

Chapter:	603	<b>PRODUCT ECO-RESPONSIBILITY ORDINANCE</b>	Gazette Number	Version Date
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		<b>Long title</b>	L.N. 86 of 2009	30/04/2009
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An Ordinance to introduce measures to minimize the environmental impact of certain types of products; and to provide for related matters.

[The Ordinance (except sections  
18(3),19(3) and (4), 22(2) and (3), 23(1),  
(5) and (6) and 24 to 28 and Schedule 3) }

30 April 2009

Sections 18(3),19(3) and (4), 22(2) and (3),  
23(1), (5) and (6) and 24 to 28 and Schedule  
3 }

7 July 2009

(Originally 32 of 2008)

Part:	1	<b>PRELIMINARY</b>	L.N. 86 of 2009	30/04/2009
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Section:	1	<b>Short title and commencement</b>		01/05/2009
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- (1) This Ordinance may be cited as the Product Eco-responsibility Ordinance.
- (2) (Omitted as spent)

Section:	2	<b>Purposes of this Ordinance</b>	4 of 2014	01/04/2015
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- (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 or a charge to discourage the use of certain products; and (Amended 4 of 2014 s. 3)
  - (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).

Section:	3	<b>Interpretation</b>	4 of 2014	01/04/2015
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- (1) In this Ordinance, unless the context otherwise requires—  
“authorized officer” (獲授權人員) means a public officer authorized under section 6;

**body corporate** (法人團體) means—

- (a) a company as defined by section 2(1) of the Companies Ordinance (Cap 622); or
- (b) a company incorporated outside Hong Kong; (Added 4 of 2014 s. 4)

“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	<b>PRESCRIBED PRODUCTS: GENERAL PROVISIONS</b>	L.N. 86 of 2009	30/04/2009
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Part:	2	<b>Application</b>	L.N. 86 of 2009	30/04/2009
Division:	1			

Section:	4	<b>Prescribed products to which Part 2 applies</b>	L.N. 86 of 2009	30/04/2009
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This Part applies in relation to plastic shopping bags.

Part:	2	<b>Regulations: general powers</b>	L.N. 86 of 2009	30/04/2009
Division:	2			

Section:	5	<b>General provisions as to regulations made under this Ordinance</b>	L.N. 86 of 2009	30/04/2009
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(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 \$500000, for such an offence;
- (b) if the offence is a continuing one, the imposition of a further fine of \$10000 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.

Part:	2	<b>Enforcement</b>	L.N. 86 of 2009	30/04/2009
Division:	3			

Section:	6	<b>Authorized officers</b>	L.N. 86 of 2009	30/04/2009
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(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.

Section:	7	<b>Powers to obtain information, enter places for routine inspection, etc.</b>	4 of 2014	01/04/2015
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(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, charge 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. (Amended 4 of 2014 s. 5)

(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, charge or fee imposed under this Ordinance; (Amended 4 of 2014 s. 5)
- (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.

Section:	8	<b>Power of entry and search</b>	L.N. 86 of 2009	30/04/2009
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(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.

Part:	2	<b>Offences</b>	L.N. 86 of 2009	30/04/2009
Division:	4			

Section:	9	<b>Providing false information, etc.</b>	L.N. 86 of 2009	30/04/2009
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(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.

Section:	10	<b>Obstructing authorized officers, etc.</b>	L.N. 86 of 2009	30/04/2009
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(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.

Section:	11	<b>Offences by body corporate</b>	L.N. 86 of 2009	30/04/2009
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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.

Part:	2	<b>Appeals</b>	L.N. 86 of 2009	30/04/2009
Division:	5			

Section:	12	<b>Interpretation of Division 5 of Part 2</b>	L.N. 86 of 2009	30/04/2009
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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).

Section:	13	<b>Appeals</b>	4 of 2014	01/04/2015
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(1) A person who is aggrieved by a decision of a public officer relating to an appealable matter 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. (Amended 4 of 2014 s. 6)

(2) In this section—

**appealable matter** (可上訴事宜) means a matter that is—

- (a) provided by a regulation made under this Ordinance; and
- (b) specified in the regulation as a matter on which an appeal may be made under this section. (Replaced 4 of 2014 s. 6)

Section:	14	<b>Establishment of Appeal Board</b>	L.N. 86 of 2009	30/04/2009
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(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.

