

PRODUCT ECO-RESPONSIBILITY BILL

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A BILL

To

Introduce measures to minimize the environmental impact of certain types of products; and to provide for related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Product Eco-responsibility Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Purposes of this Ordinance

(1) The purposes of this Ordinance are—

(a) to minimize the environmental impact of various types of products, which may include plastic shopping bags, vehicle tyres, electrical and electronic equipment, packaging materials, beverage containers and rechargeable batteries; and

(b) to that end, to introduce producer responsibility schemes 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 the recovery, recycling and proper disposal, of those products.

(2) Such schemes or measures may include (but are not limited to) the following—

- (a) a product take-back scheme under which a manufacturer, importer, wholesaler or retailer is required to collect certain products for proper waste management;
- (b) a deposit-refund scheme under which a consumer is required to pay a deposit to be refunded on the return of certain products to a specified collection point;
- (c) the imposition of a recycling fee to finance the proper waste management of certain products;
- (d) the imposition of an environmental levy to discourage the use of certain products; and
- (e) the restriction on the disposal of certain products at any designated waste disposal facility as defined in section 2 of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L).

3. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“authorized officer” (獲授權人員) means a public officer authorized under section 6;

“Director” (署長) means the Director of Environmental Protection;

“plastic shopping bag” (塑膠購物袋) means a plastic shopping bag to which this Ordinance applies according to section 18;

“prescribed product” (訂明產品) means any product mentioned in section 4;

“product” (產品) includes any article, material and substance;

“Secretary” (局長) means the Secretary for the Environment.

(2) In this Ordinance, unless the context otherwise requires—

- (a) a reference to any product includes a reference to any part of the product;
- (b) a reference to a function includes a reference to a power and a duty; and
- (c) a reference to the performance of a function includes a reference to the exercise of a power and the discharge of a duty.

PART 2**PRESCRIBED PRODUCTS: GENERAL PROVISIONS****Division 1—Application****4. Prescribed products to which Part 2 applies**

This Part applies in relation to any of the following products, namely, plastic shopping bags.

Division 2—Regulations: general powers**5. General provisions as to any regulation made under this Ordinance**

(1) A regulation made under any provision of this Ordinance may do all or any of the following—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) make different provisions for different circumstances and provide for a particular case or class of cases;
- (c) empower the Secretary or Director to grant exemptions from any requirement, either generally or in a particular case;
- (d) provide for the performance by the Director or an authorized officer of any function under the regulation;
- (e) authorize any matter or thing to be determined, applied or administered by a specified person or group of persons;
- (f) prescribe any matter that by this Ordinance is required or permitted to be prescribed by a regulation;
- (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;
- (h) generally provide for the better carrying out of the provisions and purposes of this Ordinance.

(2) A regulation may make it an offence for a person to do or omit to do any specified act and may authorize—

- (a) the imposition of a fine, not exceeding \$500,000, for such an offence;

- (b) if the offence is a continuing one, the imposition of a further fine of \$10,000 for each day or part of a day during which the offence has continued; and
- (c) the imposition of a sentence of imprisonment for a period of not more than 12 months.

Division 3—Enforcement

6. Authorized officers

(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.

(2) When performing a function under this Ordinance, an authorized officer must, if required, produce his written authorization granted under this section.

(3) An authorized officer performing a function under this Ordinance may take with him such persons as he reasonably requires to assist him in the performance of the function.

7. Powers to obtain information and samples

(1) An authorized officer may, in relation to any record or document required to be kept by a person under this Ordinance, do all or any of the following—

- (a) require the person to produce the record or document for inspection;
- (b) require the person to provide all reasonable assistance, information or explanations in connection with the record or document;
- (c) remove and retain the record or document for such period as may be reasonably necessary for further examination or reproduction, or until the relevant proceedings under this Ordinance have been heard and finally determined.

(2) If an authorized officer reasonably believes that information relating to any levy or fee imposed under this Ordinance is possessed by a person, the officer may require the person to provide the information.

(3) Subject to subsection (4), an authorized officer may take samples of any products for the purpose of ascertaining whether any provision of this Ordinance is contravened.

(4) If required by the person having the lawful custody of such products, the authorized officer shall pay for—

- (a) the market price of the samples he proposes to take; or

(b) if the market price is unknown or not readily ascertainable, a reasonable price of those samples.

