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For Discussion

**Proposed Legislation for Implementation of
Producer Responsibility Schemes**

PURPOSE

This paper sets out the Administration's proposal on new legislation for the implementation of producer responsibility schemes (PRSs) in Hong Kong. Members are invited to offer their views on the proposal.

BACKGROUND

2. We published "A Policy Framework for the Management of Municipal Solid Waste (2005-2014)" (Policy Framework) in December 2005 which sets out a comprehensive strategy to tackle our imminent waste problem. Enshrining the principle of "polluter pays" and the element of "responsibility", PRS is a key policy tool in the Policy Framework for waste reduction, recovery and recycling. Under PRS, a host of stakeholders, who can be manufacturers, importers, distributors, retailers and consumers, shall share the responsibility for the collection, recycling, treatment and disposal of end-of-life products, with a view to avoiding and reducing the environmental impact caused by such wastes.

3. In practice, PRS generally involves one or several of the following core elements -

(a) **Product take-back**

It is the most common form of PRS. Under a product take-back scheme, the producers, importers and/or retailers are required to take back the products they sell for proper waste management. They can fulfil the requirements either individually or collectively. For the latter

case, it usually takes the form of an industry “organization” established by statute. A product take-back scheme has been applied successfully overseas to a wide range of products, including vehicle tyres, rechargeable batteries, electrical and electronic equipment and packaging materials.

(b) **Deposit-refund system**

Under a deposit-refund system, a consumer is required to pay a deposit when purchasing a product. The deposit will be refunded when the consumer returns the used product to designated collection points. This system ensures a reliable return of end-of-life products for recycling, and has been applied to beverage containers in Germany, Denmark, South Australia, Canada and several states in the United States.

(c) **Advanced recycling fee (ARF)**

ARF is levied on the sale of a product, and is usually channelled to a fund set up by the relevant statute to finance the post-consumption management of the product. ARF is often used in combination with other measures, such as a take-back scheme. Overseas examples include a fee on electrical appliances to finance end-of-life management of electronic waste in California, and a fee on new tyres to finance a take-back scheme operated by the tyre industry in Sweden.

(d) **Product tax or levy**

The main objective of a product tax or levy is to discourage the use of a particular product, such as plastic bag, through economic disincentives. The tax or levy collected is usually used to support general waste management or other environmental causes. A levy on plastic bags has been implemented in Ireland, South Africa and Denmark.

The core elements above can be used either individually or in combination, and encouraging results have been achieved in some overseas jurisdictions. For instance, the levy on plastic bags in Ireland has successfully reduced the consumption of plastic bags by 90%.

4. Hong Kong has built up its own experience in PRS. In 2002, we launched a voluntary PRS for mobile phone rechargeable batteries, which was later extended to cover other types of rechargeable batteries. While the voluntary PRS has certain impact on waste reduction and recycling, we propose to introduce mandatory PRSs for the following products to achieve more substantial results -

- (a) Vehicle tyres;
- (b) Plastic shopping bags;
- (c) Electrical and electronic equipment;
- (d) Expanded polystyrene packaging materials;
- (e) Beverage containers; and
- (f) Rechargeable batteries.

These products are accorded priority because they could be a stable source of materials for developing our local recycling industry, and their diversion from landfills could help save landfill space. In addition, hazardous materials in some electrical and electronic equipment and rechargeable batteries should be recovered and properly treated instead of being disposed of at landfills. We note that overseas jurisdictions have successful experience on managing these products through PRSs.

THE LEGISLATIVE PROPOSAL

5. We need to enact a new piece of legislation for the implementation of mandatory PRSs in Hong Kong. We note that all PRSs have the same objectives and share many core elements, such as take-back responsibility and mandatory tax or levy. An umbrella legislative approach, i.e. an enabling legislation with detailed regulatory requirements to be introduced through subsidiary legislation, is needed to implement PRSs. The umbrella legislative approach is universally adopted overseas in PRS legislation, with only a few exceptions (please see **Annex** for a brief review of overseas PRS legislation). It is also in line with the approach we adopted in our own environment-related ordinances¹.

