilities of relevant stakeholders, while the operational details applicable to individual products will be prescribed in subsidiary legislation.

The Promotion of Recycling and Proper Disposal of Products (Miscellaneous Amendments) Bill 2025

4. The Promotion of Recycling and Proper Disposal of Products (Miscellaneous Amendments) Bill 2025 ("the Bill") was published in the Gazette on 28 March 2025 and received its First Reading at the Legislative Council ("LegCo") meeting of 2 April 2025, aiming to amend the Product Eco-responsibility Ordinance and the Waste Disposal Ordinance (Cap. 354) as well as their subsidiary legislation. The Bill seeks to:

(a) introduce producer responsibility schemes for various products under which suppliers, retailers or scheme operators are required to make arrangements for the recovery of those products;

(b) replace the use of prescribed forms by specified forms for notices or certificates issued under the existing PRS for plastic shopping bags; and revise the power to make regulations for the purposes of that existing scheme; and

(c) regulate the disposal and recycling facilities[2] and the import and export for certain types of waste,[3] and to ban disposal of vehicle tyre waste at designated waste disposal facilities (including landfills and refuse transfer stations). [4]

---

[2] That is, the introduction of licensing control to ensure that the operation of the disposal and recycling facilities for regulated products is environmentally sound. The licence requirement will commence in tandem with the relevant PRSs.

[3] That is, the imposition of permit requirements on the import and export of liquid carton waste and vehicle tyre waste. Exporters need to ensure that such waste will be properly recycled at the place of import before export permits will be issued by the Director of Environmental Protection ("DEP"). Similarly, DEP will issue import permits only when he/she is satisfied that such waste being imported will be properly treated or recycled by local licensed disposal facilities. At present, the import and export of lead-acid battery waste, electric vehicle battery ("EV battery") waste and plastic waste (unless such plastic waste is uncontaminated and its import and export are for the purpose of re-processing, recycling or recovery, or reuse in the importing country) are already regulated by a permit system under the Waste Disposal Ordinance. The permit system will commence in tandem with the relevant PRSs.

[4] The ban will commence in tandem with the PRS for vehicle tyre waste.

The Bills Committee

5. The House Committee agreed at its meeting on 11 April 2025 to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix 1**. Under the chairmanship of Hon LAU Kwok-fan, the Bills Committee has held five meetings with the Administration. The Bills Committee has also invited written views from the public.[5] A list of organizations/individuals who have given views to the Bills Committee is in **Appendix 2**.

Deliberations of the Bills Committee

6. The deliberations of the Bills Committee are summarized in the ensuing paragraphs:

(a) common legislative framework (paragraphs 7 to 10);

(b) subsidiary legislation to be made under the proposed new sections 159 and 160 (paragraphs 11 to 14);

(c) compliance costs (paragraphs 15 and 16);

(d) distribution, registration and labelling of products (paragraphs 17 to 31);

(e) producer responsibility plans (paragraphs 32 and 33);

(f) recovery of waste products (paragraphs 34 to 45);

(g) proposed offences (paragraphs 46 to 48);

(h) assessment notice issued by the Director of Environmental Protection (paragraphs 49 to 51) ;

(i) fixed penalty mechanism (paragraphs 52 to 54); and

(j) other legal and drafting issues (paragraphs 55 and 56).

---

[5] For details, please refer to the submissions and the two consolidated written responses provided by the Administration in May and June 2025 respectively.

Common legislative framework

7. The Bills Committee notes that with reference to the experience in other places, the Administration will adopt a "market-led approach" for implementing new PRSs. Under this approach, instead of imposing a levy or directly engaging service providers to collect and recycle waste regulated products, the Administration will set recovery targets for individual regulated products as necessary. Suppliers can choose to arrange for recovery of waste regulated products by themselves for meeting recovery targets, or engage registered scheme operators in the market at their own costs for fulfilling recovery obligations on their behalf.

8. Under the common legislative framework introduced by the Bill:

(a) suppliers generally refer to manufacturers and importers who engage in the business of distributing regulated products (i.e. products in the proposed new Schedule 12 ("Schedule 12 products") in Hong Kong. Save for suppliers who fulfil exemption provisions, any supplier must register as a "registered supplier" before distributing Schedule 12 products in Hong Kong;

(b) registered suppliers are required to submit periodic returns to the Environmental Protection Department ("EPD") with detailed information on the distribution of Schedule 12 products. They should also appoint independent auditors to conduct annual audits in order to ensure the accuracy of the information submitted; and

(c) registered suppliers or registered scheme operators so engaged are required to submit periodic returns to EPD with detailed information on the quantities of Schedule 12 products recovered. They are also required to submit to EPD annual audit reports on the recovery of waste Schedule 12 products.

9. Members are in general supportive of the "polluter-pays" principle and the concept of "eco-responsibility" of PRSs as well as the general direction of adopting a "market-led approach" for the implementation of such schemes. Members have also agreed that the setting out, among others, of the general operational mechanism of PRSs and the responsibilities of relevant stakeholders under a common legislative framework, as well as prescribing the operational details of PRSs applicable to Schedule 12 products in the corresponding subsidiary legislation could effectively enhance the efficiency of the entire

legislative process.[6]

10. The Administration undertook to continue to maintain close communication with the relevant trades after the passage of the Bill by the LegCo to discuss the operational details of the new PRSs, and to allow the relevant trades to get prepared through the provision of sufficient preparatory and adaptation periods. The Administration will also formulate clear practical guidance and enforcement guidelines while stepping up publicity and education to enable stakeholders to understand the statutory requirements of PRSs.

<u>Subsidiary legislation to be made under the proposed new sections 159 and 160</u>

11. Under the proposed new section 159, the Secretary for Environment and Ecology ("the Secretary") will be empowered to make regulations (i.e. Individual Product Regulations as defined in the Bill) in respect of certain matters, inter alia, the distribution, consumption and recovery of Schedule 12 products. In addition, under the proposed new section 160, the Secretary may, by notice published in the Gazette, amend the proposed new Schedule 12. The aforesaid regulations and notice are subsidiary legislation subject to the negative vetting procedure of LegCo.

12. The Bills Committee is concerned that the above subsidiary legislation involves specific requirements and complex details of various new PRSs, and that the negative vetting procedure, as proposed in the Bill, may not allow sufficient time for Members' scrutiny. The Bills Committee has also pointed out that in the paper entitled "Establishment of a Common Legislative Framework for Producer Responsibility Schemes" issued to the Panel on Environmental Affairs in November 2023,[7] the Environment and Ecology Bureau advised that the subsidiary legislation for different Schedule 12 products would be subject to the positive vetting procedure. In this regard, the Bills Committee has sought clarification on what subsidiary legislation would be introduced to LegCo for positive vetting after the passage of the Bill.

