

律政司
法律草擬專員



Law Draftsman
Department of Justice

香港金鐘道 66 號
金鐘道政府合署高座 8 樓

圖文傳真：852-2869 1302
網址：www.doj.gov.hk
電郵：ltd@doj.gov.hk

8/F., High Block
Queensway Government Offices
66 Queensway, Hong Kong

Fax : 852-2869 1302
Web site : www.doj.gov.hk
E-mail : ltd@doj.gov.hk

Tel: 2867 4488

香港中區皇后大道 8 號
立法會大樓
立法會秘書長
吳文華女士

吳女士：

法例的新文件設計

我們已於 2009 年 12 月向立法會司法及法律事務委員會解釋，良好的文件設計可令溝通更加清晰。為此，我們考慮了香港法例文本的格式及視覺觀感、其他普通法司法管轄區的法例格式設計，以及現時可供使用的新的文字處理及印刷技術所帶來的不同可行方案。我們的結論是可以對香港法例文本的格式及視覺設計作出一些改變，使其更方便易用、編排分明。

主要改變如下—

- (一) 文本主體採用較大字體(法例其他部分的字體大小也相應調整，以反映法例的結構層級)；
- (二) 段落間採用較寬行距；
- (三) 現時條文內文的凸排格式改為縮排(以突顯條號及款號(如有的話))；

- (四) 變更修訂條文的結構(以令其更為顯眼)；
- (五) 頁首顯示更多資料，包括標題、有關的部、分部、次分部、條或附表的編號(以令條文的位置更易識別，這些資料對長篇條例草案的讀者尤有幫助)；
- (六) 緊隨條例草案(在其摘要說明之前)、部或附表之後有一條分頁線(即在頁中心的橫線)；每部(第 1 部除外)、附表及摘要說明均在新頁開始；
- (七) 定義以斜體及粗體顯示。

這些改變有助讀者識別各條文的位置及其相互關係。另一目的是透過善用空位及使用較大字體，使文句更易入目。此外，有關改變亦可使香港法例添上現代化新貌。司法及法律事務委員會並不反對上述改變，而我們會在 2010-2011 年度立法會會期採用新的格式及設計。

現附上模擬文本樣本，展示採用新格式及設計列印的新條例草案及修訂條例草案的憲報版本(未來數月可能會略作微調)，以供參考。

文偉彥

法律草擬專員
文偉彥

2010 年 7 月 7 日

律政司
法律草擬專員

香港金鐘道 66 號
金鐘道政府合署高座 8 樓

圖文傳真：852-2869 1302
網址：www.doj.gov.hk
電郵：ldd@doj.gov.hk



Law Draftsman
Department of Justice

8/F., High Block
Queensway Government Offices
66 Queensway, Hong Kong

Fax : 852-2869 1302
Web site : www.doj.gov.hk
E-mail : ldd@doj.gov.hk

E-mail: eamonnmoran@doj.gov.hk

Tel: 2867 4488

7 July 2010

Ms Pauline Ng
Secretary General
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Pauline

New Document Design of Legislation

As we explained to the Panel on Administration of Justice and Legal Services (“AJLS Panel”) of the Legislative Council in December 2009, good document design leads to clearer communication. For this purpose, we have reviewed the format and visual aspects of the texts of our legislation, the format design of legislation in other common law jurisdictions and the possibilities now available to us with new word processing and printing technology. As a result, we have come to the conclusion that certain changes to the format and visual design of our texts of legislation can be made to make them more user-friendly and attractive.

I now highlight the major changes –

- (a) a larger font size for the main text (font sizes for other parts of legislation are also adjusted to reflect the organizational hierarchy of legislation);
- (b) wider line spacing between paragraphs;

- (c) replacing current out-denting of the text of sections by indenting (to make section numbers and subsection numbers (if any) stand out);
- (d) restructuring amending provisions (to allow amendments to be more readily identified);
- (e) more informative headers showing titles, the number of the relevant Part, Division, Subdivision, section/clause or Schedule (to help readers identify the location of provisions, particularly in long bills);
- (f) a separator (a line in the centre of a page) immediately following the end of a bill (before its explanatory memorandum), Part or Schedule with every Part (except Part 1), Schedule and explanatory memorandum starting on a fresh page;
- (g) italicized and bold defined terms.