(5) For the avoidance of doubt, a person is not liable for breach of any duty of confidentiality arising from the disclosure of any information that he is required to provide under this Ordinance.

(6) An authorized officer must not disclose any record, document or information produced or provided to him under this section unless he is satisfied that it is necessary to make the disclosure for the purposes of any proceedings under this Ordinance.

(7) In this section, a reference to a person includes a reference to anyone acting for or on behalf of the person.

8. Power of entry and search

(1) Subject to subsection (2), an authorized officer may enter and search a place if he reasonably believes that—

(a) an offence against this Ordinance has been or is being committed in the place; or

(b) there is in the place anything that constitutes, or is likely to constitute, evidence that an offence against this Ordinance has been or is being committed.

(2) Except with the consent of the occupier or person in charge of any domestic premises, an authorized officer shall not enter or search those premises without a warrant issued by a magistrate.

(3) A magistrate may issue a warrant authorizing an authorized officer to enter and search any domestic premises only if—

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

(i) an offence against this Ordinance has been or is being committed in the premises; or

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

(b) the magistrate is satisfied that—

(i) it is not practicable to communicate with a person entitled to grant entry to the premises;

(ii) such a person has unreasonably refused entry to the premises by an authorized officer;

(iii) an authorized officer apprehends on reasonable grounds that entry to the premises is unlikely to be granted unless a warrant is issued; or

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

(4) An authorized officer who enters any place under this section must, if entry is by warrant, produce that warrant.

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

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

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

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

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

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

(8) In this section—

“domestic premises” (住用處所) means any premises that are constructed or intended to be used for habitation;

“place” (地方) includes any vehicle and vessel.

Division 4—Offences

9. Providing false information, etc.

(1) A person who, in purported compliance with this Ordinance, produces or provides any record, document or information that is false, incorrect or misleading in any material particular commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

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

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

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

(3) A person who omits any material particular from any record, document or information required to be produced or provided by him under this Ordinance commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

(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.

10. Obstructing authorized officers, etc.

A person who—

- (a) wilfully obstructs or delays an authorized officer in the performance of any of his functions under this Ordinance; or
- (b) without reasonable excuse, fails to comply with any requirement properly made to him by an authorized officer under this Ordinance,

commits an offence and is liable on conviction to a fine of \$200,000.

11. Offences by body corporate

If—

- (a) a body corporate commits an offence under this Ordinance; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director of, or a person concerned in the management of, the body corporate,

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

Division 5—Appeals

12. Interpretation of Division 5 of Part 2

In this Division—

“appeal” (上訴) means an appeal made under section 13;

“Appeal Board” (上訴委員會) means the Appeal Board established by section 14(1);

“Chairman” (主席) means the Chairman of the Appeal Board appointed under section 14(2) and includes any person acting as the Chairman under section 16;

“Deputy Chairman” (副主席) means the Deputy Chairman of the Appeal Board appointed under section 14(4);

“legally qualified” (具所需法律資格) means qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336);

“panel member” (備選委員) means a member of the panel of persons appointed under section 14(3).

13. Appeals

(1) A person who is aggrieved by a decision of a public officer relating to any of the matters specified in subsection (2) may, within 21 days after the date on which the notice about that matter is served on him, appeal to the Appeal Board by giving a notice of appeal to the Director stating the reasons for the appeal.

(2) The following matters are specified for the purposes of subsection (1)—

- (a) rejection of an application for registration or deregistration in respect of a retail outlet under section 19;
- (b) rejection of an application for the exemption of part of the area of a registered retail outlet for the purposes of section 22;
- (c) an assessment notice served under section 25; and
- (d) any matter that is—
 - (i) provided by a regulation made under this Ordinance; and
 - (ii) specified in the regulation as a matter on which an appeal may be made under this section.

14. Constitution of Appeal Board

(1) There is established an Appeal Board for the purpose of hearing and determining an appeal.

(2) The Chief Executive shall appoint as Chairman of the Appeal Board a person who is legally qualified and not a public officer.

(3) The Chief Executive shall also appoint a panel of persons whom he considers to be suitable for appointment as members of the Appeal Board and who are not public officers.

(4) The Chief Executive shall appoint as Deputy Chairman of the Appeal Board one of the panel members who is legally qualified.

(5) The Chairman, the Deputy Chairman and a panel member shall be appointed for a term of not more than 3 years but may be reappointed.

(6) Every appointment under this section must be published in the Gazette.