Section:	15	<b>Exercise of Appeal Board’s jurisdiction</b>	L.N. 86 of 2009	30/04/2009
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(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.

Section:	16	<b>Supplementary provisions as to Appeal Board</b>	L.N. 86 of 2009	30/04/2009
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- (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	<b>PLASTIC SHOPPING BAGS</b>	L.N. 86 of 2009	30/04/2009
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Part:	3	<b>Interpretation</b>	L.N. 86 of 2009	30/04/2009
Division:	1			

Section:	17	<b>Interpretation of Part 3</b>	4 of 2014	01/04/2015
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- (1) In this Part, unless the context otherwise requires—
- demand notice** (繳款通知書) means a notice served under section 28D(2); (Added 4 of 2014 s. 7)
- fixed penalty** (定額罰款) means the penalty referred to in section 28A(2); (Added 4 of 2014 s. 7)
- penalty notice** (罰款通知書) means a notice given under section 28A(2); (Added 4 of 2014 s. 7)
- recovery order** (追討令) means an order made under section 28G(2). (Added 4 of 2014 s. 7)
- (Amended 4 of 2014 s. 7)

(2)-(3) (Repealed 4 of 2014 s. 7)

Part:	3	<b>Charge on Plastic Shopping Bags*</b>	4 of 2014	01/04/2015
Division:	2			

**Note:**  
\* (Replaced 4 of 2014 s. 8)

Section:	18	<b>Plastic shopping bags to which this Ordinance applies*</b>	4 of 2014	01/04/2015
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- (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) (Repealed 4 of 2014 s. 9)

**Note:**  
\* (Replaced 4 of 2014 s. 9)

Section:	18A	<b>Duty of seller to charge for plastic shopping bags</b>	4 of 2014	01/04/2015
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- (1) This section applies if there is a sale by retail of goods to a person (**customer**).
- (2) The seller must charge the customer an amount not less than that prescribed in Schedule 3 for each plastic shopping bag, or each pre-packaged pack of 10 or more plastic shopping bags, provided by the seller directly or indirectly to the customer—
- at the time of the sale;
  - for promoting the goods; or
  - otherwise in connection with the sale.
- (3) The seller must not offer any rebate or discount to the customer with the effect of directly offsetting the amount charged under subsection (2) or any part of that amount.
- (4) In this section—
- a reference to a sale by retail of goods is a reference to a sale of goods to a person who obtains the goods for purposes other than wholesale; and
  - a reference to a plastic shopping bag includes anything that can be easily turned into a plastic shopping bag.
- (5) In this section—
- sale** (出售) includes a display or offer for sale, and **sale by retail** (以零售方式出售) and **seller** (賣方) are to be construed accordingly.
- (6) For the purposes of this section, a plastic shopping bag is provided to a person—
- whether it is provided as the subject of the sale or is provided in addition to the subject of the sale; and
  - whether or not it is provided together with another product as a single item of goods.
- (Added 4 of 2014 s. 10)

Section:	18B	<b>Offences relating to section 18A</b>	4 of 2014	01/04/2015
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- (1) A person who contravenes section 18A(2) or (3) commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) to a fine at level 6 on the first occasion on which the person is convicted of the offence for contravening subsection (2) or (3) of section 18A; and
  - (b) to a fine of \$200000 on each subsequent occasion on which the person is convicted of the offence for contravening that subsection.
- (3) If a person is charged with an offence under subsection (1), it is a defence to prove that the person exercised due diligence to avoid committing the offence.

(Added 4 of 2014 s. 10)

Section:	18C	<b>Liability of franchisers and franchisees</b>	4 of 2014	01/04/2015
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- (1) This section applies if the sale mentioned in section 18A(1) is carried on in the course of a business under a franchise agreement.
- (2) Unless the Director otherwise agrees, the franchiser is the seller for the purposes of section 18A(2) and (3).
- (3) If, because of an act or default of a franchisee, the franchiser commits an offence under section 18B(1), or would have committed the offence except for the reliance on the defence under section 18B(3)—
  - (a) the franchisee also commits the offence and is liable on conviction to the penalty provided for the offence, 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 18B(3).

