



40/F, Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong
香港灣仔告士打道 5 號稅務大樓 40 樓

ACE Paper 31/2008
For advice

Implementation Details of the Environmental Levy Scheme on Plastic Shopping Bags under the Proposed Product Eco-responsibility (Plastic Shopping Bags) Regulation

PURPOSE

The implementation details of the environmental levy scheme on plastic shopping bags will be provided in a proposed Product Eco-responsibility (Plastic Shopping Bags) Regulation to be made by the Secretary for the Environment under section 29(1) of the Product Eco-responsibility Ordinance (Cap. 603) (**Annex I**) after consultation with the Advisory Council on the Environment. For this purpose, this paper seeks Members' advice on the implementation details of the environmental levy scheme.

BACKGROUND

2. The Product Eco-responsibility Ordinance was enacted by the Legislative Council in July 2008. The Ordinance is a piece of “framework” legislation that provides a legal basis for implementing producer responsibility schemes in Hong Kong. The environmental levy scheme on plastic shopping bags is the first scheme to be implemented under the Ordinance, with the objective of reducing the indiscriminate use of plastic shopping bags.

3. The key regulatory measures of the environmental levy scheme have been set out in Part 3 of the Ordinance. These measures include –

- (a) registration of “prescribed retailers” who would like to provide plastic shopping bags to customers (section 19);
- (b) charging a customer an amount of not less than the environmental levy for each plastic shopping bag (section 23);
- (c) submission of periodic returns and payment of the environmental levies (section 24); and

- (d) keeping of relevant records and documents (section 25).

The implementation details of the environmental levy scheme will be further prescribed in a Regulation to be made pursuant to section 29 of the Ordinance. In particular, the Regulation would provide for operational matters concerning: i) registration of retailers; ii) exemption for certain area within a registered retail outlet; iii) submission of returns and payment of levies; and iv) record-keeping. The Regulation is subject to the approval of the Legislative Council (i.e. subject to positive vetting procedures).

IMPLEMENTATION DETAILS OF THE ENVIRONMENTAL LEVY SCHEME

Consultation with the Retail Trade

4. It is the objective of the Administration to devise an environmental levy scheme that is workable and easy to comply, while not compromising the integrity of the regulatory regime. As committed by the Secretary for the Environment in his speech at the resumption of the second reading of the Product Eco-responsibility Bill, the implementation details of the environmental levy scheme are worked out in close consultation with the retail trade. In particular, the Administration has had a series of meetings with the Business Facilitation Advisory Committee and its Retail Task Force, the Hong Kong Retail Management Association, as well as major retailers to be affected by the environmental levy scheme. The Administration has also conducted site visits to six warehouses and ten retail outlets of the affected retailers to better understand the actual operation on the ground.

5. The implementation details proposed below have taken into account the views of the retail trade as far as practicable. That said, a balance needs to be struck between minimizing the impact on the retail trade and ensuring the effective administration of the environmental levy scheme. We have advised the Business Facilitation Advisory Committee of our proposal below.

Registration of Retailers

6. A prescribed retailer¹ who will provide plastic shopping bags to customers is to apply to the Director of Environmental Protection for registration as a registered retailer in respect of its qualified retail outlet², and to ensure that no plastic shopping bag is provided from its qualified retail outlet unless the outlet is a registered retail outlet. We share the view of the retail trade that the applications for registration should be processed expeditiously and the information required for registration should

¹ The meaning of a “prescribed retailer” is set out in Schedule 4 to the Product Eco-responsibility Ordinance.

² The meaning of a “qualified retail outlet” is set out in Schedule 4 to the Product Eco-responsibility Ordinance.

be minimized as far as practicable.

7. For this purpose, we propose that a prescribed retailer should submit an application for registration in a specified form, providing certain essential information including the names and addresses of a prescribed retailer and its qualified retail outlets, information of the contact persons and copies of the business/branch registration certificates, where available. A draft of the sample application form for registration, which is subject to further refinements, is enclosed for illustration at **Annex II**.

8. As a performance pledge, we aim to process applications for registration of new outlets under a registered retailer within ten working days, instead of 21 working days as we originally proposed to the retail trade. We are also prepared to accommodate individual requests for urgent processing on a case-by-case basis, for example during the festive seasons when additional retail outlets are to be opened quickly in response to market needs. Depending on the operational experience gained after the commencement of the scheme, we would consider whether there is room to further reduce the processing time for applications for registration.

9. At our site visits to retail outlets of the affected retailers, we observe that there could be business arrangements within such retail outlets which are operated by third parties (e.g. sub-tenancies and consignment counters managed by staff members engaged by the sub-tenants or consignors). The registered retailer should *not* be held liable for plastic shopping bags given by those third party operators that do not form part of the retail business carried on at the host retail outlet. We consider that a third party operator should not be regarded as the part of the retail outlet of a registered retailer if (i) the operator operates under a separate business registration at the location in question; (ii) the operation occupies a clearly defined area (e.g. a physical sales counter); (iii) the brand name of that third party is conspicuously displayed within that area; (iv) the operation is managed by an employee of that third party; and (v) that third party operator provides its own plastic shopping bags that bear its own brand name or logo. For this purpose, a retailer will need to submit a floor plan together with its application for registration. A registered retailer will also need to notify the Director of Environmental Protection of any subsequent changes to the floor plan. If the third party operator itself is a prescribed retailer, it would need to separately comply with the relevant requirements under the Product Eco-responsibility Ordinance.