13. The Administration has advised that:

(a) in 2023, the Administration proposed that the subsidiary legislation for different regulated products under the common

---

[6] At the request of the Bills Committee, the Administration has provided supplementary information (i.e. paragraphs 3 and 4 of LC Paper No. CB(1)795/2025(02)) on the common regulatory requirements applicable to the proposed five types of Schedule 12 products (i.e. plastic beverage containers, beverage cartons, EV batteries, vehicle tyres, and lead-acid batteries) to illustrate how the common legislative framework in the principal legislation and the subsidiary legislation reflect the regulatory requirements.

[7] Please refer to paragraph 19 of this paper for details.

legislative framework be subject to the positive vetting procedure. After deliberation and consultation with relevant stakeholders, it is proposed in the Bill that such subsidiary legislation be subject to the negative vetting procedure;

(b) one of the objectives of introducing the common legislative framework is to implement new PRSs using a "market-led approach". Each piece of subsidiary legislation addresses administrative, procedural and technical details specific to a Schedule 12 products and provides flexibility for suppliers to engage operators in the market to meet prescribed recovery targets. These technical details may be changed in view of the latest market situation and availability of new recycling technologies. The Administration will regularly review the operational details in consultation with the industries and introduce changes as appropriate;

(c) in practice, the Administration will conduct extensive consultation with relevant trades, stakeholders and the Panel on Environmental Affairs before tabling the subsidiary legislation for a Schedule 12 product to ensure broad consensus on each future PRS; and

(d) subjecting the subsidiary legislation for individual products to negative vetting is the appropriate approach to achieving the objective of this legislative amendment exercise, including establishing a "market-led" regulatory framework and enhancing legislative efficiency.

14. Notwithstanding the Administration's explanation, some members still have concerns about the negative vetting procedure for the relevant subsidiary legislation and have suggested changing the procedure. After careful consideration of the members' views, the Administration has agreed to propose amendments to the Bill to alter the vetting of subsidiary legislation made under the proposed new sections 159 and 160 to positive vetting. This will enable LegCo to scrutinize the provisions more comprehensively, thereby ensuring that each PRS can better suit practical circumstances and the trades' needs, facilitating its smooth implementation.

Compliance costs

15. Some members are concerned that the compliance costs of implementing new PRSs under a "market-led approach" and the relevant requirements (e.g. the costs of providing rebates and hiring independent auditors to conduct annual audits) will inevitably increase the financial burden on registered suppliers and may also affect the local business and economic environment. Some other

members are concerned that registered suppliers might pass on the additional costs to consumers, turning “producer responsibility” into “consumer responsibility”.

16. The Administration advised that:

(a) enshrining the “polluter pays” principle, the recovery costs will be shared by relevant stakeholders in the supply chain. The “market-led approach” allows stakeholders to play a more active role in PRSs, so that the recycling arrangements will become more efficient and cost-effective. The Administration anticipates that operational efficiency of the market will improve, thereby reducing the required costs;

(b) the Administration has been maintaining close communication with the industry and taken their views into consideration to adjust the details of the schemes, with a view to lowering the compliance costs for the industry. For example, there is a preliminary plan to exempt small suppliers who distribute less than a prescribed quantity of beverage products annually from certain legal obligations, including the submission of producer responsibility plans and the conduct of annual audits, to reduce their administrative burdens and costs. In addition, the initial statutory recovery targets will be set at a more pragmatic level;

(c) the Administration will provide sufficient preparatory and adaptation periods to allow the industry ample time to prepare for the implementation of new PRSs. This will help reduce product costs in the supply chain and avoid retail price fluctuations, thereby minimizing the impact on the public; and

(d) as new PRSs will be launched in the form of subsidiary legislation after the common legal framework is ready, the Administration can flexibly handle the launch timing and fine-tune the operational details of individual schemes to address the concerns of small-scale market participants and ensure the smooth implementation of the schemes.

<u>Distribution, registration and labelling of products</u>

Meaning of “distribute”

17. Pursuant to the proposed new section 103, for the purposes of Schedule 12 products, a person distributes a Schedule 12 product if the person:

(a) sells the Schedule 12 product;

(b) supplies the product by way of hire or hire-purchase;

(c) exchanges or disposes of the product for consideration; or

(d) gives the product to another person as a prize or gift.

18. Given the prevalence of consumption patterns such as online shopping, group buying and proxy buying, the Bills Committee is concerned that if relevant suppliers do not have a physical place of business in Hong Kong, it will be difficult for the Administration to enforce the requirements of PRSs in respect of the distribution of Schedule 12 products by such suppliers. The Bills Committee has also pointed out:

(a) even if such business processes involve Hong Kong intermediaries/agents, where products are shipped directly from overseas to a consumer's address in Hong Kong or collected by the consumer at a logistics company's pick-up point, the intermediaries/agents never own the products nor directly import them into Hong Kong. As they only provide certain services, they do not fall within the meaning of "supplier" under the proposed new section 104;[8] and

(b) taking PRS for regulated electrical equipment as an example, many electrical and electronic products purchased through cross-border e-commerce platforms and shipped to Hong Kong fail to comply with statutory requirements, which not only poses safety hazards to consumers in Hong Kong but also creates an unfair competitive disadvantage to local law-abiding merchants.

19. The Administration has advised that it has recently noted that the operational model of a cross-border e-commerce platform may involve the

---

[8] Under the proposed new section 104, the meaning of "supplier" is as follows:
(1) For the purposes of the proposed new Part 7, a person is a supplier of a type of Schedule 12 product if:
  (a) the person, in the course of the person's business, manufactures Schedule 12 products of the type in Hong Kong for distribution or consumption by the person;
  (b) subject to subsection (2), the person, in the course of the person's business, imports Schedule 12 products of the type into Hong Kong for distribution or consumption by the person; or
  (c) the person is prescribed as a supplier of the type of Schedule 12 product.
(2) A person is not a supplier of a type of Schedule 12 product by reason of subsection (1)(b) if the person:
  (a) does not own the products; and
  (b) only provides a service for transporting the products into Hong Kong for another person.

distribution or sale of REE products in Hong Kong, and has approached the platform concerned to understand the situation and explain the relevant regulations. Such platform has also submitted applications to EPD for supplier registration and endorsement of seller's removal service plan. The Administration will continue to monitor the operational models of cross-border e-commerce platforms in Hong Kong and follow up on suspected violations. Similarly, for other existing or new PRSs, the Administration will follow up on suspected violations and, depending on the specific circumstances of each case, determine whether there is a violation and take enforcement actions. The Bills Committee has reminded the Administration to continue paying attention to the possible impact of various sales modes, such as cross-border shopping and online shopping, on the implementation, enforcement and effectiveness of PRSs, in particular the situation where suppliers do not have a physical place of business in Hong Kong.

