

LEGISLATIVE COUNCIL BRIEF

PRODUCT ECO-RESPONSIBILITY BILL

INTRODUCTION

A At the meeting of the Executive Council on 18 December 2007, the Council ADVISED and the Chief Executive ORDERED that the Product Eco-responsibility Bill (PER Bill), at **Annex A**, should be introduced into the Legislative Council to provide a legal framework for implementing producer responsibility schemes in Hong Kong, with the environmental levy on plastic shopping bags as the first producer responsibility scheme under the Bill.

JUSTIFICATIONS

Producer Responsibility Schemes

2. Producer Responsibility Scheme (PRS) is a key policy initiative in the “Policy Framework for the Management of Municipal Solid Waste (2005-2014)” for waste reduction, recovery and recycling. Enshrining the principle of “polluter pays” and the element of “eco-responsibility”, PRS requires manufacturers, importers, wholesalers, retailers and consumers to share the responsibility of reducing, recovering and recycling certain products so as to minimize their environmental impact. In practice, PRS can take the form of -

- (a) product take-back schemes to ensure proper treatment of end-of-life products;
- (b) deposit-refund schemes to ensure the return of end-of-life products;
- (c) advanced recycling fees to finance the treatment of end-of-life products; and
- (d) environmental levies to discourage the use of certain products at source.

In the “Policy Framework”, we proposed to introduce PRS’s for six types

of products¹, including plastic shopping bags.

PRS on Plastic Shopping Bags

3. The public widely recognize the indiscriminate use of plastic shopping bags as a major and visible environmental problem in Hong Kong. Our landfill survey suggests that we dispose of more than three plastic shopping bags per person per day, which is much higher than the figures of our overseas counterparts². We consider that the problem of indiscriminate use can be effectively addressed by a PRS involving an environmental levy.

Public Consultation

4. We conducted a two-month public consultation exercise on a possible PRS on plastic shopping bags between May and July 2007, which involved the proposed phased introduction of an environmental levy of 50 cents on each plastic shopping bag distributed by retailers. We proposed to cover chain or large supermarkets, convenience stores and personal health and beauty stores in the first phase of the PRS.

5. The public consultation exercise adopted a multi-pronged approach, involving: i) a public opinion survey; ii) meetings of the LegCo Panel on Environmental Affairs, the District Councils and the Advisory Council on the Environment; iii) the online Public Affairs Forum under the Home Affairs Bureau; iv) consultation sessions with major stakeholders, including plastic bag manufacturers, retailers and relevant trade associations; v) a public forum; and vi) a dedicated website, with email and fax contact details for written submissions.

6. The proposed PRS received overwhelming support from the public. In a public opinion survey conducted during the public consultation period, nearly 90% of the respondents agreed that there was room to reduce the use of plastic shopping bags in their daily life. 84% and 66% of the respondents supported or strongly supported the implementation of the “polluter pays” principle and the introduction of the environmental levy on plastic shopping bags respectively. Among the respondents who supported the environmental levy, 76% of them considered that a levy of 50 cents or more would be effective in discouraging the use of plastic shopping bags, and close to 80% said that they would reduce the use of plastic shopping bags or bring their own shopping bags more often if a levy of 50 cents was introduced. Close to 85% of those who supported the environmental levy also

¹ The six types of products are plastic shopping bags, vehicle tyres, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries.

² The corresponding figures overseas are usually in the range of one to two plastic shopping bags per person per day.

supported the proposed phased approach of covering chain or large supermarkets, convenience stores and personal health and beauty stores first.

7. The LegCo Panel on Environmental Affairs discussed the proposed PRS at its meeting in May, and further invited deputations at its meeting in July. The majority of Panel members, as well as the deputations, spoke in support of the environmental levy. In particular, they noted the prevalence of the “abuse” of plastic shopping bags despite sustained public education efforts, and considered more determined action necessary to address the problem. We also consulted the Chairmen and Vice-Chairmen of the District Councils at their monthly meeting in June. Most of the Chairmen and Vice-Chairmen spoke in support of the environmental levy. The Advisory Council on the Environment, as well as its Waste Management Subcommittee, supported the proposed PRS and considered that it should be implemented as soon as practicable. To gauge the views of the middle class and the professionals, we also made use of the Public Affairs Forum under the Home Affairs Bureau. The majority of the views expressed were in support of the proposal.

8. Notwithstanding the broad-based public support, the affected stakeholders held dissenting views. Plastic bag manufacturers, as represented by the Hong Kong Plastic Bags Manufacturers’ Association, opposed the proposed environmental levy. They considered that plastic bags were more environmentally friendly than other single-use carriers, such as paper bags. They also considered that plastic bags were reused by the public and could be recycled if properly sorted. They questioned the effectiveness of the scheme in waste reduction, given the limited amount of plastic shopping bags disposed of at the landfills and the apparent risk of switching to other single-use carriers.

9. Similarly, the retail trade, and particularly the affected retailers, opposed the proposed environmental levy. They considered that chain and large supermarkets, convenience stores and personal health and beauty stores were being *unfairly* targeted under the proposal. They claimed that these major retailers only contributed to a small part of the problem, and had done their utmost in reducing plastic shopping bags on a voluntary basis. The retail trade also questioned the effectiveness of the proposal given the limited coverage initially and the availability of plastic shopping bags from other “free” sources. The affected retailers disputed the figures of the landfill survey, which attributed some 20% of plastic shopping bags to them. The retail trade suggested that voluntary effort on plastic shopping bag reduction should be strengthened.

