

## **Product Eco-responsibility Bill**

### **The Administration's Response to Views and Questions Raised at the Bills Committee Meetings on 12 June 2008**

#### **Clause 9**

It is an offence under clause 9(3) for a person to omit a material particular from any record, document or information produced by him under the Bill. In the light of Members' views, the Administration agrees to add "without reasonable excuse" in clause 9(3) and to delete clause 9(4) accordingly. The Administration also agrees to delete the term "incorrect" from clause 9(1) as suggested by Members. The Administration will propose committee stage amendments (CSAs) for this purpose.

#### **Offences and penalties under clause 10**

2. In the light of Members' views, the Administration agrees to provide for separate levels of penalties with respect to offences under clause 10(a) and (b). The Administration will propose CSAs for this purpose.

#### **Clause 17(2)(c)**

3. The Administration agrees to revise the Chinese rendition of clause 17(2)(c) and will propose CSAs for this purpose.

#### **Clause 21**

4. In the light of Members' views, the Administration agrees to add "without reasonable excuse" in the proposed new clauses 21(2A) and 21(4). The Administration will propose CSAs for this purpose.

**Defence to offences**

5. The Administration agrees to add “without reasonable excuse” in the offences mentioned in paragraphs 1 and 4 above.

**Vetting of future amendments to Schedule 3**

6. As stated in LC Paper No. CB(1) 1655/07-08(02) and 1789/07-08(01), Schedule 3 to the Bill only sets out the level of the levy. The Administration considers that there will be sufficient time for Members to consider amendment to this Schedule under the usual negative vetting procedure, as the Administration would have completed the necessary public and LegCo consultation before submitting any proposed amendments.

7. The consolidated draft of the proposed CSAs mentioned above and all previously issued CSAs proposed by the Administration is set out in marked-up form at the Annex for Members’ consideration.

Environmental Protection Department  
June 2008

**Annex****Proposed Committee Stage Amendments  
to the Product Eco-responsibility Bill**

(Shown in marked-up form on the text of the Bill)

**A BILL****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 ~~or other measures that~~ may require manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the reduction in the use, ~~and~~ or the recovery, recycling ~~and~~ 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 any of the following products, namely, plastic shopping bags.~~

This Part applies in relation to plastic shopping bags.

#### Division 2 – Regulations: general powers

#### 5. General provisions as to ~~any~~ regulations made under this Ordinance

(1A) In this section, “regulation” (規例) means any regulation made under section 27.

(1) A regulation ~~made under any provision of this Ordinance~~ 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.

(2) 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 any public officer to perform any of the functions of the Director or an authorized officer under this Ordinance as the Director may specify in the authorization.~~

(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 and samples~~ , 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) If an authorized officer reasonably believes that information relating to any levy or fee imposed under this Ordinance is possessed by a person, the officer may require the person to provide the information.~~

(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) Subject to subsection (4), an authorized officer may take samples of any products for the purpose of ascertaining whether any provision of this Ordinance is contravened.~~

(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) Subject to subsection (2), an authorized officer may enter and search a place if he reasonably believes that—~~

- ~~(a) an offence against this Ordinance has been or is being committed in the place; or~~
- ~~(b) 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.~~

~~(2) Except with the consent of the occupier or person in charge of any domestic premises, an authorized officer shall not enter or search those premises without a warrant issued by a magistrate.~~

(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.

(32) A magistrate may issue a warrant authorizing an authorized officer to enter and search any domestic premises 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 ~~premises~~ place; or
  - (ii) there is in the ~~premises~~ 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 ~~premises~~ place;
  - (ii) such a person has unreasonably refused entry to the ~~premises~~ place by an authorized officer;
  - (iii) an authorized officer apprehends on reasonable grounds that entry to the ~~premises~~ place is unlikely to be granted unless a warrant is issued; or
  - (iv) the purpose of entry to the ~~premises~~ place would be prejudiced unless an authorized officer arriving at the ~~premises~~ place can secure immediate entry.

~~(4) — An authorized officer who enters any place under this section must, if entry is by warrant, produce that warrant.~~

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

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

(65) 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 any thing 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.

(76) 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.

(87) In this section—  
~~“domestic premises” (住用處所) means any premises that are constructed or intended to be used for habitation;~~  
 “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, **incorrect** or misleading in any material particular commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months 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, ~~incorrect~~ 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 of \$200,000 and to imprisonment for 6 months at level 6.

~~(4) It is a defence to a charge under subsection (3) for the person charged to prove that he did not know and could not with due diligence have ascertained the material particular.~~

#### **10. Obstructing authorized officers, etc.**

~~A person who –~~

- ~~(a) wilfully obstructs or delays an authorized officer in the performance of any of his functions under this Ordinance;~~  
~~or~~
- ~~(b) without reasonable excuse, fails to comply with any requirement properly made to him by an authorized officer under this Ordinance,~~

~~commits an offence and is liable on conviction to a fine of \$200,000 at level 5.~~

(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 any 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, ~~or was attributable to any neglect on the part 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 22;
- (c) an assessment notice served under section 25; 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. ~~Constitution~~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 jurisdiction of the Appeal Board on an appeal shall be exercised by the Chairman and such number of panel members as the Chairman may appoint for the appeal.~~

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

(1A) 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.