Exemption of Certain Area within a Registered Retail Outlet

10. Under the Product Eco-responsibility Ordinance, a registered retailer is allowed to apply to the Director of Environmental Protection for an exemption of part of the area of a registered retail outlet. The rationale for allowing an exemption is to maintain a level-playing field among retailers as far as practicable. In particular, with the first phase of the environment levy scheme intending to cover only chain or large

supermarkets, convenience stores and personal health and beauty stores, some members of the retail trade consider that a department store which happens to have a supermarket within should *not* be covered in whole under the environmental levy scheme.

11. At the site visits to the retail outlets where an exemption would likely be sought, we observe that segregation of retail floor area within such retail outlets for the purpose of an exemption might not be feasible without adjustments to the operations of such retailers. Having regard to the *modus operandi* of these retailers, we propose to exempt cashier counters in a registered retail outlet where *none* of the three categories of goods specified in Schedule 4 to the Ordinance³ can be checked out. A registered retailer may apply for an exemption of the cashier counters in, for instance, the fashion section of a department store. We consider appropriate signs to differentiate cashier counters could be arranged by the retailers to facilitate compliance with the environmental levy scheme.

Submission of Returns and Payment of Levies

12. A registered retailer is required to charge a customer an amount of not less than the levy (i.e. 50 cents) for each plastic shopping bag provided to the customer, and to submit periodic returns and payment to the Director of Environmental Protection. While physical stock-taking of plastic shopping bags would help ensure the accuracy of periodic returns and payment, we observe at the site visits to the warehouses and the retail outlets of the affected retailers that such stock-taking could pose practical difficulties. On the other hand, the affected retailers generally maintain detailed records of plastic shopping bags procured and delivered to each and every retail outlet. Taking into account the *modus operandi* of these retailers and the need to ensure effective monitoring of compliance, we propose that returns should be made on a quarterly basis and should contain the following information with respect to each registered retail outlet –

- (a) the number of plastic shopping bags delivered to the registered retail outlet;
- (b) the number of plastic shopping bags provided to customers from the registered retail outlet; and
- (c) the total amount of environmental levies payable for the plastic shopping bags referred to in paragraph (b).

13. To allow sufficient time for a registered retailer to prepare the quarterly return, we propose that such return should be made within 30 days after the last day of each quarter, instead of 21 days as we originally proposed to the retail trade. The total amount of environmental levies payable as stated in the quarterly return should

³ The three specified categories of goods are i) food or drink; ii) medicine or first-aid item; and iii) personal hygiene or beauty product.

also be paid to the Government together with the quarterly return. To facilitate compliance, return submission and payment in person, by post, or via electronic means would be accepted.

Record Keeping

14. A registered retailer is required to keep records and documents relating to each return submitted for not less than five years. To ensure the integrity of the regulatory regime and to allow for subsequent compliance check, we propose that invoices, receipts or documents relating to the procurement, delivery and distribution of plastic shopping bags and the charging of the environmental levy should be kept.

Administrative Costs

15. In the course of our discussion with the trade, there has been suggestion that registered retailers should be reimbursed for the administrative costs that they would incur in complying with the requirements under the Product Eco-responsibility Ordinance. Currently, the reimbursement of administrative costs has not been provided for in the Ordinance. The suggestion can be re-visited as part of the review of the environmental levy scheme in due course when we are able to assess the increase in administrative costs against possible cost-savings through the reduced consumption of plastic shopping bags.

Community Involvement

16. Our public consultation exercise suggests that the majority of the public support the introduction of an environmental levy on plastic shopping bags. The imposition of the environmental levy at prescribed retailers is to deter the indiscriminate use of plastic shopping bags as there are other alternative bags available to fulfill the need of shopping bags. As part of the overall publicity and education programmes on waste reduction, the Environment and Conservation Fund will continue to support projects from District Councils, green groups and other community groups to reduce the indiscriminate use of plastic shopping bags.

CONSULTATION WITH THE LEGISLATIVE COUNCIL PANEL ON ENVIRONMENTAL AFFAIRS

17. We consulted the Legislative Council Panel on Environmental Affairs on the proposed implementation details of the environmental levy scheme on 24 November. The Panel has taken note of the implementation details and urged the Administration to submit the proposed Regulation to the Legislative Council for approval as soon as

practicable.

WAY FORWARD

18. Subject to Members' advice, we would submit the proposed Product Eco-responsibility (Plastic Shopping Bags) Regulation to the Legislative Council by the end of this year for approval. The Regulation would prescribe the implementation details of the environmental levy scheme based on the relevant proposals set out in this paper. Subject to the approval of the Regulation by the Legislative Council, there will be a three-month registration period before the launch of the environmental levy scheme to enable retailers concerned to make the necessary preparation.

19. We note that there have recently been calls in the community to postpone the implementation of the scheme in the light of the economic downturn in order to avoid creating additional burden upon the public. Yet, we consider that environmental protection and financial prudence could, and should, be complementary. Indeed, members of the public can easily avoid paying for plastic shopping bags by bringing own bags at all time. We will continue to work towards implementing the environmental levy scheme on plastic shopping bags in 2009 as committed in the Chief Executive's 2008-09 Policy Address.

ADVICE SOUGHT

20. Members are invited to comment on the implementation details of the environmental levy scheme on plastic shopping bags above.

Environmental Protection Department
December 2008

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PART 3

PLASTIC SHOPPING BAGS

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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE No. 32 OF 2008**L.S.

Donald TSANG

Chief Executive

17 July 2008

An Ordinance to introduce measures to minimize the environmental impact of certain types of products; and to provide for related matters.

[]

Enacted by the Legislative Council.