20. In response to members' enquiries, the Administration has also clarified that if a registered supplier recalls a Schedule 12 product from retailers or consumers for destruction due to, inter alia, quality issues and abandons the product, this will fall within the meaning of "consume" under the proposed new section 103(3)(a)(ii). The registered supplier is required to fulfil the relevant PRS requirements for the consumed products, and the quantity consumed will count towards the statutory recovery target that the registered supplier is required to meet. If the registered supplier recycles or repurposes the recalled product (i.e. falling within the meaning of "recover" in the proposed new section 103(4)), the product may be considered as a recovered Schedule 12 product and included in its recovery quantity.

Entering into an agreement to distribute products

21. Under the proposed new section 103(2)(b), a person would not be regarded as distributing a Schedule 12 products merely because the person enters into an agreement to do an act of distribution as defined in the Bill. Given that the definition of "distribute" under the Ordinance in respect of the existing PRSs does not contain a similar provision, the Bills Committee has requested the Administration to clarify why such a provision is proposed to be included in the proposed meaning of "distribute" in the proposed new section 103.

22. The Administration has advised that for the meaning of "distribute", a person does not "distribute" a Schedule 12 product merely by entering into an agreement to distribute the product. This is because the agreement is only a contractual commitment that outlines the terms under which future distribution may occur, but it does not, by itself, involve the actual act of distributing the product to another party. It is also possible that the agreement terms may still be subject to further modification or cancellation before the product is distributed. While the definitions of "distribute" under the existing sections 31 (for the PRS

on regulated electrical equipment) and 47 (for the PRS on regulated articles) do not contain a similar provision, the provision "entering into an agreement to distribute does not constitute distribution" which is applicable to the two schemes does exist in the existing sections 35(3) and 40(2), and section 54(2).

Imposition of terms or conditions on registration of suppliers or scheme operators

23. The proposed new sections 109 and 118 of Cap. 603 seek to empower the Director of Environmental Protection ("the Director") to impose any term or condition on the registration of a supplier and a scheme operator respectively. It is noted that the powers to impose terms or conditions do not exist in similar provisions relating to the registration of suppliers under the current PRSs.[9] The Bills Committee has requested the Administration to provide justifications for giving the Director such power.

24. The Administration has advised that the existing PRSs on regulated electrical equipment and regulated articles are implemented through a "Government-led approach". Once a supplier is registered, the Government will collect from the registered supplier a recycling levy based on the distribution quantity of the supplier and engage service providers to collect and recycle the discarded Schedule 12 products. As the recycling service will be provided by the service providers engaged by the Government, there is no need to impose any terms or conditions on the registration of suppliers of regulated electrical equipment and regulated articles. However, under the "market-led approach" for implementing the new PRSs, registered suppliers will have the flexibility to arrange the recovery of regulated product waste on their own or by engaging a service providers in the market to recover discarded Schedule 12 products. In this case, it would be necessary to empower the Director to impose appropriate terms or conditions to ensure the new approach operates smoothly. Specific terms or conditions will be prescribed in the Individual Product Regulation.

Registration and labelling of products

25. Under the proposed new section 129, a designated barcode and a prescribed logo must be printed on or affixed to the surface of a Schedule 12 product in the prescribed manner. A registered supplier must apply to the Director for the registration of Schedule 12 products distributed or consumed in Hong Kong and, if the application complies with the prescribed requirements, the Director must assign a barcode number to the product.

26. Taking the proposed PRS on plastic beverage containers and beverage cartons as an example, the Administration has advised that:

---

[9] That is, the existing sections 33 and 49.

(a) the trade and stakeholders have been consulted on the requirement for the prescribed logo. The beverage supply sector supports the application of the designated logo on regulated beverage products to differentiate them from unregistered non-compliant products, and to help the public distinguish registered products that are eligible for rebates. To reduce the compliance costs of the scheme, the Administration has proposed adopting a simple design for the logo and will not make the specifications overly complicated. Close communication with the trade will continue, and a reasonable adaptation period will be provided to allow the trade to distribute remaining stock of beverage products without the prescribed logo, in order to facilitate beverage suppliers to fulfil the relevant requirements;

(b) it is proposed that once the scheme has been implemented, beverage suppliers will only need to provide a product's original barcode at the time of product registration, and there will be no need to add a separate barcode. The scheme will identify registered beverage products based on their barcodes, supplemented by the prescribed logo; and

(c) discussions with the trade regarding the specific manner in which the designated barcodes and prescribed logos will be printed on or affixed to the surface of Schedule 12 products will continue. These discussions will take into account the possible variations in product packaging forms (e.g. beverages packaged in multipacks), other statutory requirements (e.g. the requirements under the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W)), etc., as well as the need to facilitate business operations as far as possible.

27. In response to members' enquiries, the Administration has also clarified that

(a) the proposed PRS on plastic beverage containers and beverage cartons will cover beverage products with a volume ranging from 100 millilitres to 2 litres that are carried in plastic beverage containers or beverage cartons, but does not cover refillable plastic containers, beverages that are filled and sealed immediately before sale for takeaway at retail outlets (e.g. bubble tea packaged in plastic cup sealed with a plastic film, or herbal tea or soya milk packaged in plastic cup), drink pouches and plastic beverage containers that are not filled with beverages. Products not covered by the scheme are not required to comply with the requirements of having designated barcodes and prescribed logos;

(b) takeaway beverage products that are filled and sealed immediately at retail outlets are not subject to the requirements of having designated barcodes and prescribed logos, even if they are subsequently resold by other retailers; and

(d) the Individual Product Regulation will specify the types of products exempt from registration. Relevant publicity and education efforts will be stepped up to inform stakeholders about the exemption arrangements.

Prohibition on distribution of non-compliant products by retailers

28. Under the proposed new section 132(1), a retailer must not distribute, or offer to distribute, a Schedule 12 product of a type to which the proposed new section 132 applies if the retailer knows, or reasonably ought to know, that the product is a non-compliant product. In this connection, the Bills Committee has requested the Administration to clarify the circumstances under which a retailer would be considered "reasonably ought to know" that the product is a non-compliant product.