(Added 4 of 2014 s. 10)

Section:	19	<b>(Repealed 4 of 2014 s. 11)</b>	4 of 2014	01/04/2015
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Section:	20	<b>(Repealed 4 of 2014 s. 11)</b>	4 of 2014	01/04/2015
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Section:	21	<b>Secretary may amend Schedules</b>	4 of 2014	01/04/2015
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(1) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 1, 2 or 3.

(2) An order made under this section to amend Schedule 1 or 2 is subject to the approval of the Legislative Council.

(Amended 4 of 2014 s. 12)

Part:	3	<b>(Repealed 4 of 2014 s. 13)</b>	4 of 2014	01/04/2015
Division:	3			

Section:	22	<b>(Repealed 4 of 2014 s. 13)</b>	4 of 2014	01/04/2015
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Section:	23	<b>(Repealed 4 of 2014 s. 13)</b>	4 of 2014	01/04/2015
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Section:	24	<b>(Repealed 4 of 2014 s. 13)</b>	4 of 2014	01/04/2015
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Section:	25	<b>(Repealed 4 of 2014 s. 13)</b>	4 of 2014	01/04/2015
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Section:	26	<b>(Repealed 4 of 2014 s. 13)</b>	4 of 2014	01/04/2015
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Part:	3	<b>(Repealed 4 of 2014 s. 14)</b>	4 of 2014	01/04/2015
Division:	4			

Section:	27	<b>(Repealed 4 of 2014 s. 14)</b>	4 of 2014	01/04/2015
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Section:	28	<b>(Repealed 4 of 2014 s. 14)</b>	4 of 2014	01/04/2015
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Part:	3	<b>Fixed Penalty and Related Provisions</b>	4 of 2014	01/04/2015
Division:	4A			

(Division 4A added 4 of 2014 s. 15)

Section:	28A	<b>Director may give penalty notice</b>	4 of 2014	01/04/2015
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- (1) This section applies if the Director has reason to believe that a person is committing or has committed a specified offence.
- (2) The Director may give the person a notice in the prescribed form offering the person an opportunity to discharge the person's liability for the offence by paying a fixed penalty of \$2000 within 21 days after the date on which the notice is given.
- (3) A penalty notice may be given to the person personally or by affixing it to the person's place of business.
- (4) In this section—

**specified offence** (指明罪行) means an offence under section 18B(1)—

- (a) for contravening section 18A(2)(a); or
- (b) for contravening section 18A(3) by offering any rebate or discount to the customer with the effect of directly offsetting the amount charged under section 18A(2)(a) or any part of that amount.

Section:	28B	<b>No prosecution or conviction if compliance with penalty notice</b>	4 of 2014	01/04/2015
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- (1) This section applies to a person who has been given a penalty notice in respect of an offence.
- (2) Subject to section 28F, the person is not liable to be prosecuted or convicted for the offence if the person has paid the fixed penalty within 21 days after the date on which the notice is given.

Section:	28C	<b>Director may demand personal details and inspect proof of identity</b>	4 of 2014	01/04/2015
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- (1) This section applies if the Director has reason to believe that a person is committing or has committed an offence under section 18B(1).
- (2) The Director may, for issuing or serving a summons or other document in relation to the offence, require the person—
  - (a) for an individual—
    - (i) to supply the person's name, date of birth, address and contact telephone number (if any); and
    - (ii) to produce for inspection the person's proof of identity; or
  - (b) for a body corporate—

- (i) to supply the person's corporate name, registered or principal office address and contact telephone number (if any); and
  - (ii) to produce for inspection the person's business registration certificate issued under section 6 of the Business Registration Ordinance (Cap 310).
- (3) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (2) commits an offence and is liable on conviction to a fine at level 2.
- (4) In this section **proof of identity** (身分證明文件) has the same meaning as in section 17B of the Immigration Ordinance (Cap 115).