These changes will assist the reader to identify the location of and relationship between provisions more easily. The changes also aim at reducing eye strain by a better deployment of blank space and the use of a larger font. They also modernize the appearance of our legislation. There is no objection from the AJLS Panel and we will implement the new format and design in Legislative Session 2010/2011.

Samples of a mock-up copy of a Gazette version of a bill for a new Ordinance and of an amending bill, printed in the new format and design, are attached for your information (there may be some fine-tuning in the coming months).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eamonn Moran', with a stylized, cursive script.

(Eamonn Moran)
Law Draftsman

Encl.

《產品環保責任條例草案》

Product Eco-responsibility Bill

《產品環保責任條例草案》

目錄

條次	頁次
第 1 部	
導言	
1. 簡稱及生效日期.....	C10
2. 本條例的目的.....	C12
3. 釋義.....	C14
第 2 部	
訂明產品：一般條文	
第 1 分部	
適用範圍	
4. 第 2 部所適用的訂明產品.....	C16
第 2 分部	
規例：一般權力	
5. 關於根據本條例訂立的規例的一般條文.....	C16
第 3 分部	
執法	
6. 獲授權人員.....	C18
7. 取得資料及樣本的權力.....	C20

Product Eco-responsibility Bill

Contents

Clause	Page
Part 1	
Preliminary	
1. Short title and commencement	C11
2. Purposes of this Ordinance.....	C13
3. Interpretation	C15
Part 2	
Prescribed Products: General Provisions	
Division 1	
Application	
4. Prescribed products to which Part 2 applies	C17
Division 2	
Regulations: General Powers	
5. General provisions as to any regulation made under this Ordinance.....	C17
Division 3	
Enforcement	
6. Authorized officers.....	C19
7. Powers to obtain information and samples.....	C21

C4

條次	頁次
8. 進入及搜查的權力	C22
第 4 分部	
罪行	
9. 提供虛假資料等	C26
10. 妨礙獲授權人員等	C28
11. 法人團體所犯罪行	C28
第 5 分部	
上訴	
12. 第 2 部第 5 分部的釋義	C30
13. 上訴	C30
14. 上訴委員會的組成	C32
15. 上訴委員會司法管轄權的行使	C34
16. 關於上訴委員會的補充條文	C36
第 3 部	
塑膠購物袋	
第 1 分部	
釋義	
17. 第 3 部的釋義	C38
第 2 分部	
對塑膠購物袋的徵費及訂明零售商的登記	
18. 對塑膠購物袋的徵費	C40

C5

Clause	Page
8. Power of entry and search	C23
Division 4	
Offences	
9. Providing false information, etc.	C27
10. Obstructing authorized officers, etc.	C29
11. Offences by body corporate	C29
Division 5	
Appeals	
12. Interpretation of Division 5 of Part 2	C31
13. Appeals	C31
14. Constitution of Appeal Board	C33
15. Exercise of Appeal Board's jurisdiction	C35
16. Supplementary provisions as to Appeal Board	C37
Part 3	
Plastic Shopping Bags	
Division 1	
Interpretation	
17. Interpretation of Part 3	C39
Division 2	
Levy on Plastic Shopping Bags and Registration of Prescribed Retailers	
18. Levy on plastic shopping bags	C41

C6

條次	頁次
19.	對訂明零售商提供塑膠購物袋的限制及訂明零售商的登記.....C40
20.	署長須備存登記冊.....C44
第 3 分部	
登記零售商的責任	
21.	展示登記證明書.....C44
22.	登記零售商就塑膠購物袋收取費用的責任.....C46
23.	申報及繳付徵費.....C48
24.	備存紀錄.....C50
25.	評估通知書.....C50
第 4 分部	
第 3 部所訂罪行的免責辯護	
26.	罪行的免責辯護.....C54
第 5 分部	
規例	
27.	局長可就第 3 部訂立規例.....C56
附表 1	本條例適用的塑膠購物袋.....C58
附表 2	本條不適用的塑膠購物袋.....C60
附表 3	對塑膠購物袋的徵費.....C62