29. The Administration has explained that for a non-compliant product to which the proposed new section 132 applies, once the relevant PRS is implemented, it will conduct sufficient publicity and inform the trade sector through various means to clearly outline the specific conditions that would classify a product as a non-compliant product. The trade will also be given ample time to prepare for and adapt to the changes. The above measures will help retailers familiarize themselves with the requirement and avoid distributing non-compliant products. Circumstances under which a retailer would be considered "reasonably ought to know" include whether the retailer has received any regulatory warning, whether the concerned product exhibits visible non-conformity (e.g. the designated barcode and prescribed logo not printed on or affixed to the surface of the product in the prescribed manner), whether the retailer has conducted basic checking to verify product compliance, etc.

30. As set out in the proposed new section 132(3)(a), one condition for a product to be considered non-compliant is that "the product is not a registered product" (i.e. not a Schedule 12 product registered under the proposed new section 130). Given that it may be difficult for retailers to ascertain whether a product is "not a registered product", the Bills Committee has requested the Administration to consider deleting the proposed new section 132(3)(a).

31. Having considered members' views, the Administration will propose an amendment to delete one of the conditions in the proposed new section 132(3)(a) in order to streamline the process by which retailers (particularly small and

medium-sized retailers) can verify whether the relevant Schedule 12 products have been registered. Subject to the passage of the Bill, retailers can identify non-compliant Schedule 12 products solely by their designated barcode or prescribed logo in the future, thus striking a balance between regulatory purposes and economic efficiency. In addition, EPD will make information about registered beverage products available online for public and trade reference. Practical guidelines will be formulated for the trade, and publicity and education efforts will be undertaken to help retailers identify non-compliant products and ascertain registered products.

Producer responsibility plans

Imposition of terms and conditions in respect of approved producer responsibility plans

32. The Bills Committee notes that the Bill does not provide for a mechanism for a holder of an approved producer responsibility plan to apply for renewal of approval before the plan expires. In this connection, the Bills Committee has enquired about the need to provide a mechanism in the Bill for renewal of approval.

33. The Administration has advised that when approving a producer responsibility plan, a validity period (e.g. five years) will be set for the plan. Before the producer responsibility plan expires, the plan holder will be reminded about six months in advance to submit an application under the proposed new section 112 if the plan holder wishes to continue the recovery operation to ensure that the plan takes effect in time. The Individual Product Regulation will set out the specific requirements and details for the application for approval of producer responsibility plans. The arrangement to remind plan holders to submit applications for renewal of approval is an administrative procedure and will not be stipulated in the Individual Product Regulation.

Recovery of waste products

Statutory recovery targets

34. Members have made the following observations or comments:

(a) regarding the phased-in statutory recovery targets for plastic beverage containers and beverage cartons (which will be stipulated in the Individual Product Regulation), the current proposal is to set the first phase at 30% (for plastic beverage containers) and 10% (for beverage cartons) respectively. It would be prudent and desirable to adopt an incremental approach by regularly reviewing the actual recovery situation before progressively raising the statutory recovery targets;

(b) as some of the existing voluntary recovery programmes operated by larger beverage suppliers have already achieved similar or higher recovery rates, some green groups consider the proposed statutory recovery targets for the first phase not aggressive enough. On the other hand, some beverage suppliers consider that it would still be difficult to achieve the first-phase statutory recovery targets; and

(c) in order to achieve the statutory recovery targets, registered suppliers or registered scheme operators may purchase discarded Schedule 12 products collected by the operators of GREEN@COMMUNITY, and the cleansing service companies engaged by GREEN@COMMUNITY may also sell these recovered articles to the registered suppliers or registered scheme operators. As the facilities and services of GREEN@COMMUNITY are operated by non-profit-making organizations commissioned by the Government, the above scenarios may involve public subsidy to the compliance costs of registered suppliers or registered scheme operators.

35. The Administration has advised that:

(a) the proposed first-phase statutory recovery targets for plastic beverage containers and beverage cartons are the result of discussions between the Administration and the trade. Having regard to the mode of operation and circumstances in Hong Kong, the industry generally hopes that the Government will set lower first-phase recovery targets to facilitate adaptation and the establishment of a recycling network at the initial stage of the scheme. The recovery targets could then be raised progressively according to the actual recovery situation, reaching 75% and 50% respectively in the fourth phase. The Administration has also agreed to set the statutory recovery targets at a more practical level in the first phase to facilitate the smooth implementation of the scheme. The targets for the first phase are already relatively high compared to the current recovery rate of about 14% for plastic beverage containers and less than 1% for beverage cartons;

(b) the proposed PRS on plastic beverage containers and beverage cartons will provide a rebate of not less than $0.1 per beverage container or carton, while GREEN@COMMUNITY will offer GREEN$, each with a value lower than $0.1, for gift redemption for a wide range of recyclables. Due to their different modes of operation, PRSs will not compete with GREEN@COMMUNITY, and recyclables will not necessarily be directed to GREEN@COMMUNITY. In fact, registered suppliers or registered scheme operators may collaborate with GREEN@COMMUNITY operators to set up return points in the GREEN@COMMUNITY recycling network for recovering discarded Schedule 12 products; and

(c) the statutory recovery targets and the volume of recovered products will only apply to Schedule 12 products that are registered with EPD and have the designated barcodes and prescribed logos. Registered suppliers or registered scheme operators cannot achieve the statutory recovery target by importing products from outside Hong Kong or by recovering locally discarded non-registered products.

Verification of recovery quantities

36. Members have expressed concern about how to verify recovery quantities and urged the Administration to carefully consider the sampling method, frequency and manpower arrangements, as well as any anticipated difficulties that might arise under different scenarios (e.g. how to check and verify whether individual containers are barcoded and the barcode can be scanned, and whether any non-compliant products have been mixed in, in the event that the recovered beverage containers have been flattened or a large number of beverage containers have been put into one big plastic bag). This is to ensure that the information in the annual audit reports submitted by registered suppliers or registered scheme operators on the discarded Schedule 12 products recovered is accurate. Some members opine that subject to compliance with the relevant statutory requirements, the Administration should conduct the checks in a trade-friendly manner and consider whether a reasonable degree of reporting error would be acceptable.

