

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 1218/08-09

Ref : CB1/SS/4/08

**Paper for the House Committee**

**Subcommittee on  
Product Eco-responsibility (Plastic Shopping Bags) Regulation**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Product Eco-responsibility (Plastic Shopping Bags) Regulation (the Subcommittee).

**Background**

2. In December 2007, the Product Eco-responsibility Bill (the Bill) was introduced to provide a legal framework for implementing producer responsibility schemes (PRS)<sup>1</sup> in Hong Kong, with the environmental levy on plastic shopping bags (PSB) as the first PRS under the Bill. In gist, an environmental levy of 50 cents on each PSB distributed by retailers will be implemented by phases. Chain or large supermarkets, convenience stores as well as personal health and beauty stores will be covered in the first phase. The objective is to reduce the indiscriminate use of PSB.

3. The Product Eco-responsibility Ordinance (Cap. 603) (the Ordinance) was enacted in July 2008. The key regulatory measures of the environmental levy scheme are set out in Part 3 of the Ordinance. These measures include registration of “prescribed retailers” who would provide PSB to customers, charging of the environmental levy for each PSB provided to a customer, submission of periodic returns, payment of environmental levies, and keeping of relevant records and documents.

---

<sup>1</sup> Under a PRS, manufacturers, importers, wholesalers, retailers or consumers are required to share the responsibility for reduction at source, collection, recycling, treatment or disposal of end-life products, with a view to avoiding and reducing the environmental impacts caused by such wastes. It is proposed that PRS should be introduced for six types of products, namely vehicle tyres, plastic shopping bags, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries.

## **The Regulation**

4. Pursuant to section 29 of the Ordinance, the implementation details of the environmental levy scheme on PSB are to be further prescribed in the Regulation, which would provide for operational matters concerning -

- (a) Registration of retailers;
- (b) Exemption for certain area within a registered retail outlet;
- (c) Submission of returns and payment of levies; and
- (d) Record-keeping.

## **The Subcommittee**

5. At the House Committee meeting held on 23 January 2009, Members agreed to form a Subcommittee to study the Regulation. Under the chairmanship of Hon Audrey EU Yuet-mee, the Subcommittee has held six meetings. The membership list of the Subcommittee is in **Appendix I**. Apart from examining the Regulation with the Administration, the Subcommittee has also invited views from the trade and interested parties. 21 groups have provided views to the Subcommittee. A list of these groups is in **Appendix II**.

## **Deliberations of the Subcommittee**

6. The Subcommittee supports in principle the environmental levy scheme on PSB to discourage the indiscriminate use of PSB. In the course of deliberation, members have examined issues relating to the commencement arrangement for the Ordinance and the Regulation as well as a range of operational matters, including application for registration of prescribed retailers, determination of application for registration, change of information after registration, application for exemption of part of the area of registered retail outlets or variation of exemption, determination of application or variation of exemption, revocation of exemption, submission of quarterly returns, review of the environmental levy scheme, and publicity programme.

## Commencement arrangement

7. Section 1(2) of the Ordinance provides that the Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment (SEN) by notice published in the Gazette. Section 1 of the Regulation also provides that the Regulation is to come into operation on a day to be appointed by SEN by notice in the Gazette.

8. At the first meeting of the Subcommittee, the Administration advised members that its target was to bring the environmental levy scheme into operation in July 2009. Three months would be allowed beforehand for the initial registration of prescribed retailers under the environmental levy scheme, and the actual charging on PSB would commence afterwards. To achieve this target, the Administration hopes that the Subcommittee would assist to complete scrutiny of the Regulation by mid-March 2009 in order that the Legislative Council (LegCo) could consider the motion for approving the Regulation on 22 April 2009 to enable the Administration to publish the commencement notices for both the Ordinance and the Regulation in the Gazette on 30 April 2009.