B 10. A Public Consultation Report (**Annex B**), which set out the results of the public consultation and addressed the concerns raised by

the affected stakeholders, was published in early September 2007. In light of the overwhelming public support, we consider that we should proceed with the legislation, namely the PER Bill, to provide a legal framework for implementing PRS's in Hong Kong, with the environmental levy on plastic shopping bags as the first PRS under the Bill.

Legislative Approach

11. The PER Bill is a piece of “umbrella” legislation that will provide the legal framework for introducing PRS's in respect of individual types of products when the opportunity is ripe. In particular, the Bill includes a purpose clause to set out the objectives of and the possible regulatory measures contemplated by the legislation. It also lays down the structure so that any prescribed products may be regulated at the appropriate juncture in future by introducing legislative amendments to set out the regulatory measures of the specific PRS when ready. The Bill further provides enforcement powers and an appeal mechanism, which is intended to apply to *all* PRS's.

12. Overseas experience suggests that a piece of “umbrella” legislation would prompt the relevant trade to introduce voluntary waste reduction and recycling programmes which, if implemented successfully, may obviate the need for or at least relieve the immediate pressure to introduce mandatory PRS's. In fact, with the recent announcement in the Policy Address that we will introduce the PER Bill into the LegCo in the 2007-08 legislative session, we have observed enhanced efforts by retailers in voluntary plastic shopping bag reduction. We have also secured the agreement of the computer trade to launch a voluntary computer recycling programme in early 2008.

13. We consider the current approach proposed for the PER Bill strikes a right balance in providing a legal framework for the implementation of PRS's, while addressing the concerns that the major regulatory elements for individual PRS's should be subject to the transparent deliberation at the Legislative Council.

THE BILL

14. The general provisions of the Bill are -

(a) **Purpose Clause (Part 1, clause 2)**

The purpose of the Bill is to minimize the environmental impact of certain types of products by introducing PRS's 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 the recovery, recycling and proper disposal of the products.

Such measures may include product take-back schemes, deposit-refund schemes, recycling fees, environmental levies, and restrictions on disposal. The purpose clause aims to demonstrate the intended coverage of the Bill and provides the legal basis for introducing other PRS's in future.

(b) **Enforcement (Part 2, clauses 6-8)**

The Director of Environmental Protection (DEP) shall be the enforcement authority for all PRS's. DEP or his authorized officers may obtain information, retain records and documents, take samples, and enter and search premises, vehicles or vessels.

(c) **General Offences (Part 2, clauses 9-11)**

Providing false information and obstructing authorized officers shall be made an offence.

(d) **Appeal (Part 2, clauses 12-16)**

A statutory appeal mechanism is provided to deal with appeals arising from the PRS's under the Bill. Regarding the PRS on plastic shopping bags, an aggrieved party can, for instance, appeal against certain decisions of the DEP, such as the "assessment notice" served under clause 25.

15. Aside from the general provisions, the Bill also provides for the major regulatory measures of the PRS on plastic shopping bags. These provisions are -

(a) **Environmental Levy (Part 3, clause 18; Schedules 1, 2 & 3)**

There shall be an environmental levy of 50 cents on each plastic shopping bag. The definition of "plastic shopping bag", the exemptions (e.g. plastic bags sold for \$5 or more each, etc.) and the level of the levy are set out in Schedules 1, 2 and 3 respectively. The Secretary for the Environment (SEN) may, after consultation with the Advisory Council on the Environment, amend Schedules 1, 2 or 3 by order published in the Gazette.

(b) **Registration of Prescribed Retailers (Part 3, clause 19, clause 22(2); Schedule 4)**

Pursuant to Schedule 4, a person is a prescribed retailer if he carries on a retail business at two or more qualified retail outlets; or at one qualified retail outlet that has a retail floor area of not less than 200 square metres. A retail outlet is a qualified retail outlet if the goods offered for sale in the outlet include -

- (i) any food or drink;
- (ii) any medicine or first-aid item; and
- (iii) any personal hygiene or beauty product.

Subject to the agreement of DEP, a prescribed retailer may seek DEP's exemption of an area within its registered retail outlet (e.g. the area other than the supermarket within a department store where the three specified categories of goods are not offered for sale), and the environmental levy will not apply in such an exempted area. The criteria in accordance with which DEP may grant the exemption is to be prescribed by the regulation.

SEN may, after consultation with the Advisory Council on the Environment, amend Schedule 4 by order published in the Gazette. This will enable SEN to extend the PRS on plastic shopping bags to other retailers in subsequent phases.

A prescribed retailer may register with DEP as a registered retailer in respect of its qualified retail outlets. A prescribed retailer must ensure that no plastic shopping bag is provided to a customer from any of its qualified retail outlets unless the outlet is a registered retail outlet. A prescribed retailer who contravenes this requirement commits an offence.

- (c) **Director to Maintain Register (Part 3, clause 20)**
DEP shall maintain a register of registered retailers and their registered retail outlets. The register shall be open for public inspection.
- (d) **Display of Certificate of Registration (Part 3, clause 21)**
A registered retailer shall display the certificate of registration issued by the DEP in a prominent position of its registered retail outlet. Failure to comply with this requirement will be an offence. It is also an offence for any person to display a forged, falsified or cancelled certificate of registration at any place.
- (e) **Duty of registered retailers to charge for plastic shopping bags (Part 3, clause 22)**
A registered retailer shall charge an amount of not less than the levy prescribed for each plastic shopping bag provided to a customer from each registered retail outlet of that retailer.

A registered retailer shall not offer any rebate or discount that directly offsets the levy. A registered retailer who contravenes any of these requirements commits an offence.

