

## PRODUCT ECO-RESPONSIBILITY BILL

### COMMITTEE STAGE

#### Amendments to be moved by the Secretary for the Environment

- | <u>Clause</u> | <u>Amendment Proposed</u>  |
|---------------|--|
| 2             | By deleting subclause (1)(b) and substituting –<br>“(b) to that end, to introduce producer responsibility schemes, schemes based on the “polluter pays” principle, or other measures, which may require manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the reduction in the use, or the recovery, recycling or proper disposal, of those products.”. |
| 4             | By deleting the clause and substituting –<br>“4. <b>Prescribed products to which Part 2 applies</b><br>This Part applies in relation to plastic shopping bags.”.   |
| 5             | By deleting everything before subclause (1)(a) and substituting –<br>“5. <b>General provisions as to regulations made under this Ordinance</b><br>(1A) In this section, “regulation” (規例) means any regulation made under section 27.<br>(1) A regulation may do all or any of the following –”.   |

ALL PASSED

6 By deleting subclause (1) and substituting –

“(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.”.

7 (a) By deleting the heading and substituting –

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

(b) By deleting subclauses (2) and (3) and substituting –

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

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

- (a) observe and inspect any activity, operation, process or procedure involving prescribed products;
- (b) require a person in charge of the place to produce any record or document relating to prescribed products or to any levy or fee imposed under this Ordinance;
- (c) make copies of any record or document produced under paragraph (b);

**ALL PASSED**

- (d) subject to subsection (4), take such samples of any products as the officer may reasonably require for the purpose of examination and investigation.”.

8 By deleting the clause and substituting –

**“8. Power of entry and search**

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

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

(a) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that –

- (i) an offence against this Ordinance has been or is being committed in the place; or
- (ii) there is in the place anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed; and

(b) the magistrate is satisfied that –

- (i) it is not practicable to communicate with a person entitled to grant entry to the place;
- (ii) such a person has unreasonably refused entry to the place by an authorized officer;
- (iii) an authorized officer apprehends on reasonable grounds that entry to the place is unlikely to be granted unless a warrant is issued; or

**ALL PASSED**

(iv) the purpose of entry to the place would be prejudiced unless an authorized officer arriving at the place can secure immediate entry.

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

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

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

(a) require any person present at the place to provide such assistance or information as may be necessary to enable the officer to perform his functions under this Ordinance;

(b) search and seize anything that the officer reasonably believes to be evidence of the commission of an offence under this Ordinance;

(c) retain the thing for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined.

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

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

**ALL PASSED**

9 By deleting the clause and substituting –

**“9. Providing false information, etc.**

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

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

(a) he did not know and had no reason to believe the record, document or information to be false or misleading; or

(b) he exercised due diligence to avoid the commission of the offence.

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

10 By deleting the clause and substituting –

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

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

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

**ALL PASSED**

11 By deleting the clause and substituting –

**“11. Offences by body corporate**

If –

(a) a body corporate commits an offence under this Ordinance; and

(b) it is proved that the offence was committed with the consent or connivance of a director of, or a person concerned in the management of, the body corporate,

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

14 By deleting the heading and substituting –

**“14. Establishment of Appeal Board”.**

15 By deleting subclause (1) and substituting –

“(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.”.

16 By deleting subclauses (5) and (6) and substituting –

“(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 –

**ALL PASSED**

- (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 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.”.

17

(a) In subclause (2), in the Chinese text, by deleting “以下情況獲符合” and substituting “符合以下情況”.

(b) In the Chinese text, by deleting subclause (2)(c) and substituting –

“(c) 署長未有根據第19(7)條批准任何就該店提出的撤銷登記申請，不論該店是否持續是一間合資格零售店。”.

(c) By adding –

“(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.”.

18

By deleting subclause (4).

19

(a) By deleting subclause (2).

(b) In subclause (5)(a), by deleting “of \$200,000” and substituting “at level 6”.

(c) In subclause (5)(b), by deleting “\$500,000” and substituting “\$200,000”.

**ALL PASSED**

- (d) By deleting subclause (6)(a) and (b) and substituting –
- “(a) that retailer ceases to carry on a retail business in that outlet;
  - (b) that outlet is no longer a qualified retail outlet;
  - (c) that retailer ceases to provide plastic shopping bags from that outlet; or
  - (d) that retailer is no longer a prescribed retailer.”.

New By adding immediately after clause 20 –

**“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.”.

21 (a) By adding –

“(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.”.

(b) By deleting subclause (4) and substituting –

“(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 (a) In subclause (1), by deleting everything before “from –” and substituting –

“(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”.

(b) In subclause (6)(a), by deleting “of \$200,000” and substituting “at level 6”.

**ALL PASSED**



- (c) In subclause (6)(b), by deleting “\$500,000” and substituting “\$200,000”.

23 By deleting subclause (3) and substituting –

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

24 By deleting subclause (2) and substituting –

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

25 (a) By adding immediately before subclause (1) –

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

- (a) is convicted of an offence under section 9 relating to any record, document or information on any amount of levies stated in a return submitted by the retailer in respect of a period under section 23(1);
- (b) is acquitted of an offence mentioned in paragraph (a) in reliance on the defence under section 9;
- (c) is convicted of an offence under section 23(3) for failing to submit a return in respect of a period according to the requirements in section 23(1); or
- (d) is acquitted of an offence mentioned in paragraph (c) in reliance on the defence under section 26.”.

- (b) In subclause (1), by deleting everything before “may –” and substituting –

“(1) The Director”.

- (c) In subclause (2), by deleting “at any time”.

**ALL PASSED**

(d) By adding –

“(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.”.

(e) By deleting subclauses (4) and (5) and substituting –

“(4) A registered retailer shall pay the amount of the demanded levies under an assessment notice within such time limit as is prescribed by the regulation.

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

Part 3,  
Division 4

In the heading, by deleting “**Defence**” and substituting “**Supplementary provisions as**”.

26

By deleting “21(4),”.

New

By adding immediately after clause 26 –

**“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

**ALL PASSED**

- (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).”.

- 27 (a) By renumbering the clause as clause 27(1).  
 (b) In subclause (1), by deleting “for and”.  
 (c) By adding –  
     “(2) A regulation made under this section is subject to the approval of the Legislative Council.”.
- Schedule 1 (a) By deleting “[s. 18(1) & (4)]” and substituting “[ss. 18(1) & 20A(1) & (2)]”.  
 (b) By deleting section 1(1)(b) and substituting –  
     “(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.”.
- Schedule 2 (a) By deleting “[s. 18(2) & (4)]” and substituting “[ss. 18(2) & 20A(1) & (2)]”.  
 (b) In section 1, by deleting “This Ordinance” and substituting –  
     “(1) Subject to subsection (2), this Ordinance”.  
 (c) In section 1(1)(c)(i), by deleting “item” and substituting “piece”.  
 (d) In section 1, by adding –  
     “(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.”.

ALL PASSED

Schedule 3 By deleting “[s. 18(3) & (4)]” and substituting “[ss. 18(3) & 20A(1)]”.

- Schedule 4
- (a) By deleting “[ss. 17(1) & 19(1) & (2)]” and substituting “[ss. 17(1), 19(1) & 20A(1) & (2)]”.
  - (b) By deleting section 1(1)(a) and (b) and substituting –
    - “(a) 5 or more qualified retail outlets in Hong Kong; or
    - (b) at least one qualified retail outlet in Hong Kong that has a retail floor area of not less than 200 square metres.”.
  - (c) In section 1(2), by adding “all of the following categories of goods” after “include”.

ALL PASSED