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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 4 February 2009

**Proposed resolution under
the Product Eco-responsibility Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for the Environment will move at the Council meeting of 4 February 2009 under the Product Eco-responsibility Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both English and Chinese versions, which the Secretary for the Environment will deliver when moving the proposed resolution, is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

PRODUCT ECO-RESPONSIBILITY ORDINANCE

RESOLUTION

(Under section 29 of the Product Eco-responsibility Ordinance (32 of 2008))

RESOLVED that the Product Eco-responsibility (Plastic Shopping Bags) Regulation, made by the Secretary for the Environment on 31 December 2008, be approved.

PRODUCT ECO-RESPONSIBILITY (PLASTIC SHOPPING BAGS) REGULATION

CONTENTS

Section Page

PART 1

PRELIMINARY

- | | | |
|----|----------------|---|
| 1. | Commencement | 1 |
| 2. | Interpretation | 1 |

PART 2

REGISTRATION AND DEREGISTRATION OF RETAILERS

- | | | |
|----|---|---|
| 3. | Application for registration of prescribed retailers | 2 |
| 4. | Determination of application for registration | 2 |
| 5. | Change of information after registration | 3 |
| 6. | Application for deregistration of registered retailers or registered retail outlets | 3 |
| 7. | Determination of application for deregistration | 4 |

PART 3

EXEMPTION OF PART OF THE AREA OF REGISTERED RETAIL OUTLETS

- | | | |
|----|--|---|
| 8. | Application for exemption of part of the area of registered retail outlets or variation of exemption | 5 |
| 9. | Determination of application for exemption or variation of exemption | 6 |

10.	Revocation of exemption	8
11.	Right of appeal to Appeal Board against Director's decisions	8

PART 4

OBLIGATIONS OF REGISTERED RETAILERS

12.	Submission of quarterly returns	9
13.	Payment of levies	10
14.	Record keeping	10
15.	Payment under assessment notices	10

PART 5

MISCELLANEOUS

16.	Specified forms	11
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PRODUCT ECO-RESPONSIBILITY (PLASTIC SHOPPING BAGS) REGULATION

(Made by the Secretary for the Environment under section 29 of the Product Eco-responsibility Ordinance (32 of 2008) after consultation with the Advisory Council on the Environment and subject to the approval of the Legislative Council)

PART 1

PRELIMINARY

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Interpretation

(1) In this Regulation, unless the context otherwise requires –
“non-specified goods” (非指明貨品) means goods not belonging to any category specified in section 1(2)(a), (b) or (c) of Schedule 4 to the Ordinance;

“Register” (登記冊) means the register maintained under section 20 of the Ordinance;

“specified form” (指明表格) means a form specified under section 16.

(2) Unless the context otherwise requires, all words and expressions used in this Regulation and defined in section 17 of the Ordinance for the purposes of Part 3 of the Ordinance have the same meaning as in that Part.

PART 2

REGISTRATION AND DEREGISTRATION OF RETAILERS

3. Application for registration of prescribed retailers

(1) For the purposes of section 19(2) of the Ordinance, a prescribed retailer, or a person who proposes to be a prescribed retailer, may apply for registration as a registered retailer in respect of a qualified retail outlet by making an application to the Director in writing and in the specified form.

(2) The applicant may, by giving the Director notice in writing, withdraw the application for registration at any time before it is determined under section 4.

(3) If a change in the information provided to the Director under this section occurs before the determination of the application, the applicant must, as soon as reasonably practicable, give the Director notice of the change in writing unless the application has been withdrawn.

(4) If a requirement under this section is not complied with, the application is to be treated as not properly made.

4. Determination of application for registration

(1) For the purposes of section 19(6) of the Ordinance, the Director must approve an application under section 3 unless it is rejected under subsection (2).

(2) The Director may reject the application if the Director considers that –

- (a) the application is not properly made;
- (b) the applicant is not a prescribed retailer, or will not become a prescribed retailer, based on the information provided in relation to the application; or
- (c) the information so provided is incorrect or misleading.