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

(3) 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.

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

(5) 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.
- (6) The party awarded any costs may enforce the award as a civil debt.
- (7) Costs awarded against the Director or an authorized officer are charged on the general revenue.
- (8) 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 to 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) The hearing of an appeal may be continued notwithstanding any change in the membership of the Appeal Board as if the change had not occurred.~~



~~(6) A person may not be appointed as a member of the Appeal Board before which the hearing of an appeal has been commenced without the consent of the parties to the appeal.~~

(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(1A) 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 if 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 21(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(3) that has been approved under section 19(7);
- “regulation” (《規例》) means any regulation made under section 27.
- (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(3);
  - (b) that application has been approved under section 19(7);  
and
  - (c) no application for deregistration in respect of the outlet has been approved under section 19(7), 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 23 for each plastic shopping bag that he provides to a customer.

~~(4) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 1, 2 or 3.~~

#### **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) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 4.~~

(3) 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.

(4) 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.

(5) A prescribed retailer who contravenes subsection (4) commits an offence and is liable –

- (a) to a fine of ~~\$200,000~~ at level 6 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of ~~\$500,000~~ \$200,000 on each subsequent occasion on which he is convicted of the offence.

(6) 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; ~~or~~
- (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.

(7) The Director may approve or reject an application under subsection (3) or (6) in accordance with the regulation.

(8) 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.

### **20A. 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**

### **21. 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.

(2A) A registered retailer who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.

- (3) 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.

~~(4) A person who contravenes subsection (2) or (3) commits an offence and is liable –~~

- ~~(a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and~~
- ~~(b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.~~

(4) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 5.

## **22. 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 of ~~\$200,000~~ at level 6 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of ~~\$500,000~~ \$200,000 on each subsequent occasion on which he is convicted of the offence.

### **23. 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—~~

~~(a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and~~

~~(b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.~~

(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.

## **24. 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 23 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 –~~

~~(a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and~~

~~(b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.~~

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

## 25. Assessment notice

(1A) This section applies if a registered retailer –

(a) is convicted of an offence under section 23(3) for failing to submit a return in respect of a period according to the requirements in section 23(1);

(b) is acquitted of an offence mentioned in paragraph (a) in reliance on the defence under section 26;

(c) 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 23(1); or

(d) is acquitted of an offence mentioned in paragraph (c) in reliance on a defence under section 9.

~~(1) If a registered retailer contravenes section 23(1), or the Director reasonably believes that any amount of levies stated in a return in respect of a period submitted by the retailer under that section is false, incorrect or misleading, the 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 23, the balance of that amount.

(2) The Director may ~~at any time~~ replace an assessment notice with another assessment notice served for that purpose.

(2A) 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.

(3) 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.

(4) A registered retailer shall pay the amount of the demanded levies under an assessment notice ~~on or before the 21<sup>st</sup> day after the date on which the notice is served~~ within such time limit as is prescribed by the regulation.

~~(5) A registered retailer who contravenes subsection (4) commits an offence and is liable –~~

- ~~(a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and~~
- ~~(b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.~~

(5) A registered retailer who contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 5.

(6) A registered retailer who is convicted of an offence under subsection (5) 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 (4); 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 (4).

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

(8) 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.

(9) The Director may at any time withdraw an assessment notice served under this section by serving a withdrawal notice to that effect.

(10) 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 – ~~Defence~~ Supplementary provisions as to offences under Part 3**

##### **26. Defence to offences**

It is a defence to a charge under section 19(5), ~~21(4)~~, 22(6), 23(3), 24(2) or 25(5) for a person charged to prove that he exercised due diligence to avoid the commission of the offence.

### **26A. 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(5), 21(2A) or 22(6) involving a franchised retail outlet is committed, or would have been committed except for the reliance on the defence under section 26 (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 26 in the case of an offence under section 19(5) or 22(6).

### **Division 5 – Regulations**

#### **27. Secretary may make regulations in respect of Part 3**

(1) The Secretary may, after consultation with the Advisory Council on the Environment, make regulations ~~for and~~ 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 22, 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) & (4)  
20A]

#### 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 any hole, perforation, handle or string on or attached to it.~~
- (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) & ~~(4)~~  
20A]PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE DOES  
NOT APPLY1. **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 ~~item~~ 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) & ~~(4)~~  
20A]

## LEVY ON PLASTIC SHOPPING BAGS

50 cents per plastic shopping bag

## SCHEDULE 4

[ss. 17(1), & 19(1) & ~~(2)~~  
20A]PRESCRIBED RETAILERS TO WHOM PART 3 OF THIS  
ORDINANCE APPLIES1. **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) ~~2-5~~ 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.