C7

Clause	Page
19.	Restrictions on provision of plastic shopping bags by, and registration of, prescribed retailers..... C41
20.	Director to maintain register C45
Division 3	
Obligations of Registered Retailers	
21.	Display of certificate of registration C45
22.	Duty of registered retailers to charge for plastic shopping bags..... C47
23.	Returns and payment of levies..... C49
24.	Record keeping C51
25.	Assessment notice C51
Division 4	
Defence to Offences under Part 3	
26.	Defence to offences C55
Division 5	
Regulations	
27.	Secretary may make regulations in respect of Part 3..... C57
Schedule 1	Plastic Shopping Bags to which this Ordinance Applies C59
Schedule 2	Plastic Shopping Bags to which this Ordinance does not Apply C61
Schedule 3	Levy on Plastic Shopping Bags..... C63

C8

條次	頁次
附表 4	本條例第 3 部所適用的訂明零售商C64

C9

Clause	Page
Schedule 4	Prescribed Retailers to whom Part 3 of this Ordinance Applies..... C64

本條例草案

旨在

推行措施，將若干種類產品對環境的影響盡量減低；並就相關事宜訂定條文。

由立法會制定。

第 1 部

導言

1. 簡稱及生效日期

- (1) 本條例可引稱為《產品環保責任條例》。
- (2) 本條例自環境局局長以憲報公告指定的日期起實施。

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 comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

C12

第 1 部
第 2 條**2. 本條例的目的****(1) 本條例的目的是——**

- (a) 將不同種類產品對環境的影響盡量減低，有關產品的種類可包括塑膠購物袋、車輛輪胎、電器及電子設備、包裝物料、飲品容器及可重複充電式電池；及
- (b) 為達致上述目標而推行生產者責任計劃或其他措施，規定製造商、進口商、批發商、零售商、消費者或任何其他人士分擔減少使用該等產品的責任，以及分擔回收、循環再造及妥善處置該等產品的責任。

(2) 上述計劃或措施可包括（但不限於）以下各項——

- (a) 推行產品回收計劃，規定製造商、進口商、批發商或零售商回收若干產品，以作妥善的廢物處理；
- (b) 推行按金退還計劃，規定消費者繳付按金，而該按金須於將若干產品交回指明回收點時退還；
- (c) 徵收循環再造費用，為對若干產品實行妥善的廢物處理提供資金；
- (d) 徵收環保徵費，以降低使用若干產品的動機；及
- (e) 限制於《廢物處置（指定廢物處置設施）規例》（第 354 章，附屬法例 L）第 2 條所界定的指定廢物處置設施處置若干產品。

C13

Part 1
Clause 2**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).

C14

第 1 部
第 3 條

3. 釋義

(1) 在本條例中，除文意另有所指外——

局長 (Secretary) 指環境局局長；

訂明產品 (prescribed product) 指第 4 條所述的任何產品；

產品 (product) 包括任何物品、物料及物質；

塑膠購物袋 (plastic shopping bag) 指本條例按照第 18 條所適用的塑膠購物袋；

署長 (Director) 指環境保護署署長；

獲授權人員 (authorized officer) 指根據第 6 條獲授權的公職人員；

(2) 在本條例中，除文意另有所指外——

- (a) 凡提述任何產品，即包括提述該產品的任何部分；
 - (b) 凡提述職能，即包括提述權力及責任；及
 - (c) 凡提述執行職能，即包括提述行使權力及履行責任。
-

C15

Part 1
Clause 3

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.
-

第 2 部

訂明產品：一般條文

第 1 分部

適用範圍

4. 第 2 部所適用的訂明產品
本部就以下任何產品而適用：塑膠購物袋。

第 2 分部

規例：一般權力

5. 關於根據本條例訂立的規例的一般條文
- (1) 根據本條例任何條文訂立的規例，可具有以下所有或任何效力——
- (a) 一般地適用，或參照指明的例外情況或因素而在適用範圍方面受到限制；
 - (b) 就不同情況訂立不同條文，及就個別個案或個別類別的個案作出規定；
 - (c) 賦權局長或署長，在一般情況下或個別個案中授予豁免，使獲豁免者無須遵從任何規定；
 - (d) 就署長或獲授權人員執行在該規例下的職能，訂定條文；

