

Product Eco-responsibility Bill

Proposed Committee Stage Amendments (First Batch)

This paper presents the first batch of the Administration's proposed Committee Stage Amendments (CSAs) to the Product Eco-responsibility Bill in response to suggestions made by the Bills Committee. The reasons for proposing these CSAs have been explained in LC Papers No. CB(1)1223/07-08(01), CB(1)1254/07-08(02) and CB(1)1655/07-08(02).

2. The first batch of the proposed CSAs covers the following clauses.

Clause 2(1)(b)	To include a reference to the "polluter pays" principle and to change "and" to "or". [See LC Paper No. CB(1)1655/07-08(02), para. 1]
Clause 4	To put it beyond doubt that Part 2 of the Bill only applies in relation to plastic shopping bags. [See LC Paper No. CB(1)1655/07-08(02), paras. 5-7]
Clause 5(1A) and (1)	To put it beyond doubt that the general provisions in clause 5 only supplement the regulation-making provision in clause 27. [See LC Paper No. CB(1)1655/07-08(02), paras. 5-7]
Clause 6(1)	To specify Environmental Protection Inspector as the minimum rank of an authorized officer under the Bill. [See LC Paper No. CB(1)1655/07-08(02), paras.

	2-4]
Clause 8(3)(b)(iii)	To revise the Chinese text to improve readability.
Clause 9(4)	To revise the Chinese text to improve readability.
Clause 11	To revise the rendition of the term “director” (董事) in the Chinese text. [See LC Paper No. 1223/07-08(01), p. 7]
Clause 17	To put it beyond doubt that the meaning of providing a plastic shopping bag includes giving it free of charge and selling it at a price. [See LC Paper No. 1254/07-08(02)]
Clause 19(6)	To include additional grounds for a registered retailer to apply for deregistration. [See LC Paper No. 1223/07-08(01), p. 12]
Clause 22(1)	To put it beyond doubt that a customer to whom a plastic shopping bag is provided must be charged for the bag. [See LC Paper No. 1223/07-08(01), p. 12]
Clause 25(2) and (2A)	To set a time limit for the service of an assessment notice demanding payment of assessed levies. [See LC Paper No. 1223/07-08(01), p. 14]

3. The draft of the proposed CSAs to the above clauses of the Bill is set out in marked-up form at Annex for Members’ consideration.

Environmental Protection Department
May 2008

**Proposed Committee Stage Amendments (First Batch)
to the Product Eco-responsibility Bill**

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

Clause	Proposed CSAs in marked-up form
<p>5(1A) and (1) <i>(continued)</i></p>	<ul style="list-style-type: none"> <li data-bbox="639 322 1337 454">(a) apply generally or be limited in its application by reference to specified exceptions or factors; <li data-bbox="639 490 1337 622">(b) make different provisions for different circumstances and provide for a particular case or class of cases; <li data-bbox="639 658 1337 790">(c) empower the Secretary or Director to grant exemptions from any requirement, either generally or in a particular case; <li data-bbox="639 826 1337 958">(d) provide for the performance by the Director or an authorized officer of any function under the regulation; <li data-bbox="639 994 1337 1126">(e) authorize any matter or thing to be determined, applied or administered by a specified person or group of persons; <li data-bbox="639 1162 1337 1294">(f) prescribe any matter that by this Ordinance is required or permitted to be prescribed by a regulation; <li data-bbox="639 1330 1337 1597">(g) provide for such incidental, consequential, evidential, transitional, savings and supplemental provisions as are necessary or expedient for giving full effect to the provisions of this Ordinance; <li data-bbox="639 1632 1337 1765">(h) generally provide for the better carrying out of the provisions and purposes of this Ordinance.