- (3) If an application is approved, the Director must –
 - (a) register the applicant as a registered retailer and enter the name and address of the retailer in the Register;
 - (b) register each qualified retail outlet of the retailer as a registered retail outlet and enter the name (if different from that of the retailer) and address of each such outlet in the Register;
 - (c) give the retailer notice in writing of the registration number assigned to each such outlet; and
 - (d) issue to the retailer a certificate of registration in respect of each such outlet.
- (4) If an application is rejected, the Director must –
 - (a) give the applicant notice in writing of the decision; and
 - (b) include in the notice a statement setting out the reasons for the decision.

5. Change of information after registration

(1) If a change in the information provided to the Director in relation to an application for registration occurs after it has been approved, the registered retailer must give the Director notice of the change in writing and in the specified form within 30 days after its occurrence.

(2) A registered retailer who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

6. Application for deregistration of registered retailers or registered retail outlets

(1) For the purposes of section 19(5) of the Ordinance, a registered retailer may apply for deregistration in respect of a registered retail outlet by making an application to the Director in writing and in the specified form.

(2) The applicant may, by giving the Director notice in writing, withdraw the application for deregistration at any time before it is determined under section 7.

(3) If a change in the information provided to the Director under this section occurs before the determination of the application, the applicant must, as soon as reasonably practicable, give the Director notice of the change in writing unless the application has been withdrawn.

(4) If a requirement under this section is not complied with, the application is to be treated as not properly made.

7. Determination of application for deregistration

(1) For the purposes of section 19(6) of the Ordinance, the Director must approve an application under section 6 unless it is rejected under subsection (2).

(2) The Director may reject the application if the Director considers that –

- (a) the application is not properly made;
- (b) none of the circumstances specified in section 19(5) of the Ordinance under which the application may be made exists; or
- (c) the information provided in relation to the application is incorrect or misleading.

(3) If an application is approved, the Director must –

- (a) deregister the registered retail outlet concerned;
- (b) remove the name and address of the retail outlet from the Register;
- (c) if the applicant no longer has any registered retail outlet after the deregistration referred to in paragraph (a), deregister the applicant as a registered retailer;

- (d) remove the name and address of the retailer from the Register after the deregistration referred to in paragraph (c); and
 - (e) give the applicant notice in writing of –
 - (i) the relevant deregistration; and
 - (ii) the cancellation of the certificate of registration in respect of the deregistered outlet.
- (4) If an application is rejected, the Director must –
- (a) give the applicant notice in writing of the decision; and
 - (b) include in the notice a statement setting out the reasons for the decision.

PART 3

EXEMPTION OF PART OF THE AREA OF REGISTERED RETAIL OUTLETS

8. Application for exemption of part of the area of registered retail outlets or variation of exemption

(1) For the purposes of section 23(2) of the Ordinance, a registered retailer may apply for the exemption of part of the area of a registered retail outlet of that retailer, or for the variation of an exemption, by making an application to the Director in writing and in the specified form.

(2) The specified form must be accompanied by a floor plan of the retail outlet indicating –

- (a) any area in which only non-specified goods are displayed or offered for sale; and
- (b) which part of the area of the retail outlet is intended to be exempted, or how an exempted part is intended to be varied.

(3) The applicant may, by giving the Director notice in writing, withdraw the application under this section at any time before it is determined under section 9.

(4) If a change in the information provided to the Director under this section occurs before the determination of the application, the applicant must, as soon as reasonably practicable, give the Director notice of the change in writing unless the application has been withdrawn.

(5) If a requirement under this section is not complied with, the application is to be treated as not properly made.

9. Determination of application for exemption or variation of exemption

(1) For the purposes of section 23(3) of the Ordinance, the Director must approve an application under section 8 unless it is rejected under subsection (2).