(f) Return and Payment of Levies (Part 3, clause 23)

A registered retailer shall submit to DEP such periodical returns as required by the regulation on the number of plastic shopping bags distributed and the amount of levies payable during the period to which a return relates. A registered retailer shall also pay to the Government the amount of levies payable as stated in the returns. Contravention will be an offence. The outstanding levies payable shall also be subject to a 5% surcharge for the first six months and an additional 10% surcharge thereafter.

(g) Record-keeping (Part 3, clause 24)

A registered retailer shall ensure that such records and documents as prescribed by the regulation relating to each return are kept for not less than five years. A registered retailer who fails to comply with this requirement commits an offence.

(h) Assessment Notice (Part 3, clause 25)

If a registered retailer fails to submit a return or DEP reasonably believes that the return submitted is false, incorrect or misleading, DEP may assess the amount of levies payable and demand payment of the assessed amount. A registered retailer who fails to comply with the assessment notice commits an offence. A registered retailer may appeal against DEP's assessment notice under the statutory appeal mechanism.

(i) Defence to Offence (Part 3, clause 26)

It is a defence to a charge under the offences in Part 3 for a person to prove that he exercised due diligence to avoid committing the offence.

(j) Regulation-making Powers (Part 3, clause 27)

The Secretary for the Environment may, after consultation with the Advisory Council on the Environment, make regulations for -

- (i) registration and deregistration of prescribed retailers;
- (ii) exemption of part of the area of a registered retail outlet from the requirement on the prescribed levy;
- (iii) submission of returns and payments of levies by registered retailers;

- (iv) records and documents to be kept by registered retailers; and
- (v) any supplemental, ancillary or incidental matters.

LEGISLATIVE TIMETABLE

16. The legislative timetable is as follows -

Publication in the Gazette	21 December 2007
First Reading and commencement of Second Reading debate	9 January 2008
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

C 17. The proposal has environmental, sustainability, economic, financial and civil service implications as set out at **Annex C**.

18. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will not bind the Government nor the State because it currently provides for the PRS on plastic shopping bags, which regulate certain “prescribed retailers” only.

PUBLIC CONSULTATION

19. Subsequent to the public consultation aforementioned, we have further briefed the affected retailers on the overall regulatory scheme. While still strongly objecting to the introduction of the environmental levy in principle, they consider the regulatory scheme generally workable. We have also catered for their views, such as minimizing the information required to be furnished, as far as practicable, while maintaining the overall effectiveness of the proposed regulatory regime.

PUBLICITY

20. A press release will be issued on 20 December 2007 and a spokesperson will be available to answer press enquiries.

ENQUIRIES

21. For any enquires relating to this Brief, please contact Mr. Alfred Lee, Assistant Director of Environmental Protection (Waste

Management Policy) at 2594 6032.

Environmental Protection Department
20 December 2007

PRODUCT ECO-RESPONSIBILITY BILL

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PART 3

PLASTIC SHOPPING BAGS

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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 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 the recovery, recycling and 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.

Division 2 – Regulations: general powers

5. General provisions as to any regulation made under this Ordinance

(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.

(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

(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.

(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.

(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.

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

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

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

(6) 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) 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.

(7) 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.

(8) 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.

(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 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.

(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.

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 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.

(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.

(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.

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 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.

(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.

(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.

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.

(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.

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

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

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.

(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.

25. Assessment notice

(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 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.

(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 21st day after the date on which the notice is served.

(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.

(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 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.

Division 5 – Regulations

27. Secretary may make regulations in respect of Part 3

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.

SCHEDULE 1

[s. 18(1) & (4)]

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.

(2) For the purposes of subsection (1)(a), “plastic” (塑膠) includes polyethylene, polypropylene, polyvinyl chloride and nylon.

SCHEDULE 2

[s. 18(2) & (4)]

PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE DOES
NOT APPLY

1. Plastic shopping bags excluded from application of this Ordinance

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 of goods; and
 - (ii) is sealed before the goods are supplied to the retailer concerned.

SCHEDULE 3

[s. 18(3) & (4)]

LEVY ON PLASTIC SHOPPING BAGS

50 cents per plastic shopping bag

SCHEDULE 4

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

PRESCRIBED RETAILERS TO WHOM PART 3 OF THIS
ORDINANCE APPLIES**1. Meaning of prescribed retailers**

(1) A person is a retailer prescribed for the purposes of section 19(1) of this Ordinance if he carries on a retail business at –

- (a) 2 or more qualified retail outlets in Hong Kong; or
- (b) 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 –

- (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.

Explanatory Memorandum

The objects of this Bill are –

- (a) to lay down a statutory framework for introducing measures to minimize the environmental impact of certain types of products; and
- (b) as the first regulatory scheme to be implemented for that purpose, to provide for the imposition of a levy on certain retailers for the provision of plastic shopping bags.

Part 1 – Preliminary

2. Apart from the commencement and interpretation provisions (clauses 1 and 3), Part 1 contains a purpose clause, which explains that this Bill aims at

minimizing the environment impact of various types of products by introducing producer responsibility schemes or other measures that may require different parties to share the responsibility for the reduction in the use, and the recovery, recycling and proper disposal, of the products (clause 2).

Part 2 – Prescribed products: general provisions

3. Part 2 sets out the general provisions that are applicable to all products to be regulated by this Bill.
4. In Division 1, clause 4 lists out the prescribed products to which Part 2 applies. Currently, only plastic shopping bags are specified in that clause.
5. Division 2 sets out the general provisions that are applicable to any regulation to be made under this Bill (clause 5).
6. Under Division 3, the Director of Environmental Protection (“the Director”) may authorize a public officer to perform any such statutory functions under this Bill as the Director may specify (clause 6). An authorized officer is given the power to obtain information and samples and the power of entry and search for enforcing this Bill (clauses 7 and 8).
7. Division 4 makes it an offence for a person to provide false information or to obstruct an authorized officer in the performance of his functions under this Bill (clauses 9 and 10).
8. Division 5 provides for the constitution of an Appeal Board for hearing and determining an appeal against certain decisions under this Bill (clauses 12 to 16).

