

LEGISLATIVE COUNCIL BRIEF

Product Eco-responsibility Ordinance (Cap. 603)

PRODUCT ECO-RESPONSIBILITY (PLASTIC SHOPPING BAGS) REGULATION

INTRODUCTION

The Secretary for the Environment has made the Product Eco-responsibility (Plastic Shopping Bags) Regulation (“Regulation”) under section 29 of the Product Eco-responsibility Ordinance (“Ordinance”). The Regulation provides for the implementation details of the environmental levy scheme on plastic shopping bags. The Regulation is subject to the approval of the Legislative Council.

JUSTIFICATIONS

2. The Product Eco-responsibility Ordinance was enacted by the Legislative Council in July 2008. The Ordinance is a piece of “framework” legislation that provides a legal basis for implementing producer responsibility schemes in Hong Kong. The environmental levy scheme on plastic shopping bags is the first scheme to be implemented under the Ordinance, with the objective of reducing the indiscriminate use of plastic shopping bags.

3. The key regulatory measures of the environmental levy scheme have been set out in Part 3 of the Ordinance. These measures include –

- (a) application to the Director of Environmental Protection for registration of “prescribed retailers” who would like to provide plastic shopping bags to customers (section 19);
- (b) charging a customer an amount of not less than the prescribed levy for each plastic shopping bag (section 23);
- (c) submission of periodic returns and payment of the levies

- (section 24); and
(d) keeping of relevant records and documents (section 25).

The implementation details of the environmental levy scheme needs to be further prescribed in a Regulation to be made pursuant to section 29 of the Ordinance. In particular, the Regulation would provide for operational matters concerning: i) registration of retailers; ii) exemption for certain area within a registered retail outlet; iii) submission of returns and payment of levies; and iv) record-keeping.

Consultation with Retail Trade

4. It is the objective of the Administration to devise an environmental levy scheme that is workable and easy to comply with, while not compromising the integrity of the regulatory regime. As committed by the Secretary for the Environment in his speech at the resumption of the debate on the second reading of the Product Eco-responsibility Bill, the implementation details of the environmental levy scheme are worked out in close consultation with the retail trade. In particular, the Administration has had a series of meetings with the Business Facilitation Advisory Committee and its Retail Task Force, the Hong Kong Retail Management Association, as well as major retailers to be affected by the environmental levy scheme. The Administration has also conducted site visits to six warehouses and ten retail outlets of the affected retailers to better understand the actual operation on the ground.

5. The Regulation has taken into account the views of the retail trade as far as practicable. For instance, we have minimized the information required for registration, and as a performance pledge, we aim to process applications for registration of new outlets under a registered retailer within ten working days, instead of 21 working days as originally proposed. We have also adopted an exemption mechanism that does not require segregation of retail floor area. Similarly, we have extended the time allowed for submission of quarterly returns to 30 days instead of 21 days as originally proposed. We consider that these measures could facilitate compliance by the trade, while not compromising the effective administration of the environmental levy scheme.

6. Furthermore, at our site visits to retail outlets of the affected retailers, we observe that there could be business arrangements within such retail outlets which are operated by third parties (e.g. sub-tenancies and consignment counters managed by staff members engaged by the sub-tenants or consignors). We consider that the area occupied by a third party operator should not be regarded as the part of the retail outlet of a registered retailer only if (i) the operator operates under a separate business registration at the location in question; (ii) the operation occupies a clearly defined area (e.g. a physical sales counter); (iii) the brand name of that third party is conspicuously displayed within that area; (iv) the operation is

managed by an employee of that third party; and (v) that third party operator provides its own plastic shopping bags that bear its own brand name or logo. These criteria will be set out in our practice guidelines. If the third party operator itself is a prescribed retailer, it would need to separately comply with the relevant requirements under the Product Eco-responsibility Ordinance.

7. The Administration also observes that trade fairs with retail booths are organized in Hong Kong from time to time. Generally speaking, the environmental levy scheme will not cover the business of organizing trade fairs if the relevant organizers themselves do not carry on any retail business in such fairs. Nevertheless, the Administration would take the initiative to write to fair organizers to urge them to advise individual exhibitors to minimize the use of plastic shopping bags within the trade fairs, and to remind individual exhibitors that if they are prescribed retailers, they would need to comply with the relevant requirements under the Product Eco-responsibility Ordinance.

THE REGULATION

8. The main provisions of the Regulation are set out below -

(a) **Registration of Prescribed Retailers¹ (sections 3 to 7)**

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 outlet² by making an application to the Director of Environmental Protection in writing and in a specified form.