(2) The Director may reject the application if the Director considers that –

- (a) the application is not properly made;
- (b) the information provided in relation to the application is incorrect or misleading; or
- (c) the retail outlet does not meet the criteria for exemption specified in subsection (3).

(3) For the purposes of subsection (2)(c), the following are specified as the criteria for exemption –

- (a) the total floor area of the retail outlet in which only non-specified goods are displayed or offered for sale is more than 50% of the retail floor area of the retail outlet; and
- (b) each part of the area to be exempted is a cashier's counter that accepts payment for non-specified goods only.

(4) For the purposes of subsection (3), “retail floor area” (零售樓面面積) has the same meaning as in Schedule 4 to the Ordinance.

(5) If an application is approved, the Director must –

(a) for the purposes of section 23 of the Ordinance, exempt the part of the area of the registered retail outlet, or vary the exemption, as indicated in the application subject to the following conditions –

(i) the retail outlet continues to meet all the criteria for exemption specified in subsection (3);

(ii) plastic shopping bags may be provided from an exempted area without payment of the charge required by section 23(1) of the Ordinance only if they are provided to customers who make payment for non-specified goods in that area and the number of bags so provided is not more than necessary for carrying those goods; and

(iii) such other conditions as the Director may reasonably impose from time to time;

(b) give the applicant notice in writing of the decision; and

(c) specify in the notice the conditions to which the exemption or the variation of the exemption is subject.

(6) The Director must also give the applicant notice in writing of any conditions imposed under subsection (5)(a)(iii).

(7) If an application is rejected, the Director must –

(a) give the applicant notice in writing of the decision; and

(b) include in the notice a statement setting out the reasons for the decision.

10. Revocation of exemption

(1) The Director may revoke an exemption approved under section 9 if the Director considers that –

- (a) a condition to which the exemption is subject has been breached; or
- (b) the information provided in relation to the exemption is incorrect or misleading.

(2) On revoking an exemption under subsection (1), the Director must –

- (a) give the registered retailer notice in writing of the decision; and
- (b) include in the notice a statement setting out the reasons for the decision.

(3) The Director may also revoke an exemption approved under section 9 on receiving an application made by the registered retailer in writing and in the specified form.

(4) On revoking an exemption under subsection (3), the Director must give the registered retailer notice in writing of the revocation having been completed.

(5) In this section, a reference to an exemption approved under section 9 includes a variation of an exemption approved under that section.

11. Right of appeal to Appeal Board against Director's decisions

(1) The following decisions are specified as matters on which an appeal may be made under section 13 of the Ordinance –

- (a) rejection of an application for variation of an exemption under section 9(2);
- (b) imposition of a condition under section 9(5)(a)(iii);
- (c) revocation of an exemption under section 10(1).

(2) If an appeal is made under section 13 of the Ordinance against a decision specified in subsection (1), the appeal does not affect the operation of the decision pending the determination of the appeal unless the Director decides otherwise.

PART 4

OBLIGATIONS OF REGISTERED RETAILERS

12. Submission of quarterly returns

(1) For the purposes of section 24(1) of the Ordinance, a registered retailer must submit a separate return in respect of each registered retail outlet of the retailer for each quarter ending on 31 March, 30 June, 30 September and 31 December.

(2) The return must be submitted to the Director in writing and in the specified form within 30 days after the last day of each quarter.

(3) The return in respect of a registered retail outlet for each quarter must contain the following information –

- (a) the total number of plastic shopping bags delivered to the retail outlet during that quarter;
- (b) the total number of plastic shopping bags provided directly or indirectly to customers during that quarter from the retail outlet or, if part of the area of the retail outlet is exempted by the Director for the purposes of section 23 of the Ordinance, from any area of the retail outlet that is not so exempted;
- (c) the total amount of levies payable for the bags referred to in paragraph (b); and
- (d) the total number of plastic shopping bags provided directly or indirectly to customers during that quarter from any

area of the retail outlet exempted by the Director for the purposes of section 23 of the Ordinance.