37. The Administration has advised that taking the proposed PRS for plastic beverage containers and cartons as an example, some companies prefer to use "Reverse Vending Machines" ("RVM") to check whether the recovered containers are registered beverage products through barcode verification. However, given the local context in Hong Kong, some organizations are planning to adopt weight-based recovery in locations such as housing courts. Although weight-based collection is believed to be cheaper, it may lead to inaccurate reporting. The Administration will consider further requiring registered scheme operators to establish a verification mechanism, such as installing sorting and verification equipment at their collection facilities or appointing an independent agency to conduct sampling for verifying the proportion of registered containers. Such sampling and verification arrangements should be stated clearly in the producer responsibility plans. EPD will impose terms and conditions in the approved

producer responsibility plans, requiring the scheme operators to ensure the accuracy of calculation and reporting of recovery quantities and to conduct annual sampling. Furthermore, EPD will conduct regular and surprise inspections targeting possible non-compliance. It is believed that a multi-pronged approach will minimize the chances of inaccurate reporting of recovery quantities. In addition, the Bill stipulates that self-recovering registered suppliers and registered scheme operations should appoint independent auditors to submit third-party audit reports on annual recovery quantities. If data irregularities are identified, the Government will follow up with and conduct an investigation. Moreover, the number of containers recovered that do not meet the required specifications will be deducted from the total amount collected.

Registered return points

38. Under the proposed new section 137, a retailer must not distribute a Schedule 12 product on any prescribed premises unless the retailer has set up a registered return point for the collection of Schedule 12 products, or any part of such products, for recovery purpose. As the Bills Committee notes, the Administration has proposed that the requirement to provide recovery service for plastic beverage containers would apply only to retailers with a certain operation scale, say those with a minimum retail floor area of 400 sq m[10] Retailers may set up registered return points within or in the vicinity of their shops as appropriate. Members have raised the following concerns and suggestions:

(a) retailers might circumvent the requirement to set up registered return points by reducing their retail floor area;

(b) registered return points will not be required for most of the retail shops located at MTR stations if the threshold is set at a retail floor area of not less than 400 sq m; and

(c) consideration could be given to requiring or encouraging registered suppliers or registered scheme operators to set up return points in housing courts, housing estates, large shopping malls, railway stations, etc. to make it more convenient and attractive for members of the public to return discarded Schedule 12 products.

---

[10] During the public consultation on the producer responsibility schemes on plastic beverage containers in February 2021, the Administration proposed that the requirement to provide recovery service for such containers would apply only to shops with a certain operation scale (e.g. with a minimum retail floor area of 200 sq m). Taking into account the views of various stakeholders, the Administration's latest proposal is that the threshold would be a retail floor area of not less than 400 sq m. The exact size is yet to be determined and will be specified in the Individual Product Regulation. Based on the thresholds of 200 sq m and 400 sq m, it is estimated that there will be about 600 and 400 registered return points in Hong Kong respectively.

39. Noting members' views, the Administration has advised that it has been promoting the separation and recycling of household waste through GREEN@COMMUNITY and other initiatives, and that the recycling network now covers more than 80% of the Hong Kong population. Registered suppliers or registered scheme operators may wish to consider setting up return points in housing courts and housing estates. The Administration will also make available space in public facilities, public housing estates, etc. for registered suppliers or registered scheme operators to set up return points.

Provision of rebates

40. The proposed new section 140 provides that where a retailer sets up a registered return point for the collection of Schedule 12 products of a type, or any part of such products, the retailer must provide a rebate of a value not less than the prescribed amount to a person who returns the type of products, or any part of such products, to the return point. The proposed new section 141 provides for the obligations of registered suppliers and registered scheme operators to provide the rebate. The amount of the rebate will be prescribed in the Individual Product Regulation. In response to the Bills Committee's enquiries, the Administration has clarified that:

(a) the source of funding for a retailer to provide the rebate at its registered return points under the proposed new section 140 will depend on whether there is any commercial arrangement between the retailer and the registered suppliers or registered scheme operators; and if the retailer chooses to make the arrangement on its own, the rebate will be provided at the retailer's expense;

(b) if a retailer hands the Schedule 12 products recovered from its registered return points directly to a downstream recycler instead of to a registered supplier or registered scheme operator, the quantities recovered will not count towards the recovery volumes of the registered supplier or registered scheme operator; and

(c) regarding members' concern about the availability of "outlets" for Schedule 12 products recovered by retailers, i.e. whether they will eventually be taken up by registered suppliers, registered scheme operators or other recyclers for recycling; and whether registered suppliers and registered scheme operators will be exempted from collecting Schedule 12 products through the registered return points set up by retailers given that they have achieved the statutory recovery targets, the relevant issues will be addressed through the producer responsibility plan and the terms or conditions to be imposed by the Director.

41. Some members consider the provision of financial or other incentives to promote community-wide participation in recycling to be a very important aspect of PRS, as it enables the public to play a role in the scheme as a whole. In the case of the PRS on plastic beverage containers and beverage cartons, even if the compliance costs of the scheme may lead to an increase in the price of the relevant products, the small extra amount paid by consumers when purchasing the products, or the small amount of rebate (e.g. $0.1) received when returning the product containers does not seem sufficient to provide financial incentives to motivate consumers to return the discarded Schedule 12 products and develop recycling habits. Some other members opine that unlike previous Government-led PRSs under which registered suppliers were only required to pay a levy to the Government, a market-led approach under which registered suppliers would have to make their own arrangements for recovering discarded Schedule 12 products and providing incentives to the public might be more effective in driving the operation of the recycling market. In addition, some green groups consider that a "deposit return system" could provide greater incentives for consumers to take responsibility for the "polluter pays" principle.

42. The Administration has advised that taking the PRS on plastic beverage containers and beverage cartons as an example, different places adopt different recovery arrangements which suit their local needs for collecting beverage containers. Adopting either a "deposit" system or the "rebate" system currently proposed in the Bill will have the same effect of encouraging the public to return used beverage containers for recycling. As the local retail sector includes many shops smaller in scale such as corner stores, provision stores and grocery stores, in addition to large retail chains, adopting the "deposit" system would mean that all retail shops, regardless of size, would not only have to collect deposits for the beverage products they sell, but also have to properly handle the containers returned by the public and arrange for the return of deposits. This would impose varying degrees of administrative burden and additional operational cost on all retail outlets. To avoid causing inconvenience to the retail sector as a whole and to implement the scheme progressively, the Administration is of the view that a "rebate" system better aligns with the operating mode and circumstances of Hong Kong's local retail industry.

43. The Administration has added that

(a) when setting the rebate level, the Administration needs to strike a balance between effectively encouraging public participation and the need to take into account the recovery cost and prevent fraudulent activities. It has consulted the relevant trade and stakeholders regarding the rebate level under the proposed PRS on plastic beverage containers and beverage cartons and they are supportive of the current proposal (i.e. a registered return point must provide a rebate of not less than $0.1 for each plastic beverage container or beverage carton). This rebate arrangement also provides flexibility for suppliers and scheme operators to increase the rebate amount based on their actual needs to ensure the statutory recovery targets can be met; and

(b) EPD has launched the Reverse Vending Machine Pilot Scheme since 2021 to test out public participation in returning plastic beverage containers. Under the Pilot Scheme, an instant rebate is provided via e-payment platforms to encourage the public to return used plastic beverage containers. Positive responses from the public have been received since the rollout of the Pilot Scheme. Even though the rebate level has been maintained at $0.1, the collection amount continues to be on a rise. As at late March 2025, over 166 million plastic beverage containers have been collected under the Pilot Scheme. Based on the successful experience of the Pilot Scheme, the Administration believes that the public has generally accepted the rebate level of $0.1.