(b) **Application for Exemption of Part of the Area of Registered Retail Outlet (sections 8 to 11)**

A registered retailer may apply for exemption of part of a registered retail outlet by making an application to the Director of Environmental Protection in writing and in a specified form. The retail outlet must meet the criteria for exemption, namely, the area offering non-specified goods is more than 50% of the retail floor area of the whole outlet, and each part of the area to be exempted is a cashier's counter that accepts payment for non-specified goods only. An application for exemption must be accompanied by a floor plan, indicating the area intended to be exempted.

(c) **Submission of Returns and Payment of Levies (sections 12 and 13)**

A registered retailer must submit a return in respect of each

¹ The meaning of a "prescribed retailer" is set out in Schedule 4 to the Ordinance.

² The meaning of a "qualified retail outlet" is set out in Schedule 4 to the Ordinance.

registered retail outlet of the retailer on a quarterly basis. The return must be submitted to the Director of Environmental Protection in a specified form within 30 days after the last day of the quarter. The information to be stated in the return for each quarter includes: (i) the number of plastic shopping bags delivered to the outlet during the quarter; (ii) the number of plastic shopping bags provided to the customers from the outlet during the quarter; and (iii) the total amount of levies payable for the relevant bags. A registered retailer must pay to the Government the relevant levies accordingly.

(d) **Record Keeping (section 14)**

A registered retailer shall ensure that records, invoices, receipts, delivery notes or any other documents that contain sufficient details to enable the Director to readily verify the number of plastic shopping bags provided and the charge for those bags, as well as the procurement and delivery of plastic shopping bags should be kept.

LEGISLATIVE TIMETABLE

9. The Regulation will be submitted to the Legislative Council on 31 December 2008 for positive vetting.

ENVIRONMENTAL AND SUSTAINABILITY IMPLICATIONS

10. With the implementation of the environmental levy scheme on plastic shopping bags, we envisage a significant reduction in the number of plastic shopping bags distributed from prescribed retailers. It is difficult to determine to what extent the public would react to the environmental levy. Based on the assessment of our consultant, a 50% reduction in the number of plastic shopping bags (equivalent to about 1 billion plastic shopping bags) issued by prescribed retailers could be achieved.

11. Enshrining the principle of “polluter pays”, the environmental levy scheme on plastic shopping bag is in line with the Government’s First Sustainable Development Strategy for Hong Kong. It will encourage more sustainable use of natural resources, reduce the volume of plastic waste, and further enhance community-wide awareness of environmental protection.

ECONOMIC IMPLICATIONS

12. The environmental levy scheme on plastic shopping bags offers an effective means to discourage the indiscriminate use of plastic shopping bags that generates negative environmental externalities. The prescribed

retailers claim that they may suffer some business losses due to their inability to provide “free” plastic shopping bags. Yet, given the scale and other competitive advantages of prescribed retailers, the adverse impact is likely to be limited. On the other hand, the manufacturers of plastic shopping bags may suffer some business losses.

13. The environmental levy scheme on plastic shopping bags is *not* expected to have any significant negative impact on private consumption expenditure, as the revenue expected to be raised, at \$200 million per annum, is equivalent to only about 0.02% of the private consumption expenditure in 2007. Nonetheless, there may be some adverse effects on impulsive purchases. The impact on consumer prices is negligible.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

14. An additional recurrent resource of \$7.63 million per annum for ten posts is required for dealing with issues relating to the Product Eco-responsibility Ordinance and supporting the environmental levy scheme on plastic shopping bags. Other additional expenses arising from the implementation of the proposal, including the non-recurrent cost and those arising from the establishment and operation of the proposed statutory appeal board, will be met by Environmental Protection Department’s existing allocation.

PUBLIC CONSULTATION

15. In addition to the consultation with the retail trade as described above, we consulted the Legislative Council Panel on Environmental Affairs on the implementation details of the environmental levy scheme on 24 November 2008. The Panel took note of the proposal and urged the Administration to submit the Regulation to the Legislative Council as soon as practicable.

16. Pursuant to section 29 of the Ordinance, we have also consulted the Advisory Council on the Environment on the implementation details of the environmental levy scheme on 15 December 2008. The Council supported the proposal and urged the Administration to implement the environmental levy scheme as soon as practicable to address the indiscriminate use of plastic shopping bags.

ENQUIRIES

17. A press release will be issued on 31 December 2008 and a spokesperson will be available to answer press enquiries. For any enquiries on this brief, please contact Mr. Alfred Lee, Assistant Director of

Environmental Protection (Waste Management Policy) (Telephone Number: 2594 6032).

Environmental Protection Department
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