Clause	Proposed CSAs in marked-up form
6(1)	<p>6. Authorized officers</p> <p>(1) The Director may, in writing, authorize any public officer to perform any of the functions of the Director or an authorized officer under this Ordinance as the Director may specify in the authorization.</p> <p><u>(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.</u></p>
8(3)(b)(iii)	<p>(iii) an authorized officer apprehends on reasonable grounds that entry to the premises is unlikely to be granted unless a warrant is issued; or</p> <p>(iii) 獲授權人員有合理理由<u>意恐預料</u>，除非有手令發出，否則相當<u>不可能</u><u>不獲批准</u>進入該處所；或</p>
9(4)	<p>(4) It is a defence to a charge under subsection (3) for the person charged to prove that he did not know and could not with due diligence have ascertained the material particular.</p> <p>(4) 被控犯第(3)款所訂罪行的人，如證明他不知道有關要項，而且縱使他作出應有努力，亦<u>不會能將無法</u>確定該要項，即可以此作為免責辯護。</p>

Clause	Proposed CSAs in marked-up form
11	<p>11. Offences by body corporate</p> <p>If –</p> <ul style="list-style-type: none"> (a) a body corporate commits an offence under this Ordinance; and (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director of, or a person concerned in the management of, the body corporate, <p>the director or that person also commits the offence and is liable on conviction to the penalty provided.</p> <p>11. 法人團體所犯罪行</p> <p>如 —</p> <ul style="list-style-type: none"> (a) 法人團體犯本條例所訂罪行；而 (b) 該罪行經證明是在該法人團體的<u>高級人員董事</u>或涉及該法人團體的管理的人的同意或縱容下犯的，或干犯該罪行是可歸因於該<u>高級人員董事</u>或該人的疏忽的， <p>則該<u>高級人員董事</u>或該人亦屬犯該罪行，一經定罪，可處規定的刑罰。</p>

Clause	Proposed CSAs in marked-up form
17	<p>17. Interpretation of Part 3</p> <p>(1) In this Part, unless the context otherwise requires –</p> <p>“certificate of registration” (登記證明書) means a certificate of registration issued under section 21(1);</p> <p>“levy” (徵費) means a levy mentioned in section 18(3);</p> <p>“prescribed retailer” (訂明零售商) means a retailer to which this Part applies according to section 19(1);</p> <p>“qualified retail outlet” (合資格零售店) has the meaning given by section 1(2) of Schedule 4;</p> <p>“registered retail outlet” (登記零售店) has the meaning given by subsection (2);</p> <p>“registered retailer” (登記零售商) means a person who made an application for registration under section 19(3) that has been approved under section 19(7);</p> <p>“regulation” (《規例》) means any regulation made under section 27.</p> <p>(2) For the purposes of this Part, a retail outlet is and remains as a registered retail outlet of a retailer if –</p> <p>(a) it has been a qualified retail outlet in respect of which the retailer has applied for registration under section 19(3);</p> <p>(b) that application has been approved under section 19(7); and</p>

Clause	Proposed CSAs in marked-up form
<p>17 <i>(continued)</i></p>	<p>(c) no application for deregistration in respect of the outlet has been approved under section 19(7), whether or not the outlet continues to be a qualified retail outlet.</p> <p><u>(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.</u></p>
<p>19(6)</p>	<p>(6) A registered retailer may apply to the Director for deregistration in respect of a registered retail outlet of that retailer in accordance with the regulation if –</p> <p>(a) that retailer ceases to carry on a retail business in that outlet;or</p> <p>(b) that outlet is no longer a qualified retail outlet;</p> <p><u>(c) that retailer ceases to provide plastic shopping bags from that outlet; or</u></p> <p><u>(d) that retailer is no longer a prescribed retailer.</u></p>

Clause	Proposed CSAs in marked-up form
22(1)	<p>22. Duty of registered retailers to charge for plastic shopping bags</p> <p>(1) A registered retailer shall charge <u>a customer</u> an amount of not less than the levy for each plastic shopping bag provided directly or indirectly to <u>a</u>the customer from –</p> <ul style="list-style-type: none"> (a) a registered retail outlet of that retailer; or (b) if part of the area of the outlet is exempted by the Director for the purposes of this section in accordance with subsection (3), any area of the outlet that is not so exempted.
25(2) and (2A)	<p>(2) The Director may at any time replace an assessment notice with another assessment notice served for that purpose.</p> <p><u>(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.</u></p>