PART 1**PRELIMINARY****1. Short title and commencement**

(1) This Ordinance may be cited as the Product Eco-responsibility Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Purposes of this Ordinance

(1) The purposes of this Ordinance are—

- (a) to minimize the environmental impact of various types of products, which may include plastic shopping bags, vehicle tyres, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries; and
- (b) to that end, to introduce producer responsibility schemes, schemes based on the “polluter pays” principle, or other measures, which may require manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the reduction in the use, or the recovery, recycling or proper disposal, of those products.

(2) Such schemes or measures may include (but are not limited to) the following—

- (a) a product take-back scheme under which a manufacturer, importer, wholesaler or retailer is required to collect certain products for proper waste management;
- (b) a deposit-refund scheme under which a consumer is required to pay a deposit to be refunded on the return of certain products to a specified collection point;
- (c) the imposition of a recycling fee to finance the proper waste management of certain products;
- (d) the imposition of an environmental levy to discourage the use of certain products; and
- (e) the restriction on the disposal of certain products at any designated waste disposal facility as defined in section 2 of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L).

3. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
- “authorized officer” (獲授權人員) means a public officer authorized under section 6;
- “Director” (署長) means the Director of Environmental Protection;
- “plastic shopping bag” (塑膠購物袋) means a plastic shopping bag to which this Ordinance applies according to section 18;
- “prescribed product” (訂明產品) means any product mentioned in section 4;
- “product” (產品) includes any article, material and substance;
- “Secretary” (局長) means the Secretary for the Environment.

(2) In this Ordinance, unless the context otherwise requires—

- (a) a reference to any product includes a reference to any part of the product;
- (b) a reference to a function includes a reference to a power and a duty; and
- (c) a reference to the performance of a function includes a reference to the exercise of a power and the discharge of a duty.

PART 2

PREScribed PRODUCTS: GENERAL PROVISIONS

Division 1—Application

4. Prescribed products to which Part 2 applies

This Part applies in relation to plastic shopping bags.

Division 2—Regulations: general powers

5. General provisions as to regulations made under this Ordinance

(1) In this section, “regulation” (規例) means any regulation made under section 29.

(2) A regulation may do all or any of the following—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) make different provisions for different circumstances and provide for a particular case or class of cases;
- (c) empower the Secretary or Director to grant exemptions from any requirement, either generally or in a particular case;
- (d) provide for the performance by the Director or an authorized officer of any function under the regulation;
- (e) authorize any matter or thing to be determined, applied or administered by a specified person or group of persons;
- (f) prescribe any matter that by this Ordinance is required or permitted to be prescribed by a regulation;
- (g) provide for such incidental, consequential, evidential, transitional, savings and supplemental provisions as are necessary or expedient for giving full effect to the provisions of this Ordinance;
- (h) generally provide for the better carrying out of the provisions and purposes of this Ordinance.

(3) A regulation may make it an offence for a person to do or omit to do any specified act and may authorize—

- (a) the imposition of a fine, not exceeding \$500,000, for such an offence;

- (b) if the offence is a continuing one, the imposition of a further fine of \$10,000 for each day or part of a day during which the offence has continued; and
- (c) the imposition of a sentence of imprisonment for a period of not more than 12 months.

Division 3—Enforcement

6. Authorized officers

(1) The Director may, in writing, authorize a public officer not below the rank of Environmental Protection Inspector to perform such functions of the Director or an authorized officer under this Ordinance as are specified in the authorization.

(2) When performing a function under this Ordinance, an authorized officer must, if required, produce his written authorization granted under this section.

(3) An authorized officer performing a function under this Ordinance may take with him such persons as he reasonably requires to assist him in the performance of the function.

7. Powers to obtain information, enter places for routine inspection, etc.

(1) An authorized officer may, in relation to any record or document required to be kept by a person under this Ordinance, do all or any of the following—

- (a) require the person to produce the record or document for inspection;
- (b) require the person to provide all reasonable assistance, information or explanations in connection with the record or document;
- (c) remove and retain the record or document for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined.

(2) An authorized officer may require a person to provide information relating to any levy or fee imposed under this Ordinance that is in the possession of the person and is reasonably necessary to enable the officer to ascertain whether this Ordinance has been or is being complied with.

(3) For the purpose of ascertaining whether this Ordinance has been or is being complied with, an authorized officer may, at any reasonable time, enter a place to which the public are permitted to have access, and may do all or any of the following—

- (a) observe and inspect any activity, operation, process or procedure involving prescribed products;
 - (b) require a person in charge of the place to produce any record or document relating to prescribed products or to any levy or fee imposed under this Ordinance;
 - (c) make copies of any record or document produced under paragraph (b);
 - (d) subject to subsection (4), take such samples of any products as the officer may reasonably require for the purpose of examination and investigation.
- (4) If required by the person having the lawful custody of such products, the authorized officer shall pay for—
- (a) the market price of the samples he proposes to take; or
 - (b) if the market price is unknown or not readily ascertainable, a reasonable price of those samples.
- (5) For the avoidance of doubt, a person is not liable for breach of any duty of confidentiality arising from the disclosure of any information that he is required to provide under this Ordinance.
- (6) An authorized officer must not disclose any record, document or information produced or provided to him under this section unless he is satisfied that it is necessary to make the disclosure for the purposes of any proceedings under this Ordinance.
- (7) In this section, a reference to a person includes a reference to anyone acting for or on behalf of the person.

8. Power of entry and search

(1) Where a warrant has been issued under subsection (2) in respect of a place, an authorized officer may enter and search the place in accordance with this section.