13. Payment of levies

For the purposes of section 24(2) of the Ordinance, a registered retailer must pay the total amount of levies stated in a return to the Government in person, by post or by any other means according to the payment instructions contained in the specified form of the return.

14. Record keeping

For the purposes of section 25(1) of the Ordinance, a registered retailer must ensure that records, invoices, receipts, delivery notes or any other documents that contain sufficient details to enable the Director to readily verify the following matters in respect of each registered retail outlet of the retailer are kept in accordance with that section –

- (a) the number of plastic shopping bags provided to a customer in each retail transaction of the retail outlet and the amount charged for those bags (if any) by the retailer under section 23(1) of the Ordinance in that transaction;
- (b) the number of plastic shopping bags contained in each shipment of plastic shopping bags to the retail outlet; and
- (c) the number of plastic shopping bags procured by the retailer and relating to each shipment referred to in paragraph (b).

15. Payment under assessment notices

For the purposes of section 26(6) of the Ordinance, a registered retailer must pay the amount of the demanded levies under an assessment notice within 30 days after the date on which the notice is served.

PART 5

MISCELLANEOUS

16. Specified forms

(1) The Director may specify the forms to be used under this Regulation.

(2) A specified form may require that –

(a) it be completed in a specified way;

(b) specified information or documents be included in or attached to it; and

(c) it be submitted in a specified manner.

(3) If any such requirement is not complied with in relation to a specified form for making an application under this Regulation, the application is to be treated as not made in the specified form.

(4) If any such requirement is not complied with in relation to a specified form for submitting a return under this Regulation, the return is to be treated as not submitted in the specified form.

(5) The Director is to make copies of a specified form available –

(a) during office hours at the office of the Director; and

(b) through any other means that the Director considers appropriate.

Acting Secretary for the Environment

31 December 2008

Explanatory Note

This Regulation provides for the requirements relating to the implementation of the first regulatory scheme introduced by the Product Eco-responsibility Ordinance (32 of 2008) (“the Ordinance”), namely, the imposition of a levy for the provision of plastic shopping bags from qualified retail outlets of prescribed retailers.

Part 1 – Preliminary

2. Part 1 contains the commencement and interpretation provisions for this Regulation (sections 1 and 2).

Part 2 – Registration and deregistration of retailers

3. Part 2 sets out the arrangements for registering and deregistering prescribed retailers and their qualified retail outlets under the levy scheme.

4. According to section 19(3) of the Ordinance, a prescribed retailer must ensure that no plastic shopping bag is provided to a customer from a qualified retail outlet unless it is registered with the Director of Environmental Protection (“Director”). Section 3 of this Regulation stipulates how an application for registration should be made.

5. Section 4 provides for the determination of the application by the Director, the steps to be taken in completing the registration procedures for an approved application, and the notice required in the case of a rejected application. It is an offence if a registered retailer fails to inform the Director of a change in the information provided in relation to an application after it has been approved (section 5).

6. Section 19(5) of the Ordinance sets out the circumstances under which a registered retailer may apply to the Director for deregistration from the levy scheme. Section 6 of this Regulation stipulates how such an application should be made.

7. Section 7 provides for the determination of the application by the Director, the steps to be taken in completing the deregistration procedures for an approved application, and the notice required in the case of a rejected application.

Part 3 – Exemption of part of the area of registered retail outlets

8. Section 23 of the Ordinance provides that a registered retailer may apply to the Director for the exemption of part of the area of a registered retail outlet from the levy scheme. Section 8 of this Regulation stipulates how an application for exemption or for variation of an exemption should be made.

9. Section 9 provides for the determination of the application by the Director, the criteria for exemption, the steps to be taken in completing the exemption procedures for an approved application, the imposition of conditions to which an exemption is subject, and the notice required in the case of a rejected application.