15. Exercise of Appeal Board's jurisdiction

(1) The jurisdiction of the Appeal Board on an appeal shall be exercised by the Chairman and such number of panel members as the Chairman may appoint for the appeal.

(2) On an appeal, the Appeal Board may confirm, reverse or vary a decision under appeal.

- (3) Every question before the Appeal Board shall be determined by the opinion of the majority of the Chairman and the panel members hearing the appeal except a question of law which shall be determined by the Chairman.
- (4) In the event of an equality of votes, the Chairman has a casting vote.
- (5) The Appeal Board may—
 - (a) receive evidence on oath;
 - (b) admit or take into account any statement, document, information or matter whether or not it would be admissible as evidence in a court of law;
 - (c) by notice in writing summon any person to appear before it to produce any document or to give evidence; and
 - (d) award such amount for costs in an appeal as is just and equitable in the circumstances of the case.
- (6) The party awarded any costs may enforce the award as a civil debt.
- (7) Costs awarded against the Director or an authorized officer are charged on the general revenue.
- (8) The Chairman may determine any form or matter of practice or procedure in so far as no provision is made for it in this Ordinance.

16. Supplementary provisions as to Appeal Board

- (1) If the Chairman is precluded by any cause from performing his functions during any period, the Deputy Chairman shall act as Chairman and as such to perform all of the functions of the Chairman during that period.
- (2) If both the Chairman and the Deputy Chairman are precluded by any cause from performing their functions during any period, the Chief Executive may appoint any other person who is legally qualified and not a public officer to act as Chairman and as such to perform all of the functions of the Chairman during that period.
- (3) If a panel member appointed under section 15 to hear an appeal is precluded by any cause from performing his functions during any period, the Chairman may appoint any other panel member to act in his place during that period.
- (4) The Chairman, the Deputy Chairman or any panel member may at any time resign his office by notice in writing to the Chief Executive.
- (5) The hearing of an appeal may be continued notwithstanding any change in the membership of the Appeal Board as if the change had not occurred.
- (6) A person may not be appointed as a member of the Appeal Board before which the hearing of an appeal has been commenced without the consent of the parties to the appeal.
- (7) The Chairman may, before an appeal is determined, refer a question of law to the Court of Appeal by way of case stated.

(8) In addition to the other powers of the Court of Appeal in hearing a case stated, the Court of Appeal may amend the case or order it to be sent back to the Chairman for amendment.

PART 3

PLASTIC SHOPPING BAGS

Division 1—Interpretation

17. Interpretation of Part 3

(1) In this Part, unless the context otherwise requires—
“certificate of registration” (登記證明書) means a certificate of registration issued under section 21(1);
“levy” (徵費) means a levy mentioned in section 18(3);
“prescribed retailer” (訂明零售商) means a retailer to which this Part applies according to section 19(1);
“qualified retail outlet” (合資格零售店) has the meaning given by section 1(2) of Schedule 4;
“registered retail outlet” (登記零售店) has the meaning given by subsection (2);
“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);
“regulation” (《規例》) means any regulation made under section 27.

(2) For the purposes of this Part, a retail outlet is and remains as a registered retail outlet of a retailer if—

- (a) it has been a qualified retail outlet in respect of which the retailer has applied for registration under section 19(3);
- (b) that application has been approved under section 19(7); and
- (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.

Division 2—Levy on plastic shopping bags and registration of prescribed retailers

18. Levy on plastic shopping bags

(1) Subject to subsection (2), a bag prescribed in Schedule 1 is a plastic shopping bag to which this Ordinance applies.

(2) This Ordinance does not apply to the plastic shopping bags prescribed in Schedule 2.

(3) A levy set out in Schedule 3 is payable by a registered retailer to the Government according to section 23 for each plastic shopping bag that he provides to a customer.

(4) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 1, 2 or 3.

19. Restrictions on provision of plastic shopping bags by, and registration of, prescribed retailers

(1) This Part applies to a retailer prescribed in Schedule 4.

(2) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 4.

(3) A prescribed retailer, or a person who proposes to be a prescribed retailer, may apply to the Director for registration as a registered retailer in respect of a qualified retail outlet of that retailer or person in accordance with the regulation.

(4) A prescribed retailer shall ensure that no plastic shopping bag, or nothing that can be easily turned into a plastic shopping bag, is provided directly or indirectly to a customer from a qualified retail outlet of that retailer unless the outlet is a registered retail outlet.