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;

C18

第 2 部—第 3 分部
第 6 條

- (e) 授權將任何事宜或事情交由指明的人或一組人士決定、施行或管理；
 - (f) 訂明根據本條例須以規例訂明或准許以規例訂明的任何事宜；
 - (g) 訂定為貫徹執行本條例條文的目的是而屬必需或合宜的附帶、相應、關於證據的、過渡性、保留及補充條文；
 - (h) 概括而言為更有效施行本條例的條文和更有效達致本條例的目的而訂定條文。
- (2) 規例可將任何人作出或不作出任何指明作為，定為罪行，並可授權——
- (a) 就該罪行處以不超過 \$500,000 的罰款；
 - (b) 就屬持續性質的罪行持續期間的每日（不足一日亦作一日計），另處罰款 \$10,000；及
 - (c) 判處不超過 12 個月的監禁。

第 3 分部

執法

6. 獲授權人員

- (1) 署長可藉書面授權任何公職人員，執行署長在授權書內指明的署長或公職人員在本條例下的任何職能。

C19

Part 2—Division 3
Clause 6

- (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.

C20

第 2 部—第 3 分部
第 7 條

- (2) 獲授權人員在根據本條例執行職能時，如遇到要求，須應要求出示根據本條批予他的授權書。
- (3) 根據本條例執行職能的獲授權人員，可帶同他合理所需的人，以協助他執行該職能。

7. 取得資料及樣本的權力

- (1) 獲授權人員可就根據本條例規定由某人備存的紀錄或文件，作出以下所有或任何事情——
 - (a) 要求該人出示該紀錄或文件，以供查閱；
 - (b) 要求該人提供關於該紀錄或文件的一切合理協助、資料或解釋；
 - (c) 移走及在合理地需要的期間內保留該紀錄或文件，以作進一步查驗或複製，或在根據本條例進行的有關法律程序已獲聆訊和最終裁定之前，保留該紀錄或文件。
- (2) 如獲授權人員合理地相信，某人管有關於根據本條例徵收的任何徵費或費用的資料，該人員可要求該人提供該資料。
- (3) 在符合第(4)款的規定下，獲授權人員可為確定本條例任何條文是否遭違反，而取去任何產品的樣本。
- (4) 如合法保管上述產品的人作出要求，獲授權人員須——
 - (a) 就他擬取去的樣本，繳付市價；或

C21

Part 2—Division 3
Clause 7

- (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

C22

第 2 部—第 3 分部
第 8 條

- (b) (如市價不詳或並非可輕易確定)為該等樣本繳付一個合理價錢。
- (5) 為免生疑問，任何人如因披露根據本條例他須提供的任何資料而違反保密責任，均不須為此負上法律責任。
- (6) 除非獲授權人員信納，為根據本條例進行的法律程序的目的，有需要披露根據本條向他出示或交出的紀錄、文件或資料，否則不得作出該項披露。
- (7) 在本條中，凡提述某人，即包括提述為該人或代該人行事的人。

8. 進入及搜查的權力

- (1) 在第 (2) 款的規限下，獲授權人員如合理地相信有以下情況，可進入及搜查某地方——
- (a) 有人已於或正於該地方犯違反本條例的罪行；或
- (b) 在該地方有任何物品構成證據或相當可能構成證據，證明有人已經或正在犯違反本條例的罪行。
- (2) 獲授權人員除非獲得住用處所佔用人或掌管人同意，否則不得在沒有裁判官發出的手令的情況下進入或搜查該處所。
- (3) 裁判官只可在以下情況下發出手令，授權獲授權人員進入及搜查住用處所——
- (a) 裁判官按經宣誓而作的告發，信納有合理理由懷疑——