Section:	28D	<b>Director may serve demand notice in case of failure to pay fixed penalty etc.</b>	4 of 2014	01/04/2015
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- (1) This section applies if—
- (a) a person has been given a penalty notice in respect of an offence, and has not paid the fixed penalty within 21 days after the date on which the notice is given; or
  - (b) a person refuses to accept a penalty notice intended to be given to the person in respect of an offence.
- (2) The Director may serve on the person a notice in the prescribed form—
- (a) demanding payment of the fixed penalty;
  - (b) informing the person that the person must notify the Director in writing if the person wishes to dispute liability for the offence; and
  - (c) stating that the payment or notification must be made within 10 days after the date on which the demand notice is served.
- (3) A demand notice may not be served later than—
- (a) if subsection (1)(a) applies, 6 months after the date on which the penalty notice is given; or
  - (b) if subsection (1)(b) applies, 6 months after the date on which the person refuses to accept the penalty notice.
- (4) A demand notice may be served by sending it by post to the person's address (in the case of an individual) or the person's registered or principal office address (in the case of a body corporate).
- (5) A certificate of posting in the prescribed form purporting to be signed by or for the Director is admissible in evidence in any proceedings under this Part.
- (6) Unless there is evidence to the contrary, it is presumed—
- (a) that the certificate of posting was signed by or for the Director; and
  - (b) that the demand notice to which the certificate of posting relates was duly served.

Section:	28E	<b>No prosecution or conviction if compliance with demand notice</b>	4 of 2014	01/04/2015
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- (1) This section applies to a person on whom a demand notice has been served in respect of an offence.
- (2) Subject to section 28F, the person is not liable to be prosecuted or convicted for the offence if the person has paid the fixed penalty within 10 days after the date on which the notice is served.

Section:	28F	<b>Withdrawal of penalty or demand notice</b>	4 of 2014	01/04/2015
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- (1) The Director may withdraw a penalty notice given, or a demand notice served, in respect of an offence—
- (a) at any time before a recovery order is made; or
  - (b) at any time before any proceedings for the offence commences.
- (2) If a penalty or demand notice is withdrawn—
- (a) the Director must serve notice of the withdrawal on the person to whom, or on whom, the penalty or demand notice has been given or served; and
  - (b) on application by the person, the Director must refund, through the Director of Accounting Services, any amount paid for the fixed penalty.
- (3) If a penalty or demand notice is withdrawn, proceedings for the offence may only be commenced where—
- (a) the ground, or one of the grounds, on which the notice is withdrawn is that it contains incorrect information; and

- (b) the incorrect information was supplied by the person to whom, or on whom, the notice was given or served.

Section:	28G	<b>Recovery of fixed penalty</b>	4 of 2014	01/04/2015
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- (1) This section applies if a person on whom a demand notice has been served—
  - (a) fails to pay the fixed penalty in accordance with the notice; and
  - (b) fails to notify the Director in accordance with the notice that the person wishes to dispute liability for the offence.
- (2) On application made in the name of the Secretary for Justice and production of the documents specified in subsection (5), a magistrate must order the person to pay, within 14 days after the date of service of notice of the order—
  - (a) the fixed penalty;
  - (b) an additional penalty equal to the amount of the fixed penalty; and
  - (c) \$300 by way of costs.
- (3) An application may be made in the absence of the person. The Secretary for Justice may appoint a person or class of persons to make an application.
- (4) A magistrate must cause notice of a recovery order to be served on the person against whom it is made. The notice may be served by sending it by post to the person’s address (in the case of an individual) or the person’s registered or principal office address (in the case of a body corporate).
- (5) The documents specified for subsection (2) are—
  - (a) a copy of the demand notice;
  - (b) a certificate of posting the demand notice under section 28D(5); and
  - (c) an evidentiary certificate, in the prescribed form, stating the following matters—
    - (i) that the person specified in the certificate had not, before the date of the certificate, paid the fixed penalty;
    - (ii) that the person specified in the certificate had not, before the date of the certificate, notified the Director that the person wished to dispute liability for the offence;
    - (iii) that the address specified in the certificate was, at the date specified in the certificate in relation to the address, the person’s address (in the case of an individual) or the person’s registered or principal office address (in the case of a body corporate).
- (6) An evidentiary certificate referred to in subsection (5)(c) and purporting to be signed by or for the Director is admissible in evidence in any proceedings under this Part.
- (7) Unless there is evidence to the contrary—
  - (a) it is presumed that the evidentiary certificate was signed by or for the Director; and
  - (b) the evidentiary certificate is evidence of the facts stated in it.

Section:	28H	<b>Consequences of compliance with recovery order or failure to do so</b>	4 of 2014	01/04/2015
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- (1) This section applies to a person against whom a recovery order is made.
- (2) If the person has complied with the recovery order, the person is not liable to be prosecuted or convicted for the offence to which the order relates.
- (3) If the person fails to comply with the recovery order, the person—
  - (a) is to be regarded, for the purposes of section 68 of the Magistrates Ordinance (Cap 227), as having failed to pay the sum adjudged to be paid by a conviction; and
  - (b) is liable to be imprisoned under that section.