Improving the resource recycling chain

44. The Bills Committee considers that the success of the new PRSs in reducing and recycling waste, and in promoting the development of a circular economy hinges on ensuring that the discarded Schedule 12 products, which have been recovered, can eventually be recycled rather than being disposed of in landfills. In this connection, members have urged the Administration to consider ways to improve the entire resource recycling chain in a holistic manner, including:

(a) continuing to enhance the local recovery and recycling capacity for the relevant products, so as to avoid relying on market forces to improve the resource recycling chain as a result of the "market-led approach";

(b) expediting the development of a circular economy with the Mainland to facilitate the flow and increase the value of recovered materials, thereby reducing the cost of recycling;

(c) formulating expeditiously an implementation timetable for the various new PRSs. Apart from the proposed five categories of Schedule 12 products, PRS should also be introduced for other products, such as plastic containers for non-beverage products (particularly those for daily necessities), styrofoam and other packaging materials; and

(d) keeping statistics on the amount of discarded Schedule 12 products generated from cross-boundary consumption, online shopping or brought into Hong Kong by travellers.

45. Noting members' views, the Administration has advised that when considering the setting up of a PRS for a particular type of product, it will carefully consider a number of factors. These include the recovery and recycling situation and the outlets for the recovered materials, particularly whether the local recycling market has the necessary technical and processing capacity to transform the recovered materials into materials with market value. The Administration will also continue to expand the recycling network under GREEN@COMMUNITY by increasing the number of recycling stores and recycling spots, so as to build up a green recycling culture and pave the way for the implementation of different PRSs. The Administration is also exploring with the Mainland ways to promote integrated waste resource treatment in the Greater Bay Area, with a view to jointly developing green industries and building a "Zero Waste Bay Area". Regarding the proportion of non-local beverage containers, the Administration has advised that it has conducted spot checks and analyses through multiple channels, including the Reverse Vending Machine Pilot Scheme, GREEN@COMMUNITY and waste treatment facilities. Based on these assessments, it is estimated that non-local plastic beverage containers currently account for around 3% of the total. Following the implementation of PRSs, the Government will monitor any changes to this data. Should any abnormalities be detected, appropriate follow-up measures will be taken.

Proposed offences

46. Referring to the Product Lifecycle Responsibility Bill 2025[11] which was passed in New South Wales, Australia in 2025, members have requested the Administration to review the proposed offences under the Ordinance (e.g. the offence under the proposed new section 117 concerning a holder of an approved production responsibility plan not complying with any term or condition imposed by the Director in respect of the plan), and consider whether it is necessary to provide for ancillary offences and penalties for aiding, abetting, counselling or procuring another person to commit such offences. Members take the view that compared to invoking the Criminal Procedure Ordinance (Cap. 221) and the common law, prescribing ancillary offences and penalties directly in the Bill would provide a clearer basis for enforcement.

47. The Administration has confirmed that if any person conspires or attempts to commit, or aids, abets, counsels or procures another person to commit the offences proposed in the Bill, such person could already be convicted in accordance with the prevailing provisions (i.e. section 159A or 159G of the Crimes Ordinance (Cap. 200) or section 89 of the Criminal Procedure Ordinance

[11] Please refer to section 41 of the Product Lifecycle Responsibility Bill 2025 for details.

(Cap. 221)). Therefore, after holistic consideration, the Administration has concluded that there is no need to introduce new provisions to deal with the relevant offences and criminal liabilities.

48. The Bills Committee has asked the Administration to clarify a number of issues relating to proposed offences with and without statutory defences under the Bill. The relevant information is set out in **Appendix 3**.

Assessment notices issued by the Director of Environmental Protection

49. The Bills Committee has asked the Administration to clarify the factors to be taken into account by the Director in determining whether an assessment notice should be served on a supplier under the proposed new sections 107 or 136 in respect of the relevant supplier's contravention of the proposed new sections 106, 134 and 135 (which are related to the prohibition on distribution or consumption of Schedule 12 products by suppliers, as well as the recovery targets required to be met by registered suppliers or registered scheme operators).

50. The Administration has advised that

(a) the provisions for serving assessment notices for a contravention of the above requirements are proposed by making reference to the existing sections 40 and 54;[12]

(b) if a supplier distributes or consumes a product in contravention of the requirement on distribution or consumption of products, i.e. the supplier distributes the products without supplier registration or holding an approved producer responsibility plan which is in force, the supplier would have very likely evaded the required recovery obligations of PRS (i.e. to arrange the recovery of products by themselves or engage the service of a registered scheme operator to fulfil the obligation). To prevent suppliers from evading their recovery obligation and to ensure the effective implementation of PRS, the proposed new section 107 demands a payment from the supplier concerned who has evaded the obligation of recovering its distributed products. The determination of the amount of payment is specific to different Schedule 12 products which will be prescribed in the Individual Products Regulation; and

---

[12] Under the existing sections 40 (applicable to PRSs for regulated electrical equipment) and 54 (applicable to PRSs for regulated articles), the Administration may recover recycling levies from those suppliers who have distributed the relevant products without registering as registered suppliers, and those who have distributed or used/consumed the products without paying the required recycling levy.

(c) if registered suppliers and registered scheme operators fail to meet the statutory recovery targets, i.e. if it is ascertained that the recovery quantity falls short of the recovery target identified from the relevant regular return or audit report, the Director will serve an assessment notice to the concerned registered suppliers or the registered scheme operators based on the shortfall in meeting the recovery targets. The determination of the amount of payment will be specified in the Individual Products Regulation, taking into account the relevant recovery costs and weighting factors.

51. The Bills Committee has requested the Administration to review the appropriateness of serving the assessment notice within five years of the expiry of the period referred to in the proposed new section 136(1)(a). The Administration has explained that under the proposed new section 136(4), registered suppliers are required to keep the prescribed records and documents related to the returns for five years after submission. If there is any doubt regarding a supplier's return, the Government may request the supplier to provide relevant supporting documents in order to determine whether an assessment notice should be served to recover any shortfall. The provision regarding the retrospective period ensures that the Government can review records within five years of the return submitted to enhance deterrence. This provision is also formulated with reference to the relevant sections (i.e. sections 40 and 54) of the prevailing PRS on Waste Electrical and Electronic Equipment and PRS on Glass Beverage Containers. Referring to the experience of enforcing these two PRSs, the Administration normally requests supporting documents from suppliers within two to three months after receiving their returns if there is suspicion. The proposed time limit for serving an assessment notice provides the Government with enough flexibility to enforce recovery of legal liabilities from registered suppliers or registered scheme operators who fail to meet their recovery targets within five years. Therefore, the Administration considers this arrangement appropriate.