(2) A magistrate may issue a warrant authorizing an authorized officer to enter and search a place only if—

- (a) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that—
 - (i) an offence against this Ordinance has been or is being committed in the place; or
 - (ii) there is in the place anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed; and
- (b) the magistrate is satisfied that—
 - (i) it is not practicable to communicate with a person entitled to grant entry to the place;

- (ii) such a person has unreasonably refused entry to the place by an authorized officer;
- (iii) an authorized officer apprehends on reasonable grounds that entry to the place is unlikely to be granted unless a warrant is issued; or
- (iv) the purpose of entry to the place would be prejudiced unless an authorized officer arriving at the place can secure immediate entry.

(3) An authorized officer who enters and searches a place under a warrant must, if required, produce the warrant for inspection.

(4) A warrant issued under this section continues in force until the purpose for which the entry is necessary has been satisfied.

(5) An authorized officer who enters a place under this section may do all or any of the following—

- (a) require any person present at the place to provide such assistance or information as may be necessary to enable the officer to perform his functions under this Ordinance;
- (b) search and seize anything that the officer reasonably believes to be evidence of the commission of an offence under this Ordinance;
- (c) retain the thing for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined.

(6) An authorized officer must perform his functions under this section at a reasonable hour unless he believes that the purpose of their performance could be frustrated if he performs them at a reasonable hour.

(7) In this section, “place” (地方) includes any vehicle and vessel.

Division 4—Offences

9. Providing false information, etc.

(1) A person who, in purported compliance with this Ordinance, produces or provides any record, document or information that is false or misleading in any material particular commits an offence and is liable on conviction to a fine at level 6.

(2) It is a defence to a charge under subsection (1) for the person charged to prove that—

- (a) he did not know and had no reason to believe the record, document or information to be false or misleading; or
- (b) he exercised due diligence to avoid the commission of the offence.

(3) A person who, without reasonable excuse, omits any material particular from any record, document or information required to be produced or provided by him under this Ordinance commits an offence and is liable on conviction to a fine at level 6.

10. Obstructing authorized officers, etc.

(1) A person who wilfully obstructs or delays an authorized officer in the performance of any of his functions under this Ordinance commits an offence and is liable on conviction to a fine at level 5.

(2) A person who, without reasonable excuse, fails to comply with a requirement properly made of him by an authorized officer under this Ordinance commits an offence and is liable on conviction to a fine at level 4.

11. Offences by body corporate

If—

- (a) a body corporate commits an offence under this Ordinance; and
- (b) it is proved that the offence was committed with the consent or connivance of a director of, or a person concerned in the management of, the body corporate,

the director or that person also commits the offence and is liable on conviction to the penalty provided.

Division 5—Appeals

12. Interpretation of Division 5 of Part 2

In this Division—

“appeal” (上訴) means an appeal made under section 13;

“Appeal Board” (上訴委員會) means the Appeal Board established by section 14(1);

“Chairman” (主席) means the Chairman of the Appeal Board appointed under section 14(2) and includes any person acting as the Chairman under section 16;

“Deputy Chairman” (副主席) means the Deputy Chairman of the Appeal Board appointed under section 14(4);

“legally qualified” (具所需法律資格) means qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336);

“panel member” (備選委員) means a member of the panel of persons appointed under section 14(3).

13. Appeals

(1) A person who is aggrieved by a decision of a public officer relating to any of the matters specified in subsection (2) may, within 21 days after the date on which the notice about that matter is served on him, appeal to the Appeal Board by giving a notice of appeal to the Director stating the reasons for the appeal.

(2) The following matters are specified for the purposes of subsection (1)—

- (a) rejection of an application for registration or deregistration in respect of a retail outlet under section 19;
- (b) rejection of an application for the exemption of part of the area of a registered retail outlet for the purposes of section 23;
- (c) an assessment notice served under section 26; and
- (d) any matter that is—
 - (i) provided by a regulation made under this Ordinance; and
 - (ii) specified in the regulation as a matter on which an appeal may be made under this section.

14. Establishment of Appeal Board

(1) There is established an Appeal Board for the purpose of hearing and determining an appeal.

(2) The Chief Executive shall appoint as Chairman of the Appeal Board a person who is legally qualified and not a public officer.

(3) The Chief Executive shall also appoint a panel of persons whom he considers to be suitable for appointment as members of the Appeal Board and who are not public officers.

(4) The Chief Executive shall appoint as Deputy Chairman of the Appeal Board one of the panel members who is legally qualified.

(5) The Chairman, the Deputy Chairman and a panel member shall be appointed for a term of not more than 3 years but may be reappointed.

(6) Every appointment under this section must be published in the Gazette.

15. Exercise of Appeal Board's jurisdiction

(1) The Appeal Board may exercise its jurisdiction in hearing and determining an appeal only if it is duly constituted.

(2) The Appeal Board is duly constituted for the purpose of hearing and determining an appeal if it consists of the following members—

- (a) the Chairman; and
- (b) at least 2 other members appointed by the Chairman from among the panel members to hear the appeal.

(3) On an appeal, the Appeal Board may confirm, reverse or vary a decision under appeal.

(4) Every question before the Appeal Board shall be determined by the opinion of the majority of the Chairman and the panel members hearing the appeal except a question of law which shall be determined by the Chairman.

(5) In the event of an equality of votes, the Chairman has a casting vote.

(6) The Appeal Board may—

(a) receive evidence on oath;

(b) admit or take into account any statement, document, information or matter whether or not it would be admissible as evidence in a court of law;

(c) by notice in writing summon any person to appear before it to produce any document or to give evidence; and

(d) award such amount for costs in an appeal as is just and equitable in the circumstances of the case.