9. The Subcommittee is highly dissatisfied with the limited time allowed for scrutiny of the Regulation under the proposed commencement arrangement. Members query the need for rushing the Regulation through LegCo when many implementation details, including specified forms, have yet to be finalized in consultation with the trades. They point out that when scrutinizing the principal legislation in 2008, the Bills Committee on Product Eco-responsibility Bill had already emphasized the need to allow sufficient time for LegCo to scrutinize the regulations to be made by SEN under the Bill. It was after repeated requests by the Bills Committee that the Administration had eventually agreed that regulations to be made by SEN would be subject to the approval of LegCo by way of positive vetting procedure instead of negative vetting procedure as originally proposed. However, the actual time available for scrutiny of the Regulation under the proposed commencement arrangement is in effect less than that under the negative vetting procedure. Members are of the views that the predicament could have been avoided if the Administration had made effort to introduce the Regulation into LegCo on an earlier date.

10. The Administration has explained that there is wide public acceptance for the environmental levy scheme for PSB, the framework of which has been discussed by the Bills Committee. There has also been adequate consultation with the affected trades and their views have been taken into account as far as possible. For instance, the information required for registration has been minimized. As regards the time taken for introducing the Regulation into LegCo, the Administration consulted the Panel on Environmental Affairs in November 2008 and immediately thereafter proceeded to consult the Advisory Council on the Environment in December 2008 in accordance with the statutory requirement. The notice to move the resolution on the Regulation and the full text of the Regulation were submitted to LegCo on 31 December 2008 and subsequently withdrawn following the formation of the Subcommittee to scrutinize the Regulation. The proposed commencement arrangement could help ensure the timely implementation of the levy scheme in July 2009 with the concerted efforts of the Subcommittee.

11. Members do not find the Administration's explanation acceptable. They point out that the notice to LegCo given by the Administration on 31 December 2008 was to move the resolution on the Regulation at the Council

meeting on 4 February 2009. Furthermore, the proposed commencement arrangements were not made known to members until the first meeting of the Subcommittee. Nonetheless, the Subcommittee has agreed to hold more meetings within the limited time in order to speed up the scrutiny process, considering that the levy scheme is a step forward in discouraging the indiscriminate use of PSB.

#### Application for registration of prescribed retailers

12. Under proposed section 3, 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 of Environmental Protection (the Director) in writing and in specified form, and must give notice in writing to the Director if a change in the information provided occurs before the determination of the application unless it has been withdrawn. Non-compliance with any such requirements will result in the application being treated as not properly made.

13. Some members have raised concern about the legal status of the specified form since unlike prescribed form, the former does not form part of the Regulation, and is not subject to scrutiny by LegCo. The Administration's explanation is that according to section 5 of the Ordinance, the regulation made under section 29 may provide for the performance of the Director or an authorized officer of a function under the regulation, and may authorize a matter to be determined, applied or administered by a specified person. It is therefore appropriate for the Director, in the course of performing her functions in dealing with various applications under the Regulation, to administratively specify the forms to be used under the Regulation. These forms are not intended to be prescribed within the Regulation. The specification of administrative forms under proposed section 16 is compatible with the legislative intent of section 29 of the Ordinance. It is also in line with the current practice adopted in other legislation. As the specified forms are to be used by the retail trade, they would be consulted on the drafts of the specified forms.

14. Some members have expressed concern that the phrase "not properly made", which also applies to application for deregistration and application for exemption or variation of exemption under proposed sections 6 and 8 respectively, may give the Director power which is wider than necessary. The Administration has taken on board members' view and agrees to remove the phrase and move amendments to specify that the Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application before a decision is made.