Fixed penalty mechanism

52. Under the proposed new section 143(1), the Director may give a penalty notice if he has reason to believe that a person is committing or has committed an offence under sections 131(2), 132(4), 137(3), 140(2) or 141(3) ("the five sections").[13] Given that compliance with the penalty notices would prevent the prosecution or conviction of the persons concerned, the Bills Committee has expressed concerns about the basis on which the Administration proposes that the

[13] The proposed new sections 131(2), 132(4), 137(3), 140(2) and 141(3) relate to the respective offences of contravening the following requirements: the use of prescribed logo, retailers must not distribute or offer to distribute products in certain circumstances, retailers must set up registered return points, retailers must provide rebate, and registered suppliers and registered scheme operators must provide rebate.

fixed penalty mechanism should apply only to offences under the five sections, while excluding some other proposed new offences (e.g. the proposed new section 129(2) relating to the contravention of the registration and labelling of Schedule 12 products).

53. The Administration has explained that it took into account the nature and seriousness of the proposed new offences to which the fixed penalty mechanism would apply, making reference to the comparable mechanism under the existing legislative framework for controlling disposable plastic tableware and other plastic products. Fixed penalty notices are generally issued for minor and common offences, providing a fast-track mechanism that obviates the need for court trials and enables offenders, particularly first-time offenders, to rectify the situation. However, for offences covered by the fixed penalty mechanism that are serious offences (i.e. involving recklessness or repeated offences), consideration may be given to dealing with them by way of summons and court proceedings, rather than resorting to the fixed penalty mechanism. Other proposed offences not covered by the fixed penalty mechanism, such as those under the proposed new sections 125(4) and 129(2) (i.e. failure of registered suppliers to submit annual audit reports on discarded Schedule 12 products recovered or failure to register Schedule 12 products), will have a more adverse impact on the operation of PRS. Offenders should not be absolved from liability through the fixed penalty mechanism in order to reflect the seriousness of these offences and to maintain the deterrent effect.

54. Members considers that serving a demand notice for non-payment of a fixed penalty within the prescribed period after the fixed penalty notice has been issued, and requiring the person concerned to pay the fixed penalty within another prescribed period after the penalty notice has been served would not only extend the payment period and reduce the incentive for timely payment, but might also impose a heavy administrative burden on the Administration. In response, the Administration has pointed out that the Bill seeks to establish a common legislative framework for PRSs applicable to different products to facilitate the recycling and proper disposal of Schedule 12 products. Publicity and education will be the key to implement the schemes, supplemented by enforcement efforts. Drawing reference from the experience in the control of disposable plastic tableware and other plastic products, it is expected that the number of fixed penalty notices issued will gradually decrease as the trade adapts to the new requirements under PRSs. Guidelines on the fixed penalty mechanism under the Bill will be provided to ensure consistency in enforcement standards, and publicity and education efforts will be stepped up to inform stakeholders of the requirements.

Other legal and drafting issues

55. The Bills Committee has provided views on the drafting of the proposed new sections 106(3), 134(2), 135(2) and 140(1), as well as the proposed amended section 2 (Interpretation) of the Waste Disposal Ordinance.[14] It has also requested that the Administration review these provisions. Members note the Administration's written response to their suggestions[15] and have no further comments.

56. The Administration has advised that it will propose textual amendments to the following sections:

(a) to amend the Chinese text of sections 137 and 140 so as to reflect more accurately the legislative intent expressed by the corresponding English text;

(b) to amend the English text of section 160 to align with similar expressions in existing legislations; and

(c) to revise the newly added definition of "pure electric vehicle" under the proposed amended section 2 (Interpretation) of Waste Disposal Ordinance from "means a motor vehicle that is propelled by only battery and emits no air pollutant when running" to "means a motor vehicle that is solely propelled by electric power and does not emit any exhaust gas", so as to more clearly reflect the policy intent and facilitate the trades' understanding and compliance with the relevant requirements.

Amendments to the Bill

57. Having considered the amendments to the Bill proposed by the Administration as set out in paragraphs 14, 31 and 56 above, the Bills Committee has no objection to these amendments. The Bills Committee will not propose any amendments to the Bill.

---

[14] These views relate to the drafting of phrases such as "if there is prescribed a condition" in the English text of the proposed new section 106(3), "during the prescribed recovery period" in sections 134(2) and 135(2), and "a Schedule 12 product of the type" in the English text of section 140(1). For details, please refer to items (b) and (e) of the list of follow-up actions for the meeting on 16 June 2025 and item (a) of the list of follow-up actions for the meeting on 17 June.

[15] For details, please refer to paragraphs 5 and 9 of the Administration's written response to issues raised at the meeting on 16 June 2025 and paragraphs 2 to 4 of the written response to issues raised at the meeting on 17 June 2025.

Resumption of Second Reading debate on the Bill

58. The Bills Committee has completed the scrutiny of the Bill and raised no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 23 July 2025.

Consultation with the House Committee

59. The Bills Committee reported its deliberations to the House Committee on 11 July 2025.

Council Business Divisions
Legislative Council Secretariat
16 July 2025

Appendix 1

Promotion of Recycling and Proper Disposal of Products (Miscellaneous Amendments) Bill 2025

Membership list

Chairman	Hon LAU Kwok-fan, MH, JP
Members	Hon KWOK Wai-keung, BBS, JP Ir Dr Hon LO Wai-kwok, GBS, MH, JP Hon SHIU Ka-fai, BBS, JP Hon Doreen KONG Yuk-foon Dr Hon TIK Chi-yuen, SBS, JP Hon Andrew LAM Siu-lo, SBS, JP Hon Judy CHAN Kapui, MH, JP Ir Hon CHAN Siu-hung, BBS, JP Hon Lillian KWOK Ling-lai Hon Benson LUK Hon-man Hon Carmen KAN Wai-mun, JP (Total: 12 members)
Clerk	Ms Angel SHEK
Legal Adviser	Mr Alvin CHUI

Appendix 2

Promotion of Recycling and Proper Disposal of Products (Miscellaneous Amendments) Bill 2025