Section:	28I	<b>Application for review of recovery order</b>	4 of 2014	01/04/2015
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- (1) A person against whom a recovery order is made may apply to a magistrate for review of the order.
- (2) An application must be made within 14 days after the date on which the recovery order first came to the personal notice of the applicant.
- (3) The applicant must give reasonable notice of the application to the Director.

- (4) An application may be made in person or by counsel or solicitor.
- (5) For securing the attendance of witnesses and generally for conducting the proceedings, the magistrate has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap 227).

Section:	28J	<b>Outcome of review</b>	4 of 2014	01/04/2015
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- (1) On application under section 28I, a magistrate may rescind a recovery order if the magistrate is satisfied that the demand notice did not come to the personal notice of the applicant without any fault of the applicant.
- (2) If the magistrate rescinds a recovery order, and the applicant wishes to dispute liability for the offence to which the order relates, the magistrate must give leave to that effect.
- (3) If the magistrate rescinds a recovery order, and the applicant does not wish to dispute liability for the offence to which the order relates, the magistrate—
  - (a) must order the applicant to pay the fixed penalty within 10 days after the date of an order made under this paragraph; and
  - (b) must order that, if the applicant fails to pay the fixed penalty within that period, the applicant must immediately pay—
    - (i) the fixed penalty;
    - (ii) an additional penalty equal to the amount of the fixed penalty; and
    - (iii) \$300 by way of costs.
- (4) Despite section 26 of the Magistrates Ordinance (Cap 227), if a magistrate gives leave under subsection (2), proceedings may be taken within 6 months after the date on which the magistrate gives the leave.
- (5) If the applicant fails to comply with the order under subsection (3)(b), the applicant—
  - (a) is to be regarded, for the purposes of section 68 of the Magistrates Ordinance (Cap 227), as having failed to pay the sum adjudged to be paid by a conviction; and
  - (b) is liable to be imprisoned under that section.
- (6) If the applicant has complied with the order under subsection (3)(a) or (b), the applicant is not liable to be prosecuted or convicted for the offence to which the order relates.

Section:	28K	<b>Power to rescind order on application by Director</b>	4 of 2014	01/04/2015
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- At any time, a magistrate may for good cause, on application by the Director, rescind—
- (a) an order for the payment of the fixed penalty; and
  - (b) any other order made under this Division in the same proceedings.

Section:	28L	<b>Dispute of liability for offence</b>	4 of 2014	01/04/2015
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- (1) This section applies if a person—
  - (a) has notified the Director in accordance with a demand notice that the person wishes to dispute liability for an offence; or
  - (b) has been given leave to dispute liability for an offence under section 28J(2).
- (2) A summons issued in any proceedings against the person for the offence may be served on the person in accordance with section 8 of the Magistrates Ordinance (Cap 227).
- (3) If—
  - (a) in consequence of the notification or leave, the person appears in any proceedings in answer to a summons; and
  - (b) the person is convicted of the offence after having offered no defence or a defence that is frivolous or vexatious,
 the magistrate before whom the proceedings are heard must, in addition to any other penalty and costs, impose an additional penalty equal to the amount of the fixed penalty.
- (4) Any proceedings taken against a person falling within subsection (1)(a) must terminate if the person pays in accordance with subsection (5)—
  - (a) the fixed penalty;
  - (b) an additional penalty equal to the amount of the fixed penalty; and
  - (c) \$500 by way of costs.

- (5) Payment under subsection (4) must be made at any magistracy not less than 2 days before the day specified in the summons for the person's appearance, and the summons must be produced at the time of the payment.
- (6) No public holiday may be included in the computation of the 2 days' period mentioned in subsection (5).

Section:	28M	<b>Protection of Director and authorized officers</b>	4 of 2014	01/04/2015
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- (1) The Director or an authorized officer is not personally liable for anything done or omitted to be done by the Director or officer in good faith in the performance or purported performance of a function under this Division.
- (2) The protection conferred by subsection (1) does not affect any liability of the Government for the act or omission.