15. To encourage more prescribed retailers to register as registered retailers, members consider it necessary for the Administration to simplify the application for registration as far as possible. Information pertaining to a business registration under the Business Registration Ordinance (Cap. 310), such as

address of registered office, names and addresses of individual partners of partnership, should not be repeated in the application, and such information should be updated together with the register of business. Incentives should also be provided as otherwise some retailers may try to get round the environmental levy scheme by providing consumers with paper bags or PSB not subject to control. The Administration's explanation is that it has been working closely with the retail trade to facilitate compliance as far as practicable. At the initial registration, the Administration only requires very basic and essential information, such as names and addresses of a prescribed retailer and its qualified retail outlets. It will further refine the specified form in consultation with the retail trade.

#### Determination of application for registration

16. The proposed section 4 provides that the Director must approve an application unless it is rejected. In the event that an application is rejected, the Director must give the applicant notice in writing of the decision and include in the notice a statement setting out the reasons for the decision.

17. Some members consider that there is a need to specify a time frame within which the Director should require further information and/or make her decision on the approval/rejection of application for registration. The same should also apply to the determination of application for deregistration and application for exemption or variation of exemption under proposed sections 7 and 9 respectively.

18. The Administration has explained that after consultation with the affected retail trade, it has made a performance pledge to process an application for registration of prescribed retailer within 21 working days, and application for registration of new outlets under a registered retailer within 10 working days or less. In considering an application, the Director may need to obtain information which may not be foreseen when the application is received. If a fixed time frame is to be specified in proposed sections 4, 7 and 9, the Director may need to reject an application should an applicant fail to respond to a request for additional information, even though the failure may be due only to trivial matters, such as temporary absence of the applicant from Hong Kong. Hence, the inclusion of a fixed time frame may undermine the flexibility of the Administration in accommodating the special needs of an applicant in unforeseen circumstances, and could cause undue hardship to the trade. To reassure the trade that the Director will not reject any application arbitrarily, the Administration is prepared to amend proposed sections 4, 7 and 9 to include an additional provision to expressly give an applicant the opportunity to respond to any alleged ground of rejection before the Director decides to reject an application.

19. The majority of members agrees to the need for flexibility, but considers it necessary for SEN to include in his speech to be delivered at the moving of the resolution on the Regulation the performance pledge in respect of applications for registration of "prescribed retailers" and "qualified retail outlet", and an

undertaking that the Administration will endeavour to accommodate the special needs of an applicant in unforeseen circumstances as far as possible. Mr KAM Nai-wai however remains of the view that a time frame should be included, and will consider moving amendments to this effect.

#### Change of information after registration

20. Under proposed section 5, a registered retailer must give the Director notice of a change in the information in relation to an approved registration in writing and in specified form within 30 days after its occurrence, failing which will be liable on conviction to a fine at level 2.

21. Some members have raised questions on the possible effects on registration if the registered retailer fails to give the Director notice of a change within the specified period due to unawareness of the change. According to the Administration, the requirement for the registered retailer to notify the Director of a change in the information in relation to an approved registration aims at keeping the records of registration up-to-date and accurate. As such changes concern only factual information and should be known to the registered retailer when the changes occur, the Administration considers the proposed time frame of 30 days reasonable. Besides, non-compliance with the requirement will not affect the status of a registered retailer as the changes concerned occur after an application for registration is approved.

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

22. The proposed section 8 provides that a registered retailer may apply for exemption of part of the area of a registered retail if the total 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 each part of the area to be exempted is a cashier's counter that accepts payment for non-specified goods only.

23. The Subcommittee notes that apart from the prescribed exemption criteria, the draft specified form for application for registration of prescribed retailers also contains a declaration of third party operation, which involves the issue of a third party's proposal to continue to provide free PSB in an area within a prescribed retailer's qualified retail outlet. The Regulation does not seem to give any legal basis for the declaration requirement in the draft specified form. The Administration's explanation is that during the consultation with the retail trade, the trade has indicated that third parties offering specified goods within qualified retail outlets may wish to continue to distribute free PSB. This, however, might cause confusion to customers and undermine the regulatory scheme. The Administration takes the view that a third party may provide free plastic shopping bags from an area located within a qualified retail outlet only if the area occupied by the third party operation is clearly not part of that retail outlet, and it is prudent

for the applicant to demonstrate that the third party's operation is carried on under a separate business registration. In the light of members' concern, the Administration agrees to amend the Regulation to include a second category of exemption criteria for third parties in registered retail outlets.