List of organizations/individuals who have given views to the Bills Committee

1. Sam SIU

2. The Green Earth, Green Power, Greeners Action and Greenpeace (joint submission)

3. National Eco-friendly Salvation Front

4. REDNOTE Environment Warriors

5. The Hong Kong Beverage Association Limited

6. Association of Auto Batteries And Tyres Industry

7. Liberal Party

8. Drink Without Waste

9. Andy

Appendix 3

Promotion of Recycling and Proper Disposal of Products (Miscellaneous Amendments) Bill 2025

The Bills Committee's enquiry on the proposed offences and the Administration's response

Proposed offences without a statutory defence

The proposed new Part 7 of the Product Eco-responsibility Ordinance ("the Ordinance") seeks to provide for various offences and penalties. For the proposed offences for contravention of the proposed new sections 106, 107, 108, 109, 117, 118, 122, 123, 124, 125, 126, 127, 136, 138, 140 and 141, the Administration was requested to clarify:

(a) whether it is the Administration's intention that each of the offences mentioned above is a strict liability offence and that the prosecution needs not prove the existence of mens rea (i.e. the mental element) of committing the offence;

(b) if your answer in (a) above is in the affirmative, whether it is the Administration's legislative intent that the implied common law defence of "honest and reasonable mistaken belief" is available to a person charged with each of these offences, and if so, whether the defendant only bears an evidential burden (i.e. the second alternative referred to in *Kulemesin v HKSAR* (2013) 16 HKCFAR 195 ("*Kulemesin*")), or is required to discharge a persuasive burden (i.e. the third alternative referred to in *Kulemesin*), as to the defendant's belief; and

(c) if it is the Administration's intent that the third alternative referred to in *Kulemesin* applies, how the derogation of the constitutional right to be presumed innocent under Article 87 of the Basic Law and Article 11(1) of the Hong Kong Bill of Rights could satisfy the rationality and proportionality tests laid down in *Hysan Development Co Ltd v Town Planning Board* [2016] 6 HKC 58.

2. The Administration advised that:

(a) the proposed offences for contravention of the proposed new sections 106, 107, 108, 109, 117, 118, 122, 123, 124, 125, 126, 127, 136, 138, 140 and 141 are strict liability offences which the prosecution need not prove the existence of mens rea of committing the offences. The implied common law defence of “honest and reasonable mistaken belief” will be available;

(b) given the offences for the contravention of abovementioned proposed new sections are regulatory in nature rather than a crime in the ordinary sense and the penalty imposed is arguably not severe (compared with a maximum of 4 years’ imprisonment for the indictable offence in *Kulemesin*), it is the Administration’s intent that the third alternative referred to in *Kulemesin* represents the appropriate mental requirement of the offences, i.e. the prosecution need not prove mens rea but the accused had a good defence if he could prove, on the balance of probabilities, that he acted or omitted to act in the honest and reasonable belief that the circumstances or likely consequences of his conduct were such that, if true, he would not be guilty of the offence;

(c) if the defendant claims to have honest and reasonable mistaken belief for contravening the above sections, this is something peculiar to his own knowledge and it is particularly difficult for the prosecution to disprove beyond reasonable doubt. As such, in the present context of regulatory offences, by placing the burden on the defendant to prove on the balance of probabilities that he did in fact act under an exculpatory honest and reasonable mistaken belief will represent the most appropriate balance to be struck between (a) the legitimate aim pursued by the regulatory offences on the one hand, and (b) avoiding a snaring of the blameless, on the other;

(d) in summary, having considered the nature and the severity of the offences which are punishable by a fine only, it is the Administration’s intent that the third alternative is applicable;

(e) in *Hin Lin Yee & Anor v. HKSAR* (2010) 3 HKC 403 (“Hin Lin Yee”) para. 11, the Court of Final Appeal observed that in appropriate cases “the shifting of burden to the accused to prove on the balance of probabilities something which is peculiar to his own knowledge and which the prosecution is unable to disprove beyond reasonable doubt is not unusual;

nor is this any more unfair or inconsistent with human rights provisions than imposing absolute liability on him"; and

(f) for the reasons that (i) the offences under the abovementioned sections are primarily regulatory in nature, which concern various technical requirements under the PRSs applicable for certain regulated products; (ii) the relevant offences do not carry severe penalties, but rather attract a fine at level 5 or 6 (as the case may be); (iii) the matters to be proved by the defendant are peculiarly within his knowledge; and (iv) placing the burden on the prosecution to prove beyond reasonable doubt the absence of an honest belief or the absence of reasonable grounds for such belief on the part of the defendant who contravenes the abovementioned sections is likely to make enforcement ineffective and unworkable, the Administration is of the view that any interferences with the presumption of innocence in this situation are well justified and would be consistent with Article 87 of the Basic Law and Article 11(1) of the Hong Kong Bill of Rights.

Proposed offences with a statutory defence

3. Under the proposed new sections 129, 131, 132 and 137 of the Ordinance, if a person is charged with an offence under any of these sections, it is a defence to establish that the person had a reasonable excuse for the contravention. In this regard, the Administration was requested to clarify whether the common law defence of "honest and reasonable mistaken belief" is replaced or excluded by the statutory defence of having a reasonable excuse, and the reason for this.

4. The Administration advised that:

(a) under the proposed new sections 129, 131, 132 and 137 of the Ordinance, if a person is charged with an offence under any of these sections, it is a defence to establish that the person had a reasonable excuse for the contravention;

(b) as pointed out by the Court of Final Appeal in *HKSAR v. Ho Loy* (2016) HKCFAR 110, decided in the context of the offence under reg. 50(2) and 61(2) of the Road Traffic (Traffic Control) Regulations, Cap. 374G, the statutory defence of "reasonable excuse" is potentially wider than the halfway house defence of honest and reasonable mistaken belief, since a person may have a reasonable excuse for failing to comply with a statutory requirement, even though he deliberately intends that non-compliance. Accordingly, the Court held that the appropriate alternative mental requirement of the offence concerned is the fourth alternative in the case of *Kulemesin*, supra., i.e. only the statutory defence of reasonable excuse could be relied upon; and

(c) given the language used in the provisions are similar to those in *Ho Loy*, supra, the Administration considers that the statutory defence of reasonable excuse in the new proposed sections 129, 131, 132 and 137 is wider than the common law defence of honest and reasonable belief, such that it is inconsistent with the concurrent availability of the common law defence. On such basis, the common law defence of honest and reasonable mistaken belief will not be available to a person charged with an offence under any of the new proposed sections 129, 131, 132 and 137.

[Source: Paragraphs 9 to 10 of Assistant Legal Adviser's letter to the Administration dated 17 April 2025 and paragraphs 13 to 21 of the Administration's written response]