(7) The party awarded any costs may enforce the award as a civil debt.

(8) Costs awarded against the Director or an authorized officer are charged on the general revenue.

(9) The Chairman may determine any form or matter of practice or procedure in so far as no provision is made for it in this Ordinance.

16. Supplementary provisions as to Appeal Board

(1) If the Chairman is precluded by any cause from performing his functions during any period, the Deputy Chairman shall act as Chairman and as such perform all of the functions of the Chairman during that period.

(2) If both the Chairman and the Deputy Chairman are precluded by any cause from performing their functions during any period, the Chief Executive may appoint any other person who is legally qualified and not a public officer to act as Chairman and as such to perform all of the functions of the Chairman during that period.

(3) If a panel member appointed under section 15 to hear an appeal is precluded by any cause from performing his functions during any period, the Chairman may appoint any other panel member to act in his place during that period.

(4) The Chairman, the Deputy Chairman or any panel member may at any time resign his office by notice in writing to the Chief Executive.

(5) If there is a change in the membership of the Appeal Board (whether in respect of the Chairman or any other member) during the hearing of an appeal, the following applies—

- (a) in the case where the Appeal Board remains duly constituted according to section 15(2) without the participation of any new or acting member, the Appeal Board may continue the hearing despite the change;
 - (b) if paragraph (a) does not apply and every party to the appeal consents, the Appeal Board may continue the hearing after reconstitution; or
 - (c) in any other case, the Appeal Board shall start the hearing afresh after reconstitution.
- (6) Any party to an appeal may be represented by a legal representative in the proceedings before the Appeal Board.
- (7) The Chairman may, before an appeal is determined, refer a question of law to the Court of Appeal by way of case stated.
- (8) In addition to the other powers of the Court of Appeal in hearing a case stated, the Court of Appeal may amend the case or order it to be sent back to the Chairman for amendment.

PART 3

PLASTIC SHOPPING BAGS

Division 1—Interpretation

17. Interpretation of Part 3

- (1) In this Part, unless the context otherwise requires—
- “certificate of registration” (登記證明書) means a certificate of registration issued under section 22(1);
- “levy” (徵費) means a levy mentioned in section 18(3);
- “prescribed retailer” (訂明零售商) means a retailer to which this Part applies according to section 19(1);
- “qualified retail outlet” (合資格零售店) has the meaning given by section 1(2) of Schedule 4;
- “registered retail outlet” (登記零售店) has the meaning given by subsection (2);
- “registered retailer” (登記零售商) means a person who made an application for registration under section 19(2) that has been approved under section 19(6);
- “regulation” (《規例》) means any regulation made under section 29.
- (2) For the purposes of this Part, a retail outlet is and remains as a registered retail outlet of a retailer if—
- (a) it has been a qualified retail outlet in respect of which the retailer has applied for registration under section 19(2);
 - (b) that application has been approved under section 19(6); and

(c) no application for deregistration in respect of the outlet has been approved under section 19(6), whether or not the outlet continues to be a qualified retail outlet.

(3) For the purposes of this Part, a plastic shopping bag is provided if it is given free of charge or sold at a price, whether or not it is given or sold together with another product as a single item of goods.

Division 2—Levy on plastic shopping bags and registration of prescribed retailers

18. Levy on plastic shopping bags

(1) Subject to subsection (2), a bag prescribed in Schedule 1 is a plastic shopping bag to which this Ordinance applies.

(2) This Ordinance does not apply to the plastic shopping bags prescribed in Schedule 2.

(3) A levy set out in Schedule 3 is payable by a registered retailer to the Government according to section 24 for each plastic shopping bag that he provides to a customer.

19. Restrictions on provision of plastic shopping bags by, and registration of, prescribed retailers

(1) This Part applies to a retailer prescribed in Schedule 4.

(2) A prescribed retailer, or a person who proposes to be a prescribed retailer, may apply to the Director for registration as a registered retailer in respect of a qualified retail outlet of that retailer or person in accordance with the regulation.

(3) A prescribed retailer shall ensure that no plastic shopping bag, or nothing that can be easily turned into a plastic shopping bag, is provided directly or indirectly to a customer from a qualified retail outlet of that retailer unless the outlet is a registered retail outlet.

(4) A prescribed retailer who contravenes subsection (3) commits an offence and is liable—

(a) to a fine at level 6 on the first occasion on which he is convicted of the offence; and

(b) to a fine of \$200,000 on each subsequent occasion on which he is convicted of the offence.

(5) A registered retailer may apply to the Director for deregistration in respect of a registered retail outlet of that retailer in accordance with the regulation if—

- (a) that retailer ceases to carry on a retail business in that outlet;
 - (b) that outlet is no longer a qualified retail outlet;
 - (c) that retailer ceases to provide plastic shopping bags from that outlet; or
 - (d) that retailer is no longer a prescribed retailer.
- (6) The Director may approve or reject an application under subsection (2) or (5) in accordance with the regulation.
- (7) If an appeal is made under Division 5 of Part 2 against a decision of the Director under this section, the appeal does not affect the operation of the decision pending the determination of the appeal unless the Director decides otherwise.

20. Director to maintain register

- (1) The Director must maintain a register, in such form as he may determine, containing—
- (a) the name and address of each registered retailer; and
 - (b) the name (if different) and address of each registered retail outlet of that retailer.
- (2) The Director must make the register available for inspection by the public, free of charge, during office hours at the office of the Director.

21. Secretary may amend Schedules

- (1) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 1, 2, 3 or 4.
- (2) An order made under this section to amend Schedule 1, 2 or 4 is subject to the approval of the Legislative Council.