24. The Subcommittee notes that a registered retailer is required to provide a copy of the third party operator's valid business registration certificate at the retail outlet in order to establish the fact that the third party operation is not carried on by the registered retailer. Some members express concern that substantial administrative cost will be incurred on both the registered retailer and third party operators, particularly for consignors if they have to apply separate business registrations for each and every consignment counter they have in different qualified retail outlets. The requirement is not conducive to the business environment amid the financial turmoil. They urge the Administration to consider the trade's suggestion of accepting a certified true copy of the business registration of the headquarters of a third party operator as sufficient evidence of the fact that the area occupied by the third party's operation does not form part of the qualified retail outlet.

25. The Administration has explained that there could be various business arrangements within retail outlets which are operated by third parties, such as sub-tenancies and consignment counters managed by staff members engaged by the sub-tenants or consignors. In order to indicate clearly that such an area does not form part of the retail outlet, it is considered prudent for the third party to demonstrate that it is operating under a separate business or branch registration certificate at that location, to avoid infringement of the requirements of the Ordinance when the third party provides free PSB from there. A certified true copy of the business registration of the headquarters of a third party operator may not help establish the fact that the area occupied by a third party operation within a prescribed retailer's qualified retail outlet is indeed an area that does not form part of that outlet for the purposes of the environmental levy scheme. After members' repeated requests, the Administration eventually agrees that a certified true copy of the business registration of the headquarters of a third party operator would suffice under a second type of exemption criteria to be added to the Regulation. The Administration will move amendments to the Regulation to this effect.

#### Determination of application for exemption or variation of exemption

26. The proposed section 9 provides that the exemption or variation of exemption of part of the area of a registered outlet is subject to, among other things, such conditions as the Director may reasonably impose from time to time.

27. Some members have queried the need for the Director to, from time to time, impose other conditions which an applicant is not in a position to ascertain at the time of application for exemption or variation of exemption, particularly when the registered retailer concerned is not given the opportunity to oppose to

the proposed condition. According to the Administration, different retailers may have different set-ups in their retailer outlets. Such set-ups and the related sales and marketing practice may also change from time to time. The power of the Director to reasonably impose other conditions is to tackle the possible emergence of new practice that may circumvent the environmental levy scheme and abuse the exemption mechanism. In the light of members' concern, the Administration is prepared to amend the Regulation to the effect that a registered retailer will be given prior opportunity to make representations as to why a proposed condition should not be imposed.

#### Revocation of exemption

28. Under proposed section 10, the Director may revoke an exemption if she considers that a condition to which the exemption has been breached or the information provided in relation to the exemption is incorrect or misleading. On revoking an exemption, the Director must give the registered retailer notice in writing of the decision and include in the notice a statement setting out the reason for the decision.

29. Members consider that a registered retailer should be given the right to respond to the Director before a decision on the revocation of an exemption is made. In the light of members' concern, the Administration agrees to move amendments to this effect.

#### Submission of quarterly returns

30. The proposed section 12 provides that 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.

31. The Subcommittee holds the view that for the sake of clarity, consideration should be given to stating it clearly that registered retailers operating less than three months are still required to submit quarterly returns. The Administration has taken on board members' view and will move amendments in this respect.

32. The Subcommittee notes that registered retailers are required to provide the number of PSB provided to customers from the exempted cashier's counters. Some members question the need for such requirement which would inevitably incur additional administrative work and cost on the part of prescribed retailers. They urge the Administration to accept the retail trade's suggestion of using different types of PSB for exempted counters and non-exempted counters to dispense with the need for quarterly returns for the former.