Part 3 – Plastic shopping bags

9. Part 3 sets out the regulatory scheme that introduces a levy on plastic shopping bags.
10. Division 1 lists out the definitions for Part 3 (clause 17). Division 2 provides for –
 - (a) the meaning of a plastic shopping bag as prescribed in Schedule 1;

- (b) the excluded plastic shopping bags as prescribed in Schedule 2; and
- (c) the levy payable for a plastic shopping bag as prescribed in Schedule 3.

Those Schedules may be amended by the Secretary for the Environment (“the Secretary”) after consultation with the Advisory Council on the Environment (clause 18).

11. A prescribed retailer who falls within the description in Schedule 4 is not allowed to provide plastic shopping bags to his customers from a qualified retail outlet unless the outlet is a registered retail outlet. Contravention of that requirement is an offence. The Secretary may, after consultation with the Advisory Council on the Environment, amend Schedule 4 (clause 19).

12. Division 3 sets out the obligations of a registered retailer, including the obligations to do the following –

- (a) display the certificate of registration issued by the Director in respect of each registered retail outlet (clause 21);
- (b) charge not less than the levy prescribed for each plastic shopping bag provided to a customer from that outlet (clause 22);
- (c) submit to the Director periodical returns concerning the plastic shopping bags provided and the amount of levies payable for those bags (clause 23(1));
- (d) pay to the Government the amount of levies stated in such returns or the levies demanded under an assessment notice served by the Director (clauses 23(2) and 25); and
- (e) keep records and documents relating to such returns (clause 24).

13. Division 4 provides a statutory defence to an offence under Part 3 (clause 26).

14. Division 5 empowers the Secretary to make regulations for implementing Part 3 after consultation with the Advisory Council on the Environment (clause 27).

**Public Consultation Report on the
Proposal on An Environmental Levy on Plastic Shopping Bags**

PURPOSE

This paper presents the results of the public consultation on the proposal on an environmental levy on plastic shopping bags, and the proposed way forward.

BACKGROUND

2. The Environmental Protection Department (EPD) launched a public consultation on a proposal on an environmental levy on plastic shopping bags on 28 May 2007. The objective of the proposal is to reduce the indiscriminate use of plastic shopping bags through an economic disincentive. The proposal involves a phased introduction of an environmental levy of 50 cents on each plastic shopping bag distributed at retailers, with the first phase covering chain or large supermarkets, convenience stores and personal health and beauty stores. It is estimated that close to one billion plastic shopping bags could be saved each year with the introduction of the environmental levy. The public consultation lasted for about two months and ended on 31 July 2007.

PUBLIC CONSULTATION

3. The public consultation exercise adopted a multi-pronged approach, involving i) public opinion survey; ii) meetings of the Legislative Council (LegCo) Panel on Environmental Affairs, the Advisory Council on the Environment, the District Councils and the Green Group Liaison Committee; iii) Public Affairs Forum under the Home Affairs Bureau; iv) consultation sessions with major stakeholders, including plastic bag manufacturers, retailers and relevant trade associations; v) public forum; and vi) dedicated website, email and fax for written submissions.

4. A list of meetings, consultation sessions and public forum and a list of written submissions received during the public consultation period are at **Appendix I** and **Appendix II** respectively.

General Public

5. The Center of Communication Research of the Chinese University of Hong Kong was commissioned to conduct a public opinion

survey on the proposal on an environmental levy on plastic shopping bags during the public consultation period. The survey was carried out in the period of 28 - 29 June and 2 - 4 July, with 1,102 telephone interviews successfully conducted.

6. Nearly 90% of the respondents of the survey agreed that there was room to reduce the use of plastic shopping bags in their daily life. 84% and 66% of the respondents supported the implementation of the “polluter pays” principle and the introduction of the environmental levy on plastic shopping bags respectively.

7. Among the respondents who supported the introduction of the environmental levy, 76% of them considered that a levy of 50 cents or more would be effective in discouraging the use of plastic shopping bags, and close to 80% said that they would reduce the use of plastic shopping bags or bring their own shopping bags more often if a levy of 50 cents was introduced. Close to 85% of the respondents, who supported the introduction of the environmental levy, also supported a phased approach. Among those who supported a phased approach, more than 95% of them agreed that supermarkets, convenience stores and personal health and beauty stores should be covered in the first phase. The key findings of the public opinion survey are further set out at **Appendix III**.

8. We also consulted the Chairmen and Vice-Chairmen of the District Councils at their monthly meeting on 21 June. Most of the Chairmen and Vice-Chairmen spoke in support of the environmental levy. Upon invitation, we also joined the meeting of Wan Chai District Council on 17 July, and Members were generally supportive of the levy. In addition, we made use of the Public Affairs Forum under the Home Affairs Bureau to solicit views from some 500 Forum members. The majority of the views expressed was in support of the proposal.

9. Notwithstanding the general public consensus, some members of the public considered that the proposed environmental levy amounted to a penalty, and could be a burden upon the underprivileged. Some considered that most of the plastic shopping bags had already been productively reused as garbage bags or packaging bags. Some suggested that the Government should encourage the use of degradable plastic shopping bags instead. Others suggested that the Government should strengthen public education and further work with retailers on the reduction, reuse and recovery of plastic shopping bags on a voluntary basis.