Division 3—Obligations of registered retailers

22. Display of certificate of registration

- (1) The Director shall issue a certificate of registration to a registered retailer in respect of each registered retail outlet of that retailer.
- (2) A registered retailer shall ensure that a certificate of registration is displayed in a prominent position of the registered retail outlet to which the certificate relates.
- (3) A registered retailer who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.
- (4) A person shall not—

- (a) display a certificate of registration at a place that is not a registered retail outlet to which the certificate relates; or
 - (b) display a certificate of registration that has been forged, falsified or cancelled at any place.
- (5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 5.

23. Duty of registered retailers to charge for plastic shopping bags

(1) A registered retailer shall charge a customer an amount of not less than the levy for each plastic shopping bag provided directly or indirectly to the customer from—

- (a) a registered retail outlet of that retailer; or
- (b) if part of the area of the outlet is exempted by the Director for the purposes of this section in accordance with subsection (3), any area of the outlet that is not so exempted.

(2) A registered retailer may, for the purposes of this section, apply to the Director for the exemption of part of the area of a registered retail outlet of that retailer in accordance with the regulation.

(3) The Director may approve or reject an application under subsection (2) in accordance with the criteria prescribed by the regulation.

(4) If an appeal is made under Division 5 of Part 2 against a decision of the Director under this section, the appeal does not affect the operation of the decision pending the determination of the appeal unless the Director decides otherwise.

(5) A registered retailer shall ensure that no rebate or discount is offered to any customer with the effect of directly offsetting the amount charged under subsection (1) or any part of it.

(6) A registered retailer who contravenes subsection (1) or (5) commits an offence and is liable—

- (a) to a fine at level 6 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of \$200,000 on each subsequent occasion on which he is convicted of the offence.

24. Returns and payment of levies

(1) A registered retailer shall ensure that—

- (a) any return required by the regulation in respect of the retailer, or each registered retail outlet of the retailer, is submitted to the Director at such frequency as prescribed by the regulation unless the Director agrees otherwise;

- (b) any such return is submitted to the Director in such manner and within such time limit as prescribed by the regulation; and
- (c) any such return states—
 - (i) the information required by the regulation in respect of the plastic shopping bags provided by the retailer during the period to which the return relates; and
 - (ii) the total amount of levies payable for those bags.

(2) A registered retailer shall also pay to the Government, through a method prescribed by the regulation, the total amount of levies stated in a return on or before the date by which the return is required to be submitted to the Director under this section.

(3) A registered retailer who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 5.

(4) A registered retailer who is convicted of an offence under subsection (3) in respect of any amount of levies he has failed to pay is also liable to pay—

- (a) a surcharge of 5% of the amount of levies that are outstanding on the due date referred to in subsection (2); and
- (b) an additional surcharge of 10% of the total amount of levies and the surcharge referred to in paragraph (a) that are outstanding at the expiry of 6 months after the due date referred to in subsection (2).

(5) Any outstanding amount of levies or surcharges payable under this section is recoverable as a civil debt due to the Government.

25. Record keeping

(1) A registered retailer shall ensure that such records and documents as prescribed by the regulation relating to each return submitted under section 24 are kept for not less than 5 years from the end of the calendar year to which the return relates.

(2) A registered retailer who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

26. Assessment notice

- (1) This section applies if a registered retailer—
 - (a) is convicted of an offence under section 9 relating to any record, document or information on any amount of levies stated in a return submitted by the retailer in respect of a period under section 24(1);
 - (b) is acquitted of an offence mentioned in paragraph (a) in reliance on the defence under section 9;

- (c) is convicted of an offence under section 24(3) for failing to submit a return in respect of a period according to the requirements in section 24(1); or
 - (d) is acquitted of an offence mentioned in paragraph (c) in reliance on the defence under section 27.
- (2) The Director may—
 - (a) assess the amount of levies payable for the plastic shopping bags provided by the retailer during that period; and
 - (b) serve an assessment notice on the retailer demanding payment of that assessed amount or, if the retailer has already paid part of that amount under section 24, the balance of that amount.
- (3) The Director may replace an assessment notice with another assessment notice served for that purpose.
- (4) An assessment notice served under this section in respect of plastic shopping bags provided during a period may only be served within 5 years after the end of that period.
- (5) Any assessment notice served under this section must also state—
 - (a) the reasons for serving the notice;
 - (b) how the amount of levies assessed by the Director is calculated;
 - (c) when and how payment is to be made; and
 - (d) the right of the registered retailer to appeal against the notice.
- (6) A registered retailer shall pay the amount of the demanded levies under an assessment notice within such time limit as is prescribed by the regulation.
- (7) A registered retailer who contravenes subsection (6) commits an offence and is liable on conviction to a fine at level 5.
- (8) A registered retailer who is convicted of an offence under subsection (7) is also liable to pay—
 - (a) a surcharge of 5% of the amount of levies that are outstanding on the due date referred to in subsection (6); and
 - (b) an additional surcharge of 10% of the total amount of levies and the surcharge referred to in paragraph (a) that are outstanding at the expiry of 6 months after the due date referred to in subsection (6).
- (9) Any outstanding amount of levies or surcharges payable under this section is recoverable as a civil debt due to the Government.
- (10) If an appeal is made under Division 5 of Part 2 against an assessment notice served under this section, any amount of levies or surcharges remains payable under this section pending the determination of the appeal unless the Director decides otherwise.
- (11) The Director may at any time withdraw an assessment notice served under this section by serving a withdrawal notice to that effect.

(12) Any notice under this section is regarded as duly served when it is sent by post to the last address provided by the registered retailer to the Director.