33. According to the Administration, the requirement for reporting on the number of PSB provided to customers from both exempted and non-exempted cashier's counters is necessary to allow the Administration to cross-check the

figure with the number of PSB delivered to the retail outlet. The Administration understands that retailers may offer different types of PSB at their retail outlets in response to customer's needs. It is not clear at this stage whether mandatory differentiation of PSB for exempted cashier's counters and non-exempted cashier's counters will actually benefit the operation of the retail trade. Nevertheless, the Administration is prepared to review the reporting arrangement for PSB provided at exempted counters in the light of actual experience gained from the implementation of the levy scheme.

34. Not convinced of the Administration's response, Mr Vincent FANG and Mr WONG Ting-kwong indicate that they may consider moving their own amendments to the Regulation if the Administration refuses to do so. After further discussion with the members concerned, the Administration eventually agrees to amend proposed sections 12 and 14 to the effect that the number of PSB distributed from an exempted area does not need to be reported in the quarterly returns and such records do not need to be kept. Since the amendments in question are proposed after the Subcommittee has completed scrutiny of the Regulation, the Chairman has instructed that these amendments should be circulated for consideration by members of the Subcommittee. No members have requested for another meeting to discuss the proposed amendments.

#### Review of the environmental levy scheme

35. Some members have expressed concern that the use of paper bags and garbage bags, particularly the latter, may increase as people can no longer reuse PSB as garbage bags. The Administration has advised that it is well aware of the potential risk of switching to paper bags and increase in use of garbage bags. It is one of the reasons why a phased approach is adopted. Given the serious abuse of PSB, there is ample room to reduce the use of PSB without necessitating the purchase of garbage bags. According to a dedicated survey on PSB conducted by the Environmental Protection Department (EPD) in 2005 as part of the annual waste survey<sup>2</sup>, more than eight billion PSB are disposed of every year, of which some 20% come from chain or large supermarkets, convenience stores as well as personal health and beauty stores. In other words, more than three PSB per person are disposed of per day. The outcome of the dedicated survey is in **Appendix III**.

36. Some members ask about the accuracy of the disposal figure. They emphasize the need for the Administration to ascertain the effect of the environmental levy on the use of PSB, paper bags and garbage bags. The Administration should also take the lead in reducing the use of plastic bags, particularly those large black garbage bags, by government departments and

---

<sup>2</sup> For the purpose of the survey, PSB mean plastic bags with carrying handles, holes or devices. A total of some 140 waste samples, involving about 10 tonnes of domestic, commercial and industrial waste, were randomly selected at refuse stations and landfills. Plastic shopping bags in waste samples were manually picked out and sorted by a team of about 10 workmen and an inspectorate staff as the supervisor. The sources of PSB were identified by the brand names, logos, markings, or descriptions printed on the bags.

contractors. The Administration has advised that with the forthcoming implementation of the environmental levy scheme, EPD will conduct a dedicated survey on the disposal of PSB before the commencement of the scheme and annually thereafter. The disposal figures and the disposal trend so obtained would serve as a reference for the review of the effectiveness of the environmental levy scheme. EPD is also prepared to include assessment on the disposal of paper bags, garbage bags and non-woven bags, as suggested by members, as part of the annual dedicated surveys on PSB if technically feasible.

37. Regarding the use of plastic garbage bags by the Government, the Administration has advised that all bureaux and departments have been advised to reduce the use of plastic bags as far as possible. Being the Administration's main agent for providing public street cleansing and domestic waste collection service, the Food and Environmental Hygiene Department (FEHD) has taken the initiative to require its frontline staff and contractors to economize on the use of plastic garbage bags as far as practicable. As a result, the number of plastic garbage bags used has been reduced from 5.31 million in 2006 to 4.27 million in 2008. Aside from reduction at source, FEHD has recently completed the trial use of plastic garbage bags made of more environment-friendly materials. Given the satisfactory result, FEHD would adopt plastic garbage bags with at least 70% of recycled content on a full-scale basis from mid-2009 onwards.