Legislative Council

10. The LegCo Panel on Environmental Affairs discussed the proposed environmental levy at its meetings on 28 May and 16 July. The meeting on 16 July was open for deputations. The majority of

political parties, as well as the deputations, spoke in support of the environmental levy. They considered that the environmental levy was in line with the principle of “polluter pays”, and given the seriousness of plastic shopping bag abuse, it should be implemented as soon as practicable. Regarding the details of the proposal, some considered that the environmental levy collected should be deposited into an environmental fund to support environmental projects, while others suggested that the levy should be lowered to 10 to 20 cents so as to reduce its impact on the underprivileged.

11. While not opposing the introduction of the environmental levy in principle, a political party suggested that the voluntary efforts on plastic shopping bag reduction should be strengthened and continued for another two years, before considering the need to introduce an environmental levy. The party was also concerned that environmental levies, or producer responsibility schemes in general, could become another form of Goods and Services Tax and add undue burden to the trade and the public. The administrative costs of the proposed environmental levy might also add to the burden of small and medium enterprises.

Advisory Council on the Environment

12. The Advisory Council on the Environment, as well as its Waste Management Subcommittee, supported the Administration's proposal and considered that it should be implemented as soon as possible. The Council also accepted that the scheme, being the first phase in the introduction of producer responsibility schemes (PRS) in Hong Kong, should be simple and easy to administer such that it could get off the ground smoothly. The Council encouraged the Administration to review the scheme in a year's time, and consideration should be given to extending the scheme to other retail outlets so as to realize more environmental benefits and foster a level-playing field in the affected business sector.

Plastic Bag Manufacturers

13. Plastic bag manufacturers, as represented by the Hong Kong Plastic Bags Manufacturers' Association, opposed the proposed environmental levy on plastic shopping bags. They considered that plastic shopping bags were more environmentally friendly than other single-use carriers, such as paper bags. They also considered that plastic bags were productively reused by the general public and could be recycled if properly sorted. They questioned the effectiveness of the scheme in waste reduction, given the limited amount of plastic shopping bags disposed of at the landfills and the apparent risk of switching to other single-use carriers.

Retailers

14. The retail trade, as represented by the Hong Kong Retail Management Association, opposed the proposed environmental levy. They considered that chain and large supermarkets, convenience stores and personal health and beauty stores were being unfairly targeted under the proposal. They claimed that these major retailers only contributed to a small part of the problem, and had done the most in reducing plastic shopping bags on a voluntary basis. The retail trade also questioned the effectiveness of the proposal given the limited coverage initially and the risk of switching to other single-use carriers or other free sources of plastic shopping bags. They also had doubts on the success of overseas experience. The affected retailers disputed the figures of the landfill survey, which attributed some 20% of plastic shopping bags to them. The retail trade suggested that the Government should continue with voluntary initiatives on plastic shopping bag reduction.

Green Groups and Other Organizations

15. Green groups supported the proposed environmental levy. Yet, there were slightly different views on the details of the proposal, especially on the use of the levy. The majority of written submissions from other organizations also supported the environmental levy in principle, though there were some dissenting views on the effectiveness and long-term benefits of the proposed levy.

ADMINISTRATION'S RESPONSE TO THE VIEWS RECEIVED

16. We are very much encouraged by the overwhelming support of the respondents on our proposed initiatives to address our waste problems. We are also delighted to note that the public generally agree with the implementation of the "polluter pays" principle. The public consultation exercise has shown that there is a broad-based support from members of the LegCo, the Advisory Council on the Environment, the District Councils and the public on the proposed environmental levy on plastic shopping bags.

17. Notwithstanding the broad consensus, we are aware of the concerns frequently raised by those who have expressed reservations with our proposal. In particular, some challenge the objective of the proposal. They question why plastic bag should be targeted and whether the proposed levy is a disguised move by the Government to raise revenue. Some cast doubts on the effectiveness of our proposal and similar levy schemes introduced in other economies upon reduction in plastic shopping bag waste, and call on the Government to continue with voluntary initiatives. Among those who support our proposal, there are also frequent requests for the Government to use

the levy collected for environmental purposes, to promote the use of degradable plastic bags and to step up recycling of plastic shopping bags. There have also been request for the Government to release the consultancy study conducted by GHK (Hong Kong) Limited (GHK). We would take this opportunity to respond to these comments and concerns.

Objective of the Proposal

18. It is universally accepted that usage of plastic bags is a common and in certain situation, necessary practice. The problem lies in the fact that we have been disposing of more than three plastic shopping bags per person per day. The core objective of our proposal is to reduce the *indiscriminate use* of plastic shopping bags affirmatively and effectively.

19. It has never been our intention to raise public revenue through the environmental levy. The environmental levy serves solely as an economic incentive to encourage the public to bring their own shopping bags and reduce the use of plastic shopping bags. The fewer plastic shopping bags the public use, the less revenue the levy generates. In fact, the public can, and should, avoid the environmental levy entirely by bringing their own shopping bags at all time.

Effectiveness of the Proposal

20. The effectiveness of our proposal should be measured against its objective, i.e. to reduce the indiscriminate use of plastic shopping bags. In this regard, we estimate that close to one billion plastic shopping bags could be saved each year with the introduction of the environmental levy.

21. There have been some concerns that as most people would reuse their plastic shopping bags as garbage bags, the proposed environmental levy could result in “switching” to bin liners, thus leading to an overall increase in plastic waste. In the case of Ireland, even though the environmental levy resulted in more frequent use of bin liners, there was still an overall reduction of 77% in the combined use of plastic shopping bags and bin liners. Given the extent of the indiscriminate use of plastic shopping bags in Hong Kong, there would still be ample scope for reusing plastic shopping bags as bin liners after the introduction of the proposed environmental levy.

