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By Fax (2511 3658)

27 February 2009

Mr Alfred Lee
Assistant Director (Waste Management Policy)
Environmental Protection Department
46/F, Revenue Tower
5 Gloucester Road
Wan Chai, Hong Kong

Dear Mr Lee,

**Product Eco-responsibility (Plastic Shopping Bags) Regulation
- Specified Forms**

Further to my letter dated 25 February 2009, I would be pleased if you include your advice on the following questions in your reply.

Question 1

Under section 3(1) of the Product Eco-responsibility (Plastic Shopping Bags) Regulation ("the Regulation"), a prescribed retailer is required to make his application for registration as a registered retailer "in writing and in the specified form". The Administration is of the view that non-compliance with this requirement will result in the application being treated as not properly made (para. 2 of your reply on the effect of section 3(4), LC Paper No. CB(1) 829/08-09(04)). Under section 4(2), the Director of Environment Protection ("the Director") may reject the application if he *considers* that the application is not properly made.

Whether or not an application is made in specified form seems to be a factual question, whereas the consequence of the application being treated as not properly made is a matter of law under section 3(4) but not subject to the discretion of the Director.

The effect of section 4(2), however, seems to be that the Director has a duty to consider and hence form an opinion on the question of whether the application

is properly made. If an application is not made in specified form, does the Director have any discretion to say whether the application is, or is not, to be treated as properly made? Please clarify.

Please also clarify the above query with respect to applications for deregistration and applications for exemption as the same drafting formula is used the provisions relating to these applications (sections 6(4), 7(2), 8(5) and 9(2)).

Question 2

Section 37(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides the following -

"Where any form is prescribed by or under any Ordinance, deviations therefrom, not affecting the substance of such form, shall not invalidate it."

"Prescribed forms" usually refer to the forms prescribed by or under the law and have legislative effect. The Legislative Council may scrutinize prescribed forms by way of positive or negative vetting procedure.

Under the Regulation, the consequence of making applications not in specified forms (which are made administratively) seems to be more serious than that arising from deviations from prescribed forms as provided in section 37(1) of Cap. 1. Please explain the reason for imposing a more stringent requirement with respect to the use of forms in the Regulation.

I would be grateful if you could me have your reply in bilingual form before 12 March 2009.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

cc. Legal Adviser
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