Division 4—Supplementary provisions as to offences under Part 3

27. Defence to offences

It is a defence to a charge under section 19(4), 23(6), 24(3), 25(2) or 26(7) for a person charged to prove that he exercised due diligence to avoid the commission of the offence.

28. Liability of franchisees

(1) In this section, “franchised retail outlet” (專營加盟零售店) means a qualified retail outlet at which a retail business is carried on under a franchise agreement.

(2) If an offence under section 19(4), 22(3) or 23(6) involving a franchised retail outlet is committed, or would have been committed except for the reliance on the defence under section 27 (if applicable), by its franchiser owing to an act or default of its franchisee—

- (a) the franchisee also commits the offence and is liable on conviction to the penalty provided, whether or not the franchiser is charged with or convicted of the offence; and
- (b) the franchisee may also rely on the defence under section 27 in the case of an offence under section 19(4) or 23(6).

Division 5—Regulations

29. Secretary may make regulations in respect of Part 3

(1) The Secretary may, after consultation with the Advisory Council on the Environment, make regulations with respect to all or any of the following matters—

- (a) application for registration and deregistration in respect of a retail outlet under section 19, and the determination of such an application;
- (b) application for the exemption of part of the area of a registered retail outlet for the purposes of section 23, and the criteria in accordance with which the Director may determine such an application;
- (c) submission of returns and payment of levies by registered retailers;

- (d) records and documents to be kept by registered retailers;
- (e) such supplemental provisions as are necessary or expedient for giving full effect to the provisions of this Part;
- (f) any matter ancillary or incidental to those specified in this section.

(2) A regulation made under this section is subject to the approval of the Legislative Council.

SCHEDULE 1

[ss. 18(1) & 21(1)
& (2)]

PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE APPLIES

1. Meaning of plastic shopping bags

- (1) A bag is a plastic shopping bag to which this Ordinance applies if—
 - (a) it is made wholly or partly of plastic; and
 - (b) there is a handle, handle hole, perforated line for tearing out a handle hole, carrying string or strap, or any other carrying device on, or attached to, the bag.
- (2) For the purposes of subsection (1)(a), “plastic” (塑膠) includes polyethylene, polypropylene, polyvinyl chloride and nylon.

SCHEDULE 2

[ss. 18(2) & 21(1)
& (2)]

PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE DOES NOT APPLY

1. Plastic shopping bags excluded from application of this Ordinance

- (1) Subject to subsection (2), this Ordinance does not apply to the following plastic shopping bags—
 - (a) a bag that is sold at a price of \$5.00 or more;
 - (b) 2 or more bags that are sold as a pre-packaged pack at a price of \$5.00 or more per pack;
 - (c) a bag that—

- (i) contains either unpackaged goods or more than one piece of goods; and
 - (ii) is sealed before the goods are supplied to the retailer concerned.
- (2) Subsection (1) does not apply to a bag mentioned in subsection (1)(a) or a pack of bags mentioned in subsection (1)(b) if—
- (a) it is given free of charge or sold at a price together with another product as a single item of goods; or
 - (b) a rebate or discount is offered to the purchaser of the bag or pack,
- with the effect of directly offsetting the price or part of the price of the bag or pack, so that it is in effect given free of charge or sold at a net price of less than \$5.00.

SCHEDULE 3

[ss. 18(3) & 21(1)]

LEVY ON PLASTIC SHOPPING BAGS

50 cents per plastic shopping bag

SCHEDULE 4

[ss. 17(1), 19(1) &
21(1) & (2)]

PREScribed RETAILERS TO WHOM PART 3 OF THIS
ORDINANCE APPLIES

1. Meaning of prescribed retailers

- (1) A person is a retailer prescribed for the purposes of section 19(1) of this Ordinance if he carries on a retail business at—
- (a) 5 or more qualified retail outlets in Hong Kong; or
 - (b) at least one qualified retail outlet in Hong Kong that has a retail floor area of not less than 200 square metres.
- (2) A retail outlet is a qualified retail outlet if the goods offered for sale in the outlet include all of the following categories of goods—
- (a) any food or drink;
 - (b) any medicine or first-aid item; and

(c) any personal hygiene or beauty product.

(3) If a retail business is carried on under a franchise agreement, the franchiser is the person who carries on that business for the purposes of subsection (1) unless the Director agrees otherwise.

2. Definitions

In this Schedule—

“drink” (飲品) means any liquid suitable or intended for human consumption, either without or after dilution, and includes water;

“food” (食物)—

(a) includes snack, confectionary, chewing gum, and any article or substance used as an ingredient in the preparation of food; and

(b) excludes any drink, live animal, fodder or feeding stuff for animals, and any article or substance used only as medicine;

“medicine” (藥物) excludes any article or substance customarily consumed only as food or drink;

“retail floor area” (零售樓面面積)—

(a) means the total floor area of any enclosed space at a retail outlet that is accessible by a customer;

(b) includes any area used as a passageway or occupied by a cashier, shelf, rack or goods on display; and

(c) excludes any area used as an office or for storage of stock.