22. Notwithstanding the above, we are mindful of the risk of “switching” to other single-use carriers, such as paper bags. We have, therefore, proposed a phased approach by first introducing the environmental levy at chain or large supermarkets, convenience stores and personal health and beauty stores. Given the nature of the

products offered by these retailers and the shopping habits of Hong Kong people, the risk of “switching” to paper bags at these retailers is considered low. Yet, we will closely monitor the situation, and address any side effects that may arise. We have also undertaken to review the scheme after a year of implementation. The coverage of the scheme, in terms of both the types of retailers and the types of carriers, could be adjusted or expanded if considered appropriate.

Overseas Experience

23. Contrary to the claims propagated by interested parties, the overseas experience on environmental levy has largely been successful. Ireland introduced an environmental levy of EUR 15 cents (HK\$ 1.5) on plastic shopping bags at the retail level in March 2002. The plastic shopping bag usage dropped by 95% in the first year of implementation. In subsequent years, the usage slightly rebounded, but was still 90% below the pre-levy level¹. As stated above, even taking into account of more frequent use of bin liners, there was still an overall reduction of 77% in the combined use of plastic shopping bags and bin liners. To maintain the effectiveness of the levy, Ireland has revised the levy upwards to EUR 0.22 (HK\$ 2.2) in July 2007.

24. Taiwan introduced its “Restricted Use Policy on Plastic Shopping Bags” in 2002, which involved i) a ban on plastic shopping bags with thickness less than 0.06 mm; and ii) an environmental levy at the retail level. After the introduction of the levy, the plastic shopping bag usage dropped by 80% in the first year, but slightly rebounded subsequently². The ban on “thin” plastic shopping bags has led to an increase in plastic bag waste in certain sector where plastic shopping bags are necessary. The Taiwan Environmental Protection Agency had therefore exempted restaurants with storefronts from the scheme since June 2006. Given the experience of Taiwan, we propose that we should adopt a phased approach, and review the scheme after a year of implementation.

25. Back in January 2005, the San Francisco City Government proposed to introduce an environmental levy of US\$ 17 cents (HK\$ 1.30) to reduce the use of plastic shopping bag. The proposal was withdrawn due to the objection from the trade. Instead, the City Government signed a voluntary agreement with major supermarkets in November 2005 to reduce 10 million plastic bags by December 2006³. Yet, it was reported that the target was not met⁴. In March 2007, a piece of legislation was passed to ban the use of conventional plastic shopping bags and to mandate the use of recyclable paper bags,

¹ <http://www.environ.ie/en/Environment/Waste/PlasticBags/News/MainBody,3199,en.htm>

² <http://ww2.epa.gov.tw/enews/Newsdetail.asp?InputTime=0920627163727>

³ http://www.sfenvironment.org/our_sfenvironment/press_releases.html?topic=details&ni=118

⁴ http://www.sfenvironment.org/our_sfenvironment/news.html?topic=details&ni=32

compostable plastic bags or reusable checkout bags at supermarkets and pharmacies⁵.

Voluntary Efforts

26. Our voluntary efforts on plastic shopping bag reduction started in as early as 1993 with the launch of the “Bring Your Own Bags (BYOB)” campaign. Yet, the indiscriminate use of plastic shopping bags remains a prominent environmental problem as of today. We consider, and the public generally agree, that it is time for a more decisive action by introducing the proposed environmental levy. The levy would work hand-in-hand with our continuing voluntary efforts to achieve a more reasonable use of plastic shopping bags.

Use of the Levy

27. As stated above, the objective of the proposal is to reduce the indiscriminate use of plastic shopping bags through an economic disincentive. We concur with the views of the Advisory Council on the Environment that it would be undesirable to associate the environmental levy with the funding of environmental protection initiatives. This could risk generating public misconception that they are contributing towards environmental protection by paying the environmental levy, which would defeat the very purpose of our proposal.

28. The Administration is firmly committed to environmental protection, regardless of the amount of the environmental levy collected. We will continue with our efforts to promote environmental awareness in the community and to address our waste problem in a sustainable manner through implementation of programmes on waste reduction, recovery, recycling and the adoption of latest technologies in waste treatment.

Degradable Plastic Shopping Bags

29. The use of degradable plastic shopping bags does *not* actually solve the problem of indiscriminate use. Instead, it gives a *wrong* impression that the public could use degradable plastic shopping bags without adverse environmental consequence. In fact, the disposal of degradable plastic shopping bags has its own environmental impact, and similarly imposes further pressure on our precious landfills. The mixing of degradable plastic shopping bags with conventional ones also makes the recovery and recycling of plastic shopping bags much more difficult. The best solution to our waste problem is, therefore, to bring our own reusable shopping bags at all time and avoid plastic shopping

⁵ <http://www.sfgov.org/site/uploadedfiles/bdsupvrs/ordinances07/o0081-07.pdf>

bags at source.

Recycling of Plastic Shopping Bags

30. While the proposed environmental levy focuses on reduction at source, we also very much encourage the recycling of plastic shopping bags. Since 2005, we have launched a territory-wide “source separation of domestic waste programme”, where plastic bags, together with other plastic materials, are separately sorted and collected for recycling. Similarly, the 3-colored recycling bins also collect plastic bags and other plastic materials for recycling. In conjunction with the source separation programme, we plan to launch a programme to facilitate the plastic shopping bags recycling through more publicity and enhanced collection methods. Separately, we shall work with green groups to run pilot schemes to encourage multiple use of plastic shopping bags.