(5) A prescribed retailer who contravenes subsection (4) commits an offence and is liable—

(a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and

(b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.

(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—

(a) that retailer ceases to carry on a retail business in that outlet; or

(b) that outlet is no longer a qualified retail outlet.

(7) The Director may approve or reject an application under subsection (3) or (6) in accordance with the regulation.

(8) If an appeal is made under Division 5 of Part 2 against a decision of the Director under this section, the appeal does not affect the operation of the decision pending the determination of the appeal unless the Director decides otherwise.

20. Director to maintain register

(1) The Director must maintain a register, in such form as he may determine, containing—

- (a) the name and address of each registered retailer; and
 - (b) the name (if different) and address of each registered retail outlet of that retailer.
- (2) The Director must make the register available for inspection by the public, free of charge, during office hours at the office of the Director.

Division 3—Obligations of registered retailers

21. Display of certificate of registration

(1) The Director shall issue a certificate of registration to a registered retailer in respect of each registered retail outlet of that retailer.

(2) A registered retailer shall ensure that a certificate of registration is displayed in a prominent position of the registered retail outlet to which the certificate relates.

(3) A person shall not—

- (a) display a certificate of registration at a place that is not a registered retail outlet to which the certificate relates; or
- (b) display a certificate of registration that has been forged, falsified or cancelled at any place.

(4) A person who contravenes subsection (2) or (3) commits an offence and is liable—

- (a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.

22. Duty of registered retailers to charge for plastic shopping bags

(1) A registered retailer shall charge an amount of not less than the levy for each plastic shopping bag provided directly or indirectly to a customer from—

- (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.

(2) A registered retailer may, for the purposes of this section, apply to the Director for the exemption of part of the area of a registered retail outlet of that retailer in accordance with the regulation.

(3) The Director may approve or reject an application under subsection (2) in accordance with the criteria prescribed by the regulation.

(4) If an appeal is made under Division 5 of Part 2 against a decision of the Director under this section, the appeal does not affect the operation of the decision pending the determination of the appeal unless the Director decides otherwise.

(5) A registered retailer shall ensure that no rebate or discount is offered to any customer with the effect of directly offsetting the amount charged under subsection (1) or any part of it.

(6) A registered retailer who contravenes subsection (1) or (5) commits an offence and is liable—

- (a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.

23. Returns and payment of levies

(1) A registered retailer shall ensure that—

- (a) any return required by the regulation in respect of the retailer, or each registered retail outlet of the retailer, is submitted to the Director at such frequency as prescribed by the regulation unless the Director agrees otherwise;
- (b) any such return is submitted to the Director in such manner and within such time limit as prescribed by the regulation; and
- (c) any such return states—
 - (i) the information required by the regulation in respect of the plastic shopping bags provided by the retailer during the period to which the return relates; and
 - (ii) the total amount of levies payable for those bags.

(2) A registered retailer shall also pay to the Government, through a method prescribed by the regulation, the total amount of levies stated in a return on or before the date by which the return is required to be submitted to the Director under this section.

(3) A registered retailer who contravenes subsection (1) or (2) commits an offence and is liable—

- (a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.

(4) A registered retailer who is convicted of an offence under subsection (3) in respect of any amount of levies he has failed to pay is also liable to pay—

- (a) a surcharge of 5% of the amount of levies that are outstanding on the due date referred to in subsection (2); and
- (b) an additional surcharge of 10% of the total amount of levies and the surcharge referred to in paragraph (a) that are outstanding at the expiry of 6 months after the due date referred to in subsection (2).

(5) Any outstanding amount of levies or surcharges payable under this section is recoverable as a civil debt due to the Government.

24. Record keeping

(1) A registered retailer shall ensure that such records and documents as prescribed by the regulation relating to each return submitted under section 23 are kept for not less than 5 years from the end of the calendar year to which the return relates.

(2) A registered retailer who contravenes subsection (1) commits an offence and is liable—

- (a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.

25. Assessment notice

(1) If a registered retailer contravenes section 23(1), or the Director reasonably believes that any amount of levies stated in a return in respect of a period submitted by the retailer under that section is false, incorrect or misleading, the Director may—

- (a) assess the amount of levies payable for the plastic shopping bags provided by the retailer during that period; and
- (b) serve an assessment notice on the retailer demanding payment of that assessed amount or, if the retailer has already paid part of that amount under section 23, the balance of that amount.