C23

Part 2—Division 3
Clause 8

- (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—

C24

第 2 部—第 3 分部
第 8 條

- (i) 有人已於或正於該處所犯違反本條例的罪行；或
- (ii) 在該處所有任何物品構成證據或相當可能構成證據，證明有人已經或正在犯違反本條例的罪行；及
- (b) 裁判官信納——
 - (i) 與有權批准進入該處所的人聯絡並非切實可行；
 - (ii) 該人曾不合理地拒絕獲授權人員進入該處所；
 - (iii) 獲授權人員有合理理由意恐除非有手令發出，否則相當不可能獲批准進入該處所；或
 - (iv) 除非獲授權人員到達該處所時，能立即進入該處所，否則進入該處所的目的會受到妨害。
- (4) 根據本條進入任何地方的獲授權人員如憑手令進入該地方，須出示該手令。
- (5) 凡為某目的而有必要進入處所，根據本條發出的手令持續有效，直至該目的已達到為止。
- (6) 根據本條進入某地方的獲授權人員可作出以下所有或任何事情——
 - (a) 要求在該地方的任何人，提供為使該人員能根據本條例執行其職能而屬必要的協助或資料；
 - (b) 檢取該人員合理地相信屬犯本條例所訂罪行的證據的物件；

C25

Part 2—Division 3
Clause 8

- (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) 在合理地需要的期間內，保留任何物件，以作進一步查驗或複製，或在根據本條例進行的有關法律程序已獲聆訊和最終裁定之前，保留該物件。
- (7) 除非獲授權人員相信若於合理時段執行他在本條下的職能，可能令他執行職能的目的不能達到，否則獲授權人員必須於合理時段執行該等職能。
- (8) 在本條中——
- 地方** (place) 包括任何車輛及船隻；
- 住用處所** (domestic premises) 指供居住而建造或擬作居住之用的任何處所。

第 4 分部

罪行

9. 提供虛假資料等

- (1) 任何人出示或交出在要項上屬虛假、不正確或具誤導性的紀錄、文件或資料，充作遵守本條例，即屬犯罪，一經定罪，可處罰款 \$200,000 及監禁 6 個月。
- (2) 被控犯第 (1) 款所訂罪行的人如證明——
- (a) 他既不知道亦無理由相信有關紀錄、文件或資料屬虛假、不正確或具誤導性；或
- (b) 他已作出應有努力避免犯該罪行，
- 即可以此作為免責辯護。

- (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.

C28

第 2 部—第 4 分部
第 10 條

- (3) 任何人在出示或交出根據本條例規定他須出示或交出的紀錄、文件或資料時遺漏任何要項，即屬犯罪，一經定罪，可處罰款 \$200,000 及監禁 6 個月。
- (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，亦不會能確定該要項，即可以此作為免責辯護。

10. 妨礙獲授權人員等

任何人——

- (a) 故意妨礙或阻延獲授權人員執行他在本條例下的職能；或
- (b) 無合理辯解而不遵從獲授權人員根據本條例向他恰當地提出的任何要求，

即屬犯罪，一經定罪，可處罰款 \$200,000。

11. 法人團體所犯罪行

如——

- (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高級人員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高級人員或該人的疏忽的，

則該高級人員或該人亦屬犯該罪行，一經定罪，可處規定的刑罰。

C29

Part 2—Division 4
Clause 10

- (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.

第 5 分部

上訴

12. 第 2 部第 5 分部的釋義

在本分部中——

上訴 (appeal) 指根據第 13 條提出的上訴；

上訴委員會 (Appeal Board) 指第 14(1) 條設立的上訴委員會；

主席 (Chairman) 指根據第 14(2) 條獲委任的上訴委員會主席，並包括任何根據第 16 條署理主席一職的人；

具所需法律資格 (legally qualified) 指根據《區域法院條例》(第 336 章) 第 5 條而有資格獲委任為區域法院法官；

副主席 (Deputy Chairman) 指根據第 14(4) 條獲委任的上訴委員會副主席；

備選委員 (panel member) 指根據第 14(3) 條獲委任的備選委員小組的委員。

13. 上訴

(1) 任何人如因公職人員所作的關乎第 (2) 款指明的任何事宜的決定而感到受屈，可在關於該事宜的通知送達他當日後 21 天內，藉向署長發出述明上訴理由的上訴通知書，向上訴委員會提出上訴。