38. The Subcommittee holds the view that a review of the levy scheme should be conducted as soon as possible to ascertain the effectiveness of the scheme and address the retail trade's concerns, including reimbursement of the administrative costs incurred by retailers, particularly the fees charged by credit cards, EPS and Octopus cards, extension of the scheme to other retail outlets, such as newspaper and magazine stands, etc. According to the Administration, it has undertaken to conduct a comprehensive review of the levy scheme one year after its implementation, and will consider whether and how to extend the scheme to other retail sectors. The review is necessary to enable a more in-depth assessment to be made on the operation and impact of the scheme. The Administration will kick start the preparation for the review in parallel with the launch of the levy scheme. The data obtained from the quarterly returns submitted by registered retailers will help assess the reduction of PSB after implementation of the scheme. The estimate on additional administrative costs involved vis-à-vis cost-savings arising from, among other things, the reduction in PSB to be provided by the retail trade will also help the Administration in considering the issue of reimbursement as part of the review.

#### Publicity programme

39. Members emphasize the need for the Administration to step up publicity to enhance public awareness of the environmental levy scheme and its implementation details to avoid confusion and possible disputes between staff of registered retailers and customers over the collection of environmental levy. Consideration should be given to setting up a hotline to handle public enquiries on

the Regulation. The Administration's explanation is that it has a publicity programme in place, including the production of new Announcements for Public Interest (API) dedicated for the launch of the levy scheme; broadcasting of the new API at television, radio and mass transport; special logo design pertaining to the levy scheme; production and distribution of publicity materials, such as posters and stickers, for registered retailer; publicity campaigns organized by green groups or other non-profit organizations. The publicity programme will be intensified in the run-up to the launch of the levy scheme. In the light of members' view, the Administration agrees to provide a dedicated hotline to handle public enquiries. The dedicated hotline will operate seven days a week for extended hours in the first three months upon the launch of the environmental levy scheme.

### **Amendments to the Regulation**

40. A set of amendments to be moved by the Administration is shown in revision mode in **Appendix IV**.

### **Recommendation**

41. The Subcommittee supports the moving of the resolution on the Regulation on 22 April 2009.

### **Advice sought**

42. Members are requested to note the deliberations and recommendation of the Subcommittee.

Prepared by  
Council Business Division 1  
Legislative Council Secretariat  
2 April 2009

**Subcommittee on  
Product Eco-responsibility (Plastic Shopping Bags) Regulation**

**Membership list**

<b>Chairman</b>	Hon Audrey EU Yuet-mee, SC, JP
<b>Members</b>	Hon Albert CHAN Wai-yip Hon Vincent FANG Kang, SBS, JP Hon LEE Wing-tat Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon WONG Ting-kwong, BBS Hon KAM Nai-wai, MH Hon CHAN Hak-kan Hon Tanya CHAN
	(Total : 9 Members)
<b>Clerk</b>	Miss Becky YU
<b>Legal Adviser</b>	Miss Kitty CHENG
<b>Date</b>	19 February 2009

**List of organizations which have made  
written and/or oral representations to the Subcommittee**

- (a) Advisory Council on the Environment
- (b) APCO Worldwide
- (c) Coalition of Hong Kong Newspaper and Magazine Merchants
- (d) Conservancy Association
- (e) Consumer Council
- (f) Democratic Alliance for Betterment and Progress of Hong Kong
- (g) Friends of the Earth (HK)
- (h) Greeners Action
- (i) Green Council
- (j) Green Manufacturing Alliance
- (k) Greenpeace
- (l) Green Power
- (m) Green.Recycling
- (n) Green Sense
- (o) Hong Kong Institution of Engineers
- (p) Hong Kong Plastic Bags Manufacturers' Association
- (q) Hong Kong Retail Management Association
- (r) Imperial Bird's Nest Co Ltd
- (s) Momentum 107
- (t) The Hong Kong and Kowloon General Merchandise Merchants' Association
- (u) Retail Task Force, Business Facilitation Advisory Committee