(2) The Director may at any time replace an assessment notice with another assessment notice served for that purpose.

(3) Any assessment notice served under this section must also state—

- (a) the reasons for serving the notice;
- (b) how the amount of levies assessed by the Director is calculated;
- (c) when and how payment is to be made; and
- (d) the right of the registered retailer to appeal against the notice.

(4) A registered retailer shall pay the amount of the demanded levies under an assessment notice on or before the 21st day after the date on which the notice is served.

- (5) A registered retailer who contravenes subsection (4) commits an offence and is liable—
- (a) to a fine of \$200,000 on the first occasion on which he is convicted of the offence; and
 - (b) to a fine of \$500,000 on each subsequent occasion on which he is convicted of the offence.
- (6) A registered retailer who is convicted of an offence under subsection (5) is also liable to pay—
- (a) a surcharge of 5% of the amount of levies that are outstanding on the due date referred to in subsection (4); and
 - (b) an additional surcharge of 10% of the total amount of levies and the surcharge referred to in paragraph (a) that are outstanding at the expiry of 6 months after the due date referred to in subsection (4).
- (7) Any outstanding amount of levies or surcharges payable under this section is recoverable as a civil debt due to the Government.
- (8) If an appeal is made under Division 5 of Part 2 against an assessment notice served under this section, any amount of levies or surcharges remains payable under this section pending the determination of the appeal unless the Director decides otherwise.
- (9) The Director may at any time withdraw an assessment notice served under this section by serving a withdrawal notice to that effect.
- (10) Any notice under this section is regarded as duly served when it is sent by post to the last address provided by the registered retailer to the Director.

Division 4—Defence to offences under Part 3

26. Defence to offences

It is a defence to a charge under section 19(5), 21(4), 22(6), 23(3), 24(2) or 25(5) for a person charged to prove that he exercised due diligence to avoid the commission of the offence.

Division 5—Regulations

27. Secretary may make regulations in respect of Part 3

The Secretary may, after consultation with the Advisory Council on the Environment, make regulations for and with respect to all or any of the following matters—

- (a) application for registration and deregistration in respect of a retail outlet under section 19, and the determination of such an application;
- (b) application for the exemption of part of the area of a registered retail outlet for the purposes of section 22, and the criteria in accordance with which the Director may determine such an application;
- (c) submission of returns and payment of levies by registered retailers;
- (d) records and documents to be kept by registered retailers;
- (e) such supplemental provisions as are necessary or expedient for giving full effect to the provisions of this Part;
- (f) any matter ancillary or incidental to those specified in this section.

SCHEDULE 1

[s. 18(1) & (4)]

PLASTIC SHOPPING BAGS TO WHICH THIS
ORDINANCE APPLIES**1. Meaning of plastic shopping bags**

- (1) A bag is a plastic shopping bag to which this Ordinance applies if—
 - (a) it is made wholly or partly of plastic; and
 - (b) there is any hole, perforation, handle or string on or attached to it.
- (2) For the purposes of subsection (1)(a), “plastic” (塑膠) includes polyethylene, polypropylene, polyvinyl chloride and nylon.

SCHEDULE 2

[s. 18(2) & (4)]

PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE
DOES NOT APPLY**1. Plastic shopping bags excluded from application of this Ordinance**

- This Ordinance does not apply to the following plastic shopping bags—
- (a) a bag that is sold at a price of \$5.00 or more;

- (b) 2 or more bags that are sold as a pre-packaged pack at a price of \$5.00 or more per pack;
- (c) a bag that—
 - (i) contains either unpackaged goods or more than one item of goods; and
 - (ii) is sealed before the goods are supplied to the retailer concerned.

SCHEDULE 3

[s. 18(3) & (4)]

LEVY ON PLASTIC SHOPPING BAGS

50 cents per plastic shopping bag

SCHEDULE 4

[ss. 17(1) & 19(1) & (2)]

PRESCRIBED RETAILERS TO WHOM PART 3 OF THIS ORDINANCE APPLIES

1. **Meaning of prescribed retailers**

(1) A person is a retailer prescribed for the purposes of section 19(1) of this Ordinance if he carries on a retail business at—

- (a) 2 or more qualified retail outlets in Hong Kong; or
- (b) one qualified retail outlet in Hong Kong that has a retail floor area of not less than 200 square metres.