¹ For instance, subsidiary legislation under the Waste Disposal Ordinance (Cap. 354) regulates livestock waste (Cap. 354A) and chemical waste (Cap. 354C).

Regulatory Requirements

6. The new legislation will cover all the core elements of PRS described in paragraph 3. Specifically, the new legislation will empower the Chief Executive in Council to introduce regulatory requirements, including -

- (a) imposition of take-back responsibility for the collection, recycling, treatment and disposal of end-of-life products (e.g. electrical and electronic equipment, expanded polystyrene packaging materials);
- (b) imposition of deposit and refund system on specific products (e.g. beverage containers) to ensure reliable return of end-of-life products;
- (c) imposition of fee, tax or levy on specific products (e.g. plastic bags, vehicle tyres, electrical and electronic equipment) to finance recycling programmes or to deter indiscriminate use;
- (d) restriction on free distribution of specific products (e.g. plastic bags) to reduce indiscriminate use;
- (e) labelling and disclosure requirements for specific products (e.g. hazardous component in electrical and electronic equipment) to facilitate recycling;
- (f) landfill disposal bans to complement take-back responsibility; and
- (g) registration and record-keeping requirements to ensure compliance.

Establishment of Organizations

7. For certain PRSs, the industries concerned, instead of the Government, might be in a better position to operate recycling programmes of their own products, given their unique market knowledge. The new legislation will therefore empower the Chief Executive in Council to make regulations to establish industry organizations, which will be tasked to manage collection and recycling programmes of their own products.

Enforcement and Penalty

8. The new legislation will authorize the Director of Environmental

Protection (DEP) as the enforcement authority to ensure compliance of the regulatory requirements. DEP will have the power to enter and inspect, the power to obtain and analyze samples, and the power to request information and records. The legislation will also provide for penalties for violation of regulatory requirements.

FINANCIAL AND STAFFING IMPLICATIONS

9. While the enactment of the proposed enabling legislation will not in itself have financial and staffing implications, we envisage that the introduction of PRSs for specific products subsequently through subsidiary legislation will involve additional resources and staff for schemes' administration and enforcement. The cost of implementing individual PRSs will be carefully assessed as we develop the schemes in detail. For PRSs that involve mandatory fee, levy or tax, the revenue so collected may help offset the Government's expenditure on waste collection, recycling and other environmental causes.

PUBLIC CONSULTATION

10. The Legislative Council (LegCo) Panel on Environmental Affairs (EA Panel) discussed the Policy Framework at its meetings on 15 December 2005 and 19 January 2006. While agreeing that PRSs should be implemented expeditiously, a few LegCo Members expressed concerns about the umbrella legislative approach to introduce an enabling legislation first and individual PRSs in the form of subsidiary legislation subsequently. Given the common objective and the shared core elements of PRSs, it would be difficult to justify the enactment of separate ordinances for individual PRSs. To address LegCo Members' concern, we will explain that we will fully consult the LegCo on the subsidiary legislation, and that each set of PRS regulation will be subject to the vetting of the LegCo under the established procedures.

11. The Advisory Council on the Environment also discussed the Policy Framework, and hosted an Open Forum on the Policy Framework to gather views from the trade, academics, green groups and the public. The Council fully supports the implementation of PRSs in Hong Kong.

12. In addition, we have set up dedicated phone number, fax number and email for the public to express their views on the Policy Framework. We have

also invited views from members of Home Affairs Bureau's Public Affair Forum. Up to the end of March, we have received over 70 comments. Among those comments on PRSs, the majority of them are supportive.

IMPLEMENTATION PLAN

13. We plan to introduce the Bill into the LegCo in 2006. Besides the proposed legislation, we are developing PRSs on specific products, with priority given to vehicle tyres, plastic shopping bags and electrical and electronic equipment. We will consult the trade and the relevant stakeholders on these PRSs and seek Members' views in due course.

ADVICE SOUGHT

14. Members are invited to note and comment on the proposed legislation.

Environmental Protection Department
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