Section:	28N	<b>Legislative Council may amend certain amounts</b>	4 of 2014	01/04/2015
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The Legislative Council may, by resolution, amend the amount specified in section 28A(2), 28G(2)(c), 28J(3)(b)(iii) or 28L(4)(c).

Part:	3	<b>Regulations</b>	L.N. 86 of 2009	30/04/2009
Division:	5			

Section:	29	<b>Secretary may make regulations in respect of Part 3</b>	4 of 2014	01/04/2015
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- (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)-(d) (Repealed 4 of 2014 s. 16)
- (da) notices and certificates required to be prescribed for this Part; (Added 4 of 2014 s. 16)
- (db) payment of fixed penalties, additional penalties and other amounts payable under this Part; (Added 4 of 2014 s. 16)
- (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.

Part:	3	<b>Savings and Transitionals</b>	4 of 2014	01/04/2015
Division:	6			

(Division 6 added 4 of 2014 s. 17)

Section:	30	<b>Savings and transitional provisions relating to Product Eco-responsibility (Amendment) Ordinance 2014</b>	4 of 2014	01/04/2015
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Schedule 5 provides for the savings and transitional arrangements relating to the Product Eco-responsibility (Amendment) Ordinance 2014 (4 of 2014).

Schedule:	1	<b>PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE APPLIES</b>	4 of 2014	01/04/2015
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[sections 18(1) & 21(1) & (2)]

## 1. Meaning of plastic shopping bags

- (1) A bag made wholly or partly of plastic is a plastic shopping bag to which this Ordinance applies, whether or not 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. (Replaced 4 of 2014 s. 18)

(2) For the purposes of subsection (1), “plastic” (塑膠) includes polyethylene, polypropylene, polyvinyl chloride and nylon. (Amended 4 of 2014 s. 18)

Schedule:	2	<b>PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE DOES NOT APPLY</b>	4 of 2014	01/04/2015
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[sections 18(2) & 21(1) & (2)]

### 1. Plastic shopping bags excluded from application of this Ordinance

- (1) This Ordinance does not apply to the following plastic shopping bags— (Amended 4 of 2014 s. 19)
- (a)-(b) (Repealed 4 of 2014 s. 19)
  - (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 seller concerned; (Amended 4 of 2014 s. 19)
  - (d) a bag that only contains an item of food, drink or medicine for human or animal consumption where—
    - (i) the item is in a frozen or chilled state; or
    - (ii) the item is not contained in airtight packaging; (Added 4 of 2014 s. 19)
  - (e) a bag that forms part of the goods concerned. (Added 4 of 2014 s. 19)
  - (2) (Repealed 4 of 2014 s. 19)
- (3) For the purposes of subsection (1)(e), a bag is to be regarded as forming part of the goods if—
- (a) the bag is specifically designed for containing the goods;
  - (b) the bag contains the goods, and the quality of the goods would deteriorate if they were not contained in the bag;
  - (c) the goods are in liquid form and contained in the bag, or the goods are in liquid contained in the bag; or
  - (d) information on how to consume or use the goods is printed, written or labelled on the bag. (Added 4 of 2014 s. 19)

Schedule:	3	<b>AMOUNT PRESCRIBED FOR SECTION 18A(2)*</b>	4 of 2014	01/04/2015
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[sections 18A(2) & 21(1)]  
(Amended 4 of 2014 s. 20)

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(Amended 4 of 2014 s. 20)

**Note:**

\* (Replaced 4 of 2014 s. 20)

Schedule:	4	<b>(Repealed 4 of 2014 s. 21)</b>	4 of 2014	01/04/2015
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Schedule:	5	<b>Savings and Transitional Provisions Relating to Product Eco-responsibility (Amendment) Ordinance 2014</b>	4 of 2014	01/04/2015
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[section 30]

### 1. Interpretation

(1) In this Schedule—

**pre-amended Ordinance** (《原有條例》) means this Ordinance as in force immediately before 1 April 2015;

**PSB Regulation** (《膠袋規例》) means the Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap 603 sub. leg. A) as in force immediately before 1 April 2015;

**specified form** (指明表格) means a form specified by the Director under section 9 of this Schedule.

- (2) In this Schedule, a reference to a provision having a continuing effect under Cap 1 is a reference to the provision having a continuing effect by the operation of section 23 of the Interpretation and General Clauses Ordinance (Cap 1).
- (3) A word or an expression used in this Schedule, and defined or otherwise explained in section 17 of the pre-amended Ordinance or section 2 of the PSB Regulation, has the same meaning as in that section.
- (4) The saving mentioned in this Schedule for the effect of a provision of the pre-amended Ordinance extends to any other provision of that Ordinance or the PSB Regulation—
  - (a) that defines a word or an expression used in the provision;
  - (b) in accordance with which the provision is to be construed; or
  - (c) by reference to which the provision is to operate.