(2) A retail outlet is a qualified retail outlet if the goods offered for sale in the outlet include—

- (a) any food or drink;
- (b) any medicine or first-aid item; and
- (c) any personal hygiene or beauty product.

(3) If a retail business is carried on under a franchise agreement, the franchiser is the person who carries on that business for the purposes of subsection (1) unless the Director agrees otherwise.

2. **Definitions**

In this Schedule—

“drink” (飲品) means any liquid suitable or intended for human consumption, either without or after dilution, and includes water;

“food” (食物)—

- (a) includes snack, confectionary, chewing gum, and any article or substance used as an ingredient in the preparation of food; and
- (b) excludes any drink, live animal, fodder or feeding stuff for animals, and any article or substance used only as medicine;

“medicine” (藥物) excludes any article or substance customarily consumed only as food or drink;

“retail floor area” (零售樓面面積)—

- (a) means the total floor area of any enclosed space at a retail outlet that is accessible by a customer;
- (b) includes any area used as a passageway or occupied by a cashier, shelf, rack or goods on display; and
- (c) excludes any area used as an office or for storage of stock.

Explanatory Memorandum

The objects of this Bill are—

- (a) to lay down a statutory framework for introducing measures to minimize the environmental impact of certain types of products; and
- (b) as the first regulatory scheme to be implemented for that purpose, to provide for the imposition of a levy on certain retailers for the provision of plastic shopping bags.

Part 1—Preliminary

2. Apart from the commencement and interpretation provisions (clauses 1 and 3), Part 1 contains a purpose clause, which explains that this Bill aims at minimizing the environment impact of various types of products by introducing producer responsibility schemes or other measures that may require different parties to share the responsibility for the reduction in the use, and the recovery, recycling and proper disposal, of the products (clause 2).

Part 2—Prescribed products: general provisions

3. Part 2 sets out the general provisions that are applicable to all products to be regulated by this Bill.

4. In Division 1, clause 4 lists out the prescribed products to which Part 2 applies. Currently, only plastic shopping bags are specified in that clause.

5. Division 2 sets out the general provisions that are applicable to any regulation to be made under this Bill (clause 5).

6. Under Division 3, the Director of Environmental Protection (“the Director”) may authorize a public officer to perform any such statutory functions under this Bill as the Director may specify (clause 6). An authorized officer is given the power to obtain information and samples and the power of entry and search for enforcing this Bill (clauses 7 and 8).

7. Division 4 makes it an offence for a person to provide false information or to obstruct an authorized officer in the performance of his functions under this Bill (clauses 9 and 10).

8. Division 5 provides for the constitution of an Appeal Board for hearing and determining an appeal against certain decisions under this Bill (clauses 12 to 16).

Part 3—Plastic shopping bags

9. Part 3 sets out the regulatory scheme that introduces a levy on plastic shopping bags.

10. Division 1 lists out the definitions for Part 3 (clause 17). Division 2 provides for—

- (a) the meaning of a plastic shopping bag as prescribed in Schedule 1;
- (b) the excluded plastic shopping bags as prescribed in Schedule 2; and
- (c) the levy payable for a plastic shopping bag as prescribed in Schedule 3.

Those Schedules may be amended by the Secretary for the Environment (“the Secretary”) after consultation with the Advisory Council on the Environment (clause 18).

11. A prescribed retailer who falls within the description in Schedule 4 is not allowed to provide plastic shopping bags to his customers from a qualified retail outlet unless the outlet is a registered retail outlet. Contravention of that requirement is an offence. The Secretary may, after consultation with the Advisory Council on the Environment, amend Schedule 4 (clause 19).

12. Division 3 sets out the obligations of a registered retailer, including the obligations to do the following—

- (a) display the certificate of registration issued by the Director in respect of each registered retail outlet (clause 21);
- (b) charge not less than the levy prescribed for each plastic shopping bag provided to a customer from that outlet (clause 22);

- (c) submit to the Director periodical returns concerning the plastic shopping bags provided and the amount of levies payable for those bags (clause 23(1));
- (d) pay to the Government the amount of levies stated in such returns or the levies demanded under an assessment notice served by the Director (clauses 23(2) and 25); and
- (e) keep records and documents relating to such returns (clause 24).

13. Division 4 provides a statutory defence to an offence under Part 3 (clause 26).

14. Division 5 empowers the Secretary to make regulations for implementing Part 3 after consultation with the Advisory Council on the Environment (clause 27).