(2) 為施行第 (1) 款，現指明以下事宜——

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)—

C32

第 2 部—第 5 分部
第 14 條

- (a) 拒絕根據第 19 條就零售店提出的登記申請或撤銷登記申請；
- (b) 拒絕為施行第 22 條而就登記零售店的部分範圍提出的豁免申請；
- (c) 根據第 25 條送達的評估通知書；及
- (d) 符合以下說明的事宜——
 - (i) 根據本條例訂立的規例所規定者；及
 - (ii) 該等規例指明屬可為之而根據本條提出上訴的。

14. 上訴委員會的組成

- (1) 現為就上訴進行聆訊及作出裁定的目的，設立一個上訴委員會。
- (2) 行政長官須委任一名具所需法律資格且並非公職人員的人士為上訴委員會主席。
- (3) 行政長官亦須委任一組他認為適合獲委任為上訴委員會委員的人，組成備選委員小組，該等人士須不是公職人員。
- (4) 行政長官須委任一名具所需法律資格的備選委員為上訴委員會副主席。
- (5) 主席、副主席及備選委員的任期不得超過 3 年，但可獲再度委任。
- (6) 根據本條作出的每項委任，均必須在憲報公布。

C33

Part 2—Division 5
Clause 14

- (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. 上訴委員會司法管轄權的行使

- (1) 上訴委員會就任何一宗上訴而具有的司法管轄權，須由主席及主席為該宗上訴而委任的備選委員行使，委員的數目由主席決定。
- (2) 在任何上訴中，上訴委員會可確認、推翻或更改上訴所針對的決定。
- (3) 上訴委員會席前的每項待決問題，須以主席及聆訊上訴的備選委員的過半數意見裁定，但法律問題則須由主席裁定。
- (4) 如票數均等，則主席有權投決定票。
- (5) 上訴委員會可——
 - (a) 收取經宣誓而作的證供；
 - (b) 接納或考慮任何陳述、文件、資料或事物，不論該等陳述、文件、資料或事物會否獲法庭接納為證據；
 - (c) 以書面通知，傳召任何人到上訴委員會席前出示任何文件或作證；及
 - (d) 判給在有關個案的情況下屬公正及公平的款額的上訴訟費。
- (6) 獲判給訟費的一方，可將該項判給作為民事債項強制執行。
- (7) 判定須由署長或獲授權人員支付的訟費，須由政府一般收入支付。
- (8) 在本條例沒有為某實務或程序格式或事宜訂定條文的範圍內，主席可決定該格式或事宜。

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.

C36

第2部—第5分部
第16條**16. 關於上訴委員會的補充條文**

- (1) 如主席因任何因由，而不能在某段期間執行其職能，副主席須署理主席一職，並在該期間內，以主席身分執行主席的一切職能。
- (2) 如主席及副主席因任何因由，而均不能在某段期間執行他們的職能，行政長官可委任任何其他具所需法律資格且並非公職人員的人署理主席一職，並在該期間內，以主席身分執行主席的一切職能。
- (3) 如根據第15條獲委任以聆訊一宗上訴的備選委員因任何因由，而不能在某段期間內執行其職能，主席可委任任何其他備選委員在該期間內署理其席位。
- (4) 主席、副主席或任何備選委員可在任何時間，藉向行政長官發出書面通知，辭去其席位。
- (5) 即使上訴委員會的委員組成有任何變更，上訴聆訊仍可繼續，猶如該項變更沒有發生一樣。
- (6) 凡上訴的聆訊已在上訴委員會席前展開，除非上訴各方同意，否則任何人不得被委任為該上訴委員會的委員。
- (7) 主席可在上訴獲裁決前，以案件呈述的方式，將法律問題轉介上訴法庭。
- (8) 上訴法庭除可行使它在聆訊呈述的案件時所具有的其他權力外，亦可修訂有關案件呈述，或命令將之交回主席修訂。

C37

Part 2—Division 5
Clause 16**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.