## **2. Returns and payment of levies due after 31 March 2015**

- (1) A person who was a registered retailer at any time within the period beginning on 1 January 2015 and ending on 31 March 2015 must ensure that—
  - (a) a separate return in respect of each registered retail outlet of the person for that period is submitted to the Director;
  - (b) the return is submitted to the Director in writing and in the specified form on or before 30 April 2015; and
  - (c) the return states the information specified in subsection (2).
- (2) The information is—
  - (a) the total number of plastic shopping bags delivered to the registered retail outlet during that period, except for any bags to be provided from an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption;
  - (b) the total number of plastic shopping bags provided directly or indirectly to customers during that period from—
    - (i) the retail outlet; or
    - (ii) if there is an exempted area in the retail outlet, any area of the retail outlet that is not exempted;
  - (c) the total amount of levies payable for the bags referred to in paragraph (b); and
  - (d) if an application for registration or deregistration in respect of the retail outlet is approved during that period, the date on which the retail outlet becomes registered or deregistered.
- (3) On or before 30 April 2015, the person must also pay to the Government the total amount of levies stated in the return in person, by post or by any other means according to the payment instructions contained in the specified form of the return.
- (4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine at level 5.
- (5) It is a defence to a charge under subsection (4) for the person charged to prove that the person exercised due diligence to avoid the commission of the offence.

## **3. Surcharges for offences in respect of payment of levies**

- (1) This section applies if, on or after 1 April 2015, a person is convicted of an offence under either of the following provisions in respect of an amount of levies stated in a return that the person has failed to pay—
  - (a) section 24(3) of the pre-amended Ordinance having a continuing effect under Cap 1;
  - (b) section 2(4) of this Schedule.
- (2) The person is also liable to pay—
  - (a) a surcharge of 5% of the amount of levies that are outstanding at the expiry of the due date; 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.
- (3) In this section—

**due date** (到期日), in relation to levies stated in a return, means the 30th day after the end of the period to which the return relates.

#### **4. Record keeping**

- (1) A person who has submitted a return under section 2(1) of this Schedule must ensure that the records and documents specified in subsection (2) relating to the return are kept until 31 March 2020.
- (2) The records and documents are records, invoices, receipts, delivery notes or any other documents that contain sufficient details to enable the Director to readily verify the following matters in respect of each registered retail outlet of the person—
  - (a) the number of plastic shopping bags provided to a customer in each retail transaction of the retail outlet, except for any bags provided from an exempted area of the retail outlet;
  - (b) the amount charged for those bags by the person under section 23(1) of the pre-amended Ordinance;
  - (c) the number of plastic shopping bags contained in each shipment of plastic shopping bags to the retail outlet, except for any bags to be provided from an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption; and
  - (d) the number of plastic shopping bags procured by the person and relating to each shipment referred to in paragraph (c).
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.
- (4) It is a defence to a charge under subsection (3) for the person charged to prove that the person exercised due diligence to avoid the commission of the offence.

#### **5. Assessment notice for conviction or acquittal before 1 April 2015**

- (1) This section applies if, before 1 April 2015—
  - (a) the Director may make an assessment for the plastic shopping bags provided by a person, and serve an assessment notice on the person, under section 26(2) of the pre-amended Ordinance but has not done so; or
  - (b) the Director has served an assessment notice on a person under that section.
- (2) Section 26(2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) of the pre-amended Ordinance continues to apply in relation to an assessment under subsection (1)(a) as if a reference to a registered retailer in that section were a reference to the person.
- (3) Section 26(3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) of the pre-amended Ordinance continues to apply in relation to a notice under subsection (1)(b) as if a reference to a registered retailer in that section were a reference to the person.
- (4) It is a defence to a charge under section 26(7) of the pre-amended Ordinance having a continuing effect under subsection (2) or (3) for the person charged to prove that the person exercised due diligence to avoid the commission of the offence.