Consultancy Study by GHK

31. In December 2005, EPD commissioned GHK to conduct an “Assessment of the Benefits and Effects of the Plastic Shopping Bag Charging Scheme”. GHK identified and assessed four options for plastic shopping bags reduction, namely (1) voluntary approach; (2) combination of supplier levy and consumer charge; (3) consumer charge at all retail outlets; and (4) consumer charge at selected retail outlets (primarily supermarkets and convenience stores).

32. GHK considered that all options could reduce the number of plastic shopping bags, but a key issue to address was the risk of “switching” to alternative bags. Option (1) could achieve some reduction in plastic shopping bags, and the risk of “switching” to alternative bags was minimal. Options (2) and (3) could achieve significant reduction in plastic shopping bags but the risk of “switching” to alternative bags was substantial, and would likely result in more waste to our landfills. Option (4) could achieve considerable reduction in plastic shopping bags but the risk of “switching” to alternative bags was still present. Depending on the extent of switching, there could either be a net increase or decrease in the amount of waste.

33. We have taken note of GHK’s study in formulating our proposal. In particular, we generally share GHK’s concern over the risk of “switching” to alternative bags. We have, therefore, proposed a phased approach by first introducing the environmental levy at chain or large supermarkets, convenience stores and personal health and beauty stores. Given the nature of products offered by these retailers and the shopping habit of Hong Kong people, the risk of “switching” to

alternative bags at these retailers would be limited. According to GHK's assessment, under such a "no switching" scenario, option (4) would result in less waste to our landfills. Yet, we would closely monitor the situation, and address any problem of indiscriminate use that may arise. We have also undertaken to review the scheme after a year of implementation, as recommended by GHK. The GHK's study has been made available online⁶.

WAY FORWARD

34. It is clear from the public consultation that there is a broad-based public support to the introduction of the proposed environmental levy to address the indiscriminate use of plastic shopping bags. As reflected in the written submissions, there has been an increasing awareness on environmental protection among members of the public, who consider that it is time for more decisive action to address our environmental problems. The proposed environmental levy responds affirmatively to this public aspiration.

35. Going forward, we shall proceed with the preparation of the relevant legislation, namely the Product Eco-Responsibility Bill (PER Bill). As stated in our paper to the LegCo Panel on Environmental Affairs, the PER Bill would set out the purpose of PRS, which encompasses environmental levy as a way to reduce waste at source; the types of products and materials to be covered by the Bill; and the major regulatory measures of the PRS on plastic shopping bags, including the imposition of the environmental levy and the definitions of plastic shopping bags and relevant retailers. The implementation and operational details of the PRS on plastic shopping bags would be set out in a piece of subsidiary legislation. It is our plan to introduce the PER Bill into the LegCo in the 2007/08 legislative session.

36. In the meantime, we will continue to work with green groups and retailers to reduce the use of plastic shopping bags on a voluntary basis. Last year, the Environment and Conservation Fund Committee agreed to dedicate \$10 million to support a public education programme under the "Policy Framework for the Management of Municipal Solid Waste (2005-2014)". A major year-long public education campaign has been approved to promote plastic bag reduction at wet markets, bakeries and newspaper stands. Aside from reduction, we would also encourage green groups to promote plastic bag reuse and recycling, so as to complement the proposed environmental levy and complete the loop of a circular economy.

Environmental Protection Department
August 2007

⁶ http://www.epd.gov.hk/epd/english/environmentinhk/waste/prob_solutions/env_levy.html

Appendix I to Annex B

List of Meetings, Consultation Sessions & Public Forum

Date	Consultation Sessions, Meetings & Public Forum
28 May	The Hon. Vincent Fang and Representatives of the Retail Trade
28 May	Legislative Council Panel on Environmental Affairs
05 June	Green Group Liaison Committee
06 June	Waste Management Subcommittee of the Advisory Council on the Environment
11 June	Advisory Council on the Environment
12 June	China Resources Vanguard
15 June	AS Watsons (PARKnSHOP and Watsons)
15 June	Hong Kong Plastic Bags Manufacturers' Association
18 June	Dairy Farm (Wellcome, Mannings and 7-Eleven)
21 June	Chairmen and Vice-Chairmen of District Councils
28 June	City'super
03 July	Circle-K
05 July	Jusco
06 July	Apita (UNY)
10 July	Marks & Spencer
12 July	Hong Kong Retail Management Association
16 July	Legislative Council Panel on Environmental Affairs (Meeting with Deputations)
17 July	Wan Chai District Council
22 July	Public Forum

Appendix II to Annex B

List of Written Submissions

Groups	Number of Submissions
Advisory Body	
- Advisory Council on the Environment	1
Political Parties & Legislative Council Members	
- Civic Party	1
- Democratic Alliance for Betterment and Progress of Hong Kong	1
- Democratic Party	1
- Hong Kong Association for Democracy and People's Livelihood	1
- Liberal Party	1
- Hon. Vincent Fang	1
District Council Members	
- Mr. Chan Kin-shing (Yau Tsim Mong)	1
- Mr. Chan Kuen-kwan (Sai Kung)	1
Trade Associations	
- Chinese Manufacturers' Association of Hong Kong	1
- Federation of Hong Kong Industries	1
- Green Manufacturing Alliance	1
- Hong Kong Plastic Bags Manufacturers' Association	1
- Hong Kong Retail Management Association	1
Professional Organizations	
- Association of Engineering Professionals in Society	1
- Chartered Institution of Water and Environmental Management Hong Kong	1
- Hong Kong Institution of Engineers	1
- Hong Kong Waste Management Association	1
Green Groups	
- Clean Air Action Group	1
- Conservancy Association	1
- Friends of the Earth (Hong Kong)	1

- Green Council	1
- Green Sense	1
- Green Student Council	1
Other Organizations	
- Christians for Eco-concern	1
- Caritas Mok Cheung Sui Kun Community Centre	1
- Hong Kong Christian Service	1
- EC Group	1
- Wan Chai District Focus Group	1
Public Affairs Forum	
- Members of Public Affairs Forum	42
The Public	
- Members of the public	77
Total	148

**Key Findings of Public Opinion Survey on the
Proposal on An Environmental Levy on Plastic Shopping Bags**

Dates: 28 – 29 June; 2 – 4 July
Samples: 1,102 respondents of age 15 and above
Margin of Error: ± 3.0% (95% confidence interval)

Key Findings

Scope for Reducing Plastic Shopping Bags

- 89.3 % of respondents agreed that there was room in reducing the use of plastic shopping bags.