### Survey Results of Plastic Shopping Bags at Waste Facilities (2005)

<b>Types of Retailers</b>	<b>Million/year</b>	<b>%</b>
<b>Supermarkets and Convenience Stores</b>	<b>1,766</b>	<b>20.3</b>
<b>Bakeries and Cake Shops</b>	<b>530</b>	<b>6.1</b>
<b>Restaurants and Fast Food Shops</b>	<b>387</b>	<b>4.5</b>
<b>Newspaper and Magazine Bags</b>	<b>298</b>	<b>3.4</b>
<b>Medicare and Cosmetic Shops</b>	<b>195</b>	<b>2.2</b>
<b>Department Stores and Home Accessories Shops</b>	<b>158</b>	<b>1.8</b>
<b>Fashion and Footwear Shops</b>	<b>106</b>	<b>1.2</b>
<b>Books, Stationery, Gifts and Novelties Shops</b>	<b>61</b>	<b>0.7</b>
<b>Electrical, Electronic and Telecommunications Shops</b>	<b>35</b>	<b>0.4</b>
<b>Others<sup>1</sup></b>	<b>5,155</b>	<b>59.3</b>
<b>Total:</b>	<b>8,691</b>	<b>100</b>

<sup>1</sup> These were plastic shopping bags for which the types of retailers were not readily identifiable.

## 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 –

“criteria for a Type 1 exemption” (第 1 類豁免準則) means the criteria specified in section 8(3);

“criteria for a Type 2 exemption” (第 2 類豁免準則) means the criteria specified in section 8(5);

“exempted area” (獲豁免範圍), in relation to a registered retail outlet, means an area of the retail outlet that is exempted by the Director for the purposes of section 23 of the Ordinance;

“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) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.~~

#### **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;~~
  - ~~(a) the applicant has not complied with a requirement under section 3(1), (3) or (4);~~
  - (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) Before rejecting an application, the Director must –
- (a) give the applicant prior notice in writing of the Director's intention to do so and the reasons; and
  - (b) give the applicant an opportunity to make representations.

## **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.~~

(4) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.

## **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;~~

- (a) the applicant has not complied with a requirement under section 6(1), (3) or (4);
  - (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.
- (5) Before rejecting an application, the Director must –
- (a) give the applicant prior notice in writing of the Director's intention to do so and the reasons; and
  - (b) give the applicant an opportunity to make representations.

## 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 to the Director 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~~ based on the criteria for a Type 1 exemption or the criteria for a Type 2 exemption.

(2) An application under subsection (1) must be made in writing and in the specified form.

(3) The following are specified as the criteria for a Type 1 exemption in relation to a registered retail outlet –

(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) The following are specified as the criteria for a Type 2 exemption in relation to a registered retail outlet –

(a) the part of the area of the retail outlet to be exempted is used for the purposes of a business of a third party (not being the registered retailer) registered under the Business Registration Ordinance (Cap. 310);

- (b) that area is demarcated clearly by a counter and is used exclusively for the purposes of the third party's business;
- (c) the name, trade name, trade mark or brand name of the third party is displayed conspicuously in that area;
- (d) that area is staffed by an employee of the third party; and
- (e) all plastic shopping bags provided from that area bear the name, trade name, trade mark or brand name of the third party.

(26) For an application based on the criteria for a Type 1 exemption, the ~~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 area~~ is intended to be varied, according to the criteria for a Type 1 exemption.

(7) For an application based on the criteria for a Type 2 exemption, the specified form must be accompanied by a floor plan of the retail outlet indicating which part of the area of the retail outlet is intended to be exempted, or how an exempted area is intended to be varied, according to the criteria for a Type 2 exemption.

(38) 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.

(49) 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.~~

(10) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.