#### **6. Assessment notice for conviction or acquittal on or after 1 April 2015**

- (1) This section applies if, on or after 1 April 2015, a person—
  - (a) is convicted of an offence under section 9 of this Ordinance relating to any record, document or information on an amount of levies stated in a return submitted by the person in respect of a period under either of the following provisions—
    - (i) section 24(1) of the pre-amended Ordinance;
    - (ii) section 2(1) of this Schedule;
  - (b) is acquitted of an offence mentioned in paragraph (a) in reliance on the defence under section 9 of this Ordinance;
  - (c) is convicted of an offence under section 24(3) of the pre-amended Ordinance having a continuing effect under Cap 1 for failing to submit a return in respect of a period according to the requirements in section 24(1) of the pre-amended Ordinance;
  - (d) is acquitted of an offence mentioned in paragraph (c) in reliance on the defence under section 27 of the pre-amended Ordinance having a continuing effect under Cap 1;
  - (e) is convicted of an offence under section 2(4) of this Schedule for failing to submit a return according to the requirements in section 2(1) of this Schedule; or

- (f) is acquitted of an offence mentioned in paragraph (e) in reliance on the defence under section 2(5) of this Schedule.
- (2) The Director may—
  - (a) assess the amount of levies payable for the plastic shopping bags provided by the person during that period; and
  - (b) serve an assessment notice on the person demanding payment of—
    - (i) that assessed amount; or
    - (ii) if the person has already paid part of that amount under section 24 of the pre-amended Ordinance, or under section 2 of this Schedule, 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) An 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 person to appeal against the notice.
- (6) The person must pay the amount of the demanded levies under an assessment notice within a period of 30 days after the date on which the notice is served.
- (7) A person who contravenes subsection (6) commits an offence and is liable on conviction to a fine at level 5.
- (8) A person 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 at the expiry of the period 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 period referred to in subsection (6).
- (9) If an appeal is made under section 7 of this Schedule against an assessment notice served under this section, any amount of levies or surcharges that is outstanding remains payable under this section pending the determination of the appeal unless the Director decides otherwise.
- (10) The Director may at any time withdraw an assessment notice served under this section by serving a withdrawal notice to that effect.
- (11) A notice under this section is regarded as duly served when it is sent by post to the last address provided by the person to the Director.
- (12) It is a defence to a charge under subsection (7) for the person charged to prove that the person exercised due diligence to avoid the commission of the offence.

## 7. Appeal

- (1) A person who is aggrieved by a decision of a public officer relating to an assessment notice served under either of the following provisions may, within 21 days after the date on which the notice is served on the person, appeal to the Appeal Board by giving a notice of appeal to the Director stating the reasons for the appeal—
  - (a) section 26 of the pre-amended Ordinance having a continuing effect under section 5 of this Schedule;
  - (b) section 6 of this Schedule.
- (2) For the purposes of Division 5 of Part 2 of this Ordinance, an appeal made under subsection (1) is to be regarded as an appeal made under section 13 of this Ordinance.
- (3) In this section—

**Appeal Board** (上訴委員會) has the meaning given by section 12 of this Ordinance.

## 8. Levies and surcharges are recoverable as civil debt

An outstanding amount of levies or surcharges payable under section 2, 3 or 6 of this Schedule is recoverable as a civil debt due to the Government.

## 9. Specified form

- (1) The Director may specify the forms to be used under this Schedule.
- (2) A specified form may require that—
  - (a) it be completed in a specified way;
  - (b) specified information or documents be included in or attached to it; and
  - (c) it be submitted in a specified manner.
- (3) If any such requirement is not complied with in relation to a specified form for submitting a return under section 2(1) of this Schedule, the return is to be treated as not submitted in the specified form.
- (4) The Director is to make copies of a specified form available—
  - (a) during office hours at the office of the Director; and
  - (b) through any other means that the Director considers appropriate.

**10. Provisions of this Schedule not to derogate from section 23 of Interpretation and General Clauses Ordinance**

The provisions of this Schedule are in addition to, and not in derogation of, section 23 of the Interpretation and General Clauses Ordinance (Cap 1).

(Schedule 5 added 4 of 2014 s. 22)