10. Section 10 sets out the circumstances under which the Director may revoke an exemption.

11. According to section 13 of the Ordinance, a person aggrieved by the Director's rejection of an application for registration, deregistration or exemption may appeal to the Appeal Board established under the Ordinance. Section 11 of this Regulation also provides for a right of appeal to the Appeal Board against a decision of the Director on rejecting an application for variation of an exemption, imposing a condition to which an exemption is subject, or revoking an exemption.

Part 4 – Obligations of registered retailers

12. Part 4 provides for the following matters relating to the discharge of registered retailers' obligations under Part 3 of the Ordinance –

- (a) requirements for submission of quarterly returns to the Director (section 12);
- (b) the methods of payment of levies (section 13);

- (c) records and documents required to be kept in respect of each registered retail outlet (section 14); and
- (d) the time limit for payment of demanded levies under assessment notices (section 15).

Part 5 – Miscellaneous

13. Section 16 provides that the Director may specify the forms to be used under this Regulation.

**Speech by the Secretary for the Environment
at the Legislative Council
on 4 February 2009**

Product Eco-responsibility Ordinance (Cap. 603)

Product Eco-responsibility (Plastic Shopping Bags) Regulation

President,

I move that the motion under my name, as printed on the Agenda, be passed. The proposed resolution is to approve the Regulation that provides for the implementation details of the environmental levy scheme on plastic shopping bags under the Product Eco-responsibility Ordinance.

2. The Product Eco-responsibility Ordinance was enacted by the Legislative Council in July 2008. The Ordinance is a piece of “framework” legislation that provides a legal basis for implementing producer responsibility schemes in Hong Kong. It is a milestone in the environment agenda and very much reflects the importance and urgency that the Legislative Council and the community attach to environmental protection in general and sustainable waste management in particular.

3. The environmental levy on plastic shopping bags is the first producer responsibility scheme to be implemented under the Ordinance, with a view to addressing the indiscriminate use of plastic shopping bags. As Members are well aware, the abuse of plastic shopping bags is one of the most visible environmental problems in Hong Kong. Our landfill survey suggests that billions of plastic shopping bags are disposed of at landfills every year. The majority of the public also agrees that there is much room to reduce the use of plastic shopping bags in their daily life and supports the introduction of an environmental levy to address the problem. In response to this public aspiration on environmental protection, we, the Government, have the responsibility and the duty to put the environmental levy scheme into actions as early as possible.

4. As I have committed at the resumption of the second reading of the Product Eco-responsibility Bill in July 2008, the implementation details of the environmental levy scheme are worked out in close consultation with the retail trade. In particular, the Administration has had a series of meetings with the Business Facilitation Advisory Committee and its Retail Task Force, the Hong Kong Retail Management Association, as well as major retailers to be affected by the environmental levy scheme. The Administration has also conducted site visits to six warehouses and ten retail outlets of the affected retailers to better understand the actual operation on the ground. The implementation details as set out in the Regulation have taken into account the views of the retail trade as far as practicable. That said, a balance needs to be struck between minimizing the impact on the retail trade and ensuring the effective administration of the environmental levy scheme.

5. We consulted the Legislative Council Panel on Environmental Affairs on the implementation details of the environmental levy scheme on 24 November. Despite the difficult economic situation faced by the community, the Panel was supportive and urged the Administration to submit the Regulation into the Legislative Council as soon as practicable. Pursuant to section 29(1) of the Product Eco-responsibility Ordinance, we also consulted the Advisory Council on the Environment on 15 December. Again, the Council was very supportive and urged the Administration and the Legislative Council to implement the environmental levy scheme at the earliest date possible.

6. Hong Kong is facing an imminent and serious waste problem. Every possible step must be taken to reduce our waste and to promote reuse, recovery and recycling. I therefore call on this Council to support the Motion. Subject to the approval of this Council, we plan to start registration of retailers in April 2009 and to implement the environmental levy scheme in July 2009.

7. The implementation of the environmental levy scheme will be a key cornerstone of our sustainable waste management strategy. We just cannot afford to wait any longer.

8. With these remarks, President, I move the motion.