**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;~~

(a) the applicant has not complied with a requirement under section 8(1), (2), (6), (7), (9) or (10);

(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).~~

(c) the retail outlet does not meet the following –

(i) if the application is based on the criteria for a Type 1 exemption, any of the criteria for a Type 1 exemption; or

(ii) if the application is based on the criteria for a Type 2 exemption, any of the criteria for a Type 2 exemption.

~~(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.~~

~~(53)~~ 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;~~

~~(i) if the application is based on the criteria for a Type 1 exemption, all the conditions set out in subsection (4); or~~

~~(ii) if the application is based on the criteria for a Type 2 exemption, all the conditions set out in subsection (5);~~

~~(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.

(4) For the purposes of subsection (3)(a)(i), if the application is based on the criteria for a Type 1 exemption, the following are the conditions to which

the exemption, or variation of the exemption, of part of the area of the registered retail outlet is subject –

- (a) the retail outlet continues to meet the criteria for a Type 1 exemption;
- (b) plastic shopping bags may be provided from such an exempted area without payment of the charge required by section 23(1) of the Ordinance only if –
  - (i) they are provided to customers who make payment for non-specified goods in that area; and
  - (ii) the number of bags so provided is not more than necessary for carrying those goods; and
- (c) such other conditions as the Director may reasonably impose from time to time.

(5) For the purposes of subsection (3)(a)(ii), if the application is based on the criteria for a Type 2 exemption, the following are the conditions to which the exemption, or variation of the exemption, of part of the area of the registered retail outlet is subject –

- (a) the retail outlet continues to meet the criteria for a Type 2 exemption;
- (b) plastic shopping bags may be provided from such an exempted area without payment of the charge required by section 23(1) of the Ordinance only if –
  - (i) they are provided to customers who purchase the goods offered for sale by the third party concerned in that area; and
  - (ii) the number of bags so provided is not more than necessary for carrying those goods; and
- (c) such other conditions as the Director may reasonably impose from time to time.

(6) The Director must also give the applicant notice in writing of any conditions imposed under subsection ~~(5)(a)(iii)~~ (4)(c) or (5)(c).

(7) Before imposing any conditions under subsection (4)(c) or (5)(c), the Director must –

(a) give the applicant prior notice in writing of the conditions that the Director intends to impose; and

(b) give the applicant an opportunity to make representations as to why the conditions should not be imposed.

~~(78)~~ 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.

(9) Before rejecting an application, the Director must –

(a) give the applicant prior notice in writing of the Director's intention to do so and the reasons; and

(b) give the applicant an opportunity to make representations.

(10) An exemption, or variation of an exemption, approved under this section applies only to the registered retailer by whom the application is made.

## **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) Before revoking an exemption under subsection (1), the Director must –

- (a) give the registered retailer prior notice in writing of the Director's intention to do so and the reasons; and
- (b) give that retailer an opportunity to make representations.

(56) 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)~~ 9(4)(c) or (5)(c);
- (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, except for any bags to be provided from an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption;
- (b) the total number of plastic shopping bags provided directly or indirectly to customers during that 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; –~~
  - (i) the retail outlet; or
  - (ii) if there is an exempted area in the retail outlet, any area of the retail outlet that is not exempted; and

(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.~~

(4) In relation to a quarter in which the application for registration or deregistration in respect of a retail outlet is approved, the return for that quarter must also specify the date on which the retail outlet becomes registered or deregistered.

### **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, except for any bags provided from an exempted area of the retail outlet; ~~and~~

(b) the amount charged for those bags ~~(if any)~~ by the retailer under section 23(1) of the Ordinance ~~in that transaction;~~

(bc) the number of plastic shopping bags contained in each shipment of plastic shopping bags to the retail outlet,

except for any bags to be provided from an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption; and

- (*ed*) the number of plastic shopping bags procured by the retailer and relating to each shipment referred to in paragraph (*bc*).

### **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.