香港特別行政區政府
The Government of the
Hong Kong Special Administrative Region
環境保護署 Environmental Protection Department

For Official Use
Code No.
/ /

產品環保責任（塑膠購物袋）規例
PRODUCT ECO-RESPONSIBILITY (PLASTIC SHOPPING BAGS) REGULATION

申請為登記零售商/ 登記零售店
Application as Registered Retailer/ Registered Retail Outlet

請以正楷填寫各項資料 Please complete all items in BLOCK LETTERS

A 段 Part A 零售商資料 Particulars of Retailer		
<input type="checkbox"/> 個人 Individual	<input type="checkbox"/> 公司 Company	<input type="checkbox"/> 合夥經營 Partnership

	零售商名稱 Retailer's Name	
附註 1 Note 1	商業登記號碼 Business Registration Number	
	註冊辦事處地址 Address of Registered Office	
附註 2 Note 2	塑膠購物袋徵費登記號碼 (如適用) Plastic Shopping Bag Levy Registration Number (if applicable)	
電話號碼 Telephone Number		傳真號碼 Fax Number

A1 段 Part A1 個人或合夥人申請 (如適用) Individual or Partnership Application (if applicable)
如屬公司申請則無需填寫 Not applicable for a Company registration

附註 3 Note 3	(1) 東主或合夥人資料 Particulars of proprietor or partners	
	全名 Name	
附註 4 Note 4	香港身份證號碼 HK Identity Card Number	
	住址 Residential Address	
電話號碼 Telephone Number		傳真號碼 Fax Number

	(2) 合夥人資料 Particulars of partners	
	全名 Name	
	香港身份證號碼 HK Identity Card Number	
	住址 Residential Address	
電話號碼 Telephone Number		傳真號碼 Fax Number

B 段 Part B	零售店資料 Particulars of Retail Outlet
<input type="checkbox"/>	此店以特許經營方式運作 This Outlet is under franchise arrangement

	零售店名稱 Name of the Retail Outlet	
附註 5 Note 5	商業登記號碼 Business Registration Number	
	店長名稱 Name of the Outlet Manager	
	營業地址 Address of the Retail Outlet	
電話號碼 Telephone Number		傳真號碼 Fax Number
<p>此零售店出售的貨品包括以下類別。 請選擇適合的類別。 The following categories of goods are offered for sale in this outlet. Please tick as appropriate.</p> <p> <input type="checkbox"/> 食物或飲品 <input type="checkbox"/> 藥物或急救用品 <input type="checkbox"/> 個人衛生或美容用品 <input type="checkbox"/> Food & Drink <input type="checkbox"/> Medicine or First-aid Item <input type="checkbox"/> Personal Hygiene or Beauty Product </p>		

B1 段 Part B1 只適用於以特許經營方式運作的零售店 For outlet under franchise arrangement only

	特許經營者資料 Franchisee Details	
	全名 Name	
	香港身份證號碼 HK Identity Card Number	
	住址 Residential Address	
電話號碼 Telephone Number		傳真號碼 Fax Number

B2 段 Part B2 豁免申請 (如適用) Exemption Arrangement (if applicable)

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C 段 Part C 申請人聲明 Declaration of Applicant
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本人/ 我們已充份理解夾附的「基本條款」及「使用條款」的內容。在接納登記後，本人/ 我們接受「基本條款」及「使用條款」及同意受其約束。

本人/ 我們已細閱申請指南內關於本人/ 我們個人資料的「個人資料收集聲明」。本人/ 我們謹此聲明，本人/ 我們在此申請表上所填報的個人資料，就本人/ 我們所知，均屬真確及最新的資料。 本人/ 我們明白並且同意，此等個人資料，是可按照「個人資料收集聲明」第一段所述之目的而被使用。

I/We have through understanding of the attached Basic Conditions and Conditions of Use. Upon approval of my/our application of registration, I/We accept and agree to be bound by the Basic Conditions and Conditions of Use.

I/We have read the Personal Information Collection Statement inside the Application Guide about my/our personal data. I/We declare that the personal data provided in this application form are accurate and up-to-date to the best of my/our knowledge. I/We agree and understand that such personal data can be used according to the purposes stated in paragraph 1 of the Personal Information Collection Statement.

請選擇 (1) (2) (3) 其中一項填寫 Please complete either (1) or (2) or (3)

(1) 公司申請 Company Application		
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申請人姓名 Name of applicant	申請人簽署 Signature of applicant	
在法人團體內的職銜 Designation within the body corporate	公司印章 Company Chop	日期 Date

(2) 個人經營業務申請 Individual Business Application		
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東主姓名 Name of the proprietor	東主簽署 Signature of the proprietor	日期 Date
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(3) 合夥經營申請 Partnership Application			
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本人已將業務的所有合夥人列出。			
申請人姓名 Name of applicant	申請人簽署 Signature of applicant	在合夥經營的職銜 Designation within the partnership.	日期 Date

申請指南 Application Guide

- | | | |
|--------|---|---|
| 附註 1 | - | 隨申請表必須附上有效商業登記証副本。 |
| 附註 2 | - | 此欄只適用於已登記的零售商。 |
| 附註 3 | - | 必須填寫東主或所有合夥人資料。如須要請加表格填寫。 |
| 附註 4 | - | 隨申請表必須附上東主或所有合夥人身份証副本。 |
| 附註 5 | - | 隨申請表必須附上有效商業登記証副本。新零售店如在申請時未能提供有效的商業登記証，請填上預算的開業日期及預算提供有效商業登記証副本的日期。 |
| | | |
| Note 1 | – | Copy of a valid Business Registration Certificate to be provided for verification. |
| Note 2 | – | This item is only applicable to existing registered retailer. |
| Note 3 | - | Details of proprietor or all partners should be listed. Use separate sheet if necessary. |
| Note 4 | – | Copies of Hong Kong Identity Cards of proprietor or all partners must be submitted. |
| Note 5 | - | Copy of a valid Business Registration Certificate to be provided for verification. For a new retail outlet where a valid Business Registration Certificate is not available at the time of application, please state the expected date of business commencement and the expected date of providing the Business Registration Certificate. |