“Polluter pays” Principle and Environmental Levy

- 84.0% of respondents supported or strongly supported the “polluter pays” principle.
- 66.2% of respondents supported or strongly supported the proposed environmental levy on plastic shopping bags.

Effectiveness of the Environmental Levy

- Amongst those supporting the environmental levy:
 - 76.2% (50.4% of all respondents) considered that a levy of 50 cents or above would be an effective deterrent.
 - 77.9% (51.6% of all respondents) would use fewer plastic shopping bags if a levy of 50 cents were imposed.
 - 79.9% (52.9% of all respondents) would more often bring their own bags if a levy of 50 cents were imposed.

Phased Approach

- Amongst those supporting the environmental levy:
 - 84.3% (55.9% of all respondents) supported a phased approach.
 - 95.3% of those supporting a phased approach (53.2 % of all respondents) agreed that supermarkets, convenience stores and personal health and beauty shops should be covered first.

Reuse and Recycling

- 92.7% of respondents reused plastic shopping bags for the following purposes:

As garbage bags	90.4%
As general carriers	83.7%
As packaging materials	69.7%
As shopping bags again	64.6%
Others	2.1%

- 34.4% of respondents separately sorted out plastic shopping bags for recycling.
- 71.1% of respondents claimed that they brought their own bags in daily life.

Other Reduction Measures

- Amongst those not supporting the environmental levy (21.8%), the following measures were suggested to reduce the use of plastic shopping bags:

Measures	Of those not supporting the levy	Of all respondents
More public education	94.3%	20.5%
Voluntary scheme by retailers	82.5%	18.0%
More reuse and recycling	91.8%	20.0%
Ban on plastic bags	13.9%	3.0%
Others	17.5%	3.8%

IMPLICATIONS OF THE PROPOSAL

ENVIRONMENTAL IMPLICATIONS

With the implementation of the PRS on plastic shopping bags, we envisage a significant reduction in the number of plastic shopping bags distributed from prescribed retailers (i.e. chain or large supermarkets, convenience stores and personal health and beauty stores). It is difficult to determine to what extent the public would react to the environmental levy. Based on the assessment of our consultant, a 50% reduction in the number of plastic shopping bags (equivalent to about 1 billion plastic shopping bags) issued by prescribed retailers could be achieved.

2. Aside from addressing the problem of indiscriminate use of plastic shopping bags, the enactment of the PER Bill will provide the legal basis for introducing PRS's for other products where necessary. This will send a strong message of "eco-responsibility" to the public at large, by encouraging manufacturers, importers, wholesalers, retailers and consumers to shoulder their "eco-responsibility" on waste reduction, recovery and recycling voluntarily. Should voluntary efforts fail, regulation by legislative means could be pursued.

SUSTAINABILITY IMPLICATIONS

3. The introduction of PRS's based on the "polluter pays" principle is in line with the Government's First Sustainable Development Strategy for Hong Kong. In particular, the PRS on plastic shopping bags will encourage more sustainable use of natural resources, reduce the volume of plastic waste, and further enhance community-wide awareness of environmental protection.

ECONOMIC IMPLICATIONS

4. The PRS on plastic shopping bags offers an effective means to discourage the indiscriminate use of plastic shopping bags that generates negative environmental externalities. The prescribed retailers claim that they may suffer some business losses due to their inability to provide "free" plastic shopping bags. Yet, given the scale and other competitive advantages of prescribed retailers, the adverse impact is likely to be limited. The manufacturers of plastic shopping bags may suffer some business losses, but new business opportunities, such as in the production of durable and reusable plastic bags, may arise.

5. The PRS on plastic shopping bags is not expected to have any significant negative impact on private consumption expenditure as it is expected to raise \$200 million revenue per annum, which is equivalent to only about 0.02% of the private consumption expenditure in 2006. The impact on consumer prices is also negligible.

6. The economic implications of other PRS's can only be ascertained after the detailed regulatory schemes are worked out.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

7. It is difficult to determine to what extent the public would react to the environmental levy. Based on a 50% reduction in the distribution of plastic shopping bags from prescribed retailers and a further 50% exemption of plastic bags with no hole, handle or string (i.e. not plastic *shopping* bags under our definition), the environmental levy might generate up to \$200 million a year. The experience in Ireland suggests that the use of plastic shopping bags could experience a significant drop initially (more than 90%), but will rebound gradually over time. As such, the environmental levy collected for the first few years could be significantly less than \$200 million per year.

8. We have been allocated four posts for coping with the initial additional workload of implementing the Bill. The recurrent cost involved is \$3.02 million per annum. The long-term staffing requirements should be ascertained upon full implementation of the PRS and where necessary, sought through the established resources allocation mechanism. Other additional expenses arising from the implementation of the proposal, including the non-recurrent cost and those arising from the establishment and operation of the proposed statutory appeal board, will be met by EPD's existing allocation.