第3部

塑膠購物袋

第1分部

釋義

17. 第3部的釋義

(1) 在本部中，除文意另有所指外——

合資格零售商 (qualified retail outlet) 具有附表4第1(2)條給予該詞的涵義；

訂明零售商 (prescribed retailer) 指本部按照第19(1)條對之適用的零售商；

《規例》 (regulation) 指根據第27條訂立的規例；

登記零售店 (registered retail outlet) 具有第(2)款給予該詞的涵義；

登記零售商 (registered retailer) 指根據第19(3)條申請登記、而其申請已根據第19(7)條獲批准的人；

登記證明書 (certificate of registration) 指根據第21(1)條發出的登記證明書；

徵費 (levy) 指第18(3)條所述的徵費。

(2) 為施行本部的目的，如以下情況獲符合，某零售店即屬某零售商的登記零售店，並維持是該零售商的登記零售店——

(a) 該店曾屬該零售商已為之根據第19(3)條申請登記的合資格零售店；

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);

C40

第 3 部—第 2 分部
第 18 條

- (b) 該申請已根據第 19(7) 條獲批准；及
- (c) 無論該店是否持續是一間合資格零售店，從沒有就該店提出的撤銷登記申請根據第 19(7) 條獲批准。

第 2 分部

對塑膠購物袋的徵費及訂明零售商的登記

18. 對塑膠購物袋的徵費

- (1) 在第 (2) 款的規限下，附表 1 訂明的袋是本條例所適用的塑膠購物袋。
- (2) 本條例不適用於附表 2 訂明的塑膠購物袋。
- (3) 登記零售商須按照第 23 條，為他提供予顧客的每個塑膠購物袋，向政府繳付附表 3 列明的徵費。
- (4) 局長可在諮詢環境諮詢委員會後，藉於憲報刊登的命令，修訂附表 1、2 或 3。

19. 對訂明零售商提供塑膠購物袋的限制及訂明零售商的登記

- (1) 本部適用於附表 4 訂明的零售商。
- (2) 局長可在諮詢環境諮詢委員會後，藉於憲報刊登的命令，修訂附表 4。

C41

Part 3—Division 2
Clause 18

- (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.

C42

第3部—第2分部
第19條

- (3) 訂明零售商或有意成為訂明零售商的人，可按照《規例》向署長申請就該零售商或該人的合資格零售店登記成為登記零售商。
- (4) 訂明零售商須確保除非其合資格零售店是登記零售店，否則不得從該店直接或間接向顧客提供任何塑膠購物袋，或任何可輕易地轉化為塑膠購物袋的東西。
- (5) 任何訂明零售商違反第(4)款，即屬犯罪——
 - (a) 在他首度被裁定犯該罪行時，可處罰款 \$200,000；而
 - (b) 在他其後每次被裁定犯該罪行時，可處罰款 \$500,000。
- (6) 如有以下情況，登記零售商可按照《規例》，向署長申請將該零售商的登記零售店的登記撤銷——
 - (a) 該零售商停止在該店經營零售業務；或
 - (b) 該店不再屬合資格零售店。
- (7) 署長可按照《規例》批准或拒絕根據第(3)或(6)款提出的申請。
- (8) 如有人根據第2部第5分部提出上訴，反對署長根據本條作出的決定，除非署長另有決定，否則該上訴不影響該決定在該上訴待決期間的實施。

C43

Part 3—Division 2
Clause 19

- (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.

C44

第 3 部—第 3 分部
第 21 條

20. 署長須備存登記冊

- (1) 署長必須以他決定的形式，備存一份載有以下資料的登記冊——
 - (a) 每名登記零售商的姓名或名稱及地址；及
 - (b) 該零售商的每一登記零售店的名稱（如有不同）及地址。
- (2) 署長必須在辦公時間內，在其辦事處提供登記冊予公眾免費查閱。

第 3 分部

登記零售商的責任

21. 展示登記證明書

- (1) 署長須就登記零售商的每一登記零售店，向該零售商發出一份登記證明書。
- (2) 登記零售商須確保登記證明書在該證明書所關乎的登記零售店內的當眼位置展示。
- (3) 任何人不得——
 - (a) 在並非某登記證明書所關乎的登記零售店的地方，展示該登記證明書；或
 - (b) 在任何地方，展示偽造、捏改或已取消的登記證明書。
- (4) 任何人違反第 (2) 或 (3) 款，即屬犯罪——
 - (a) 在他首度被裁定犯該罪行時，可處罰款 \$200,000；而

C45

Part 3—Division 3
Clause 21

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

C46

第 3 部—第 3 分部
第 22 條

(b) 在他其後每次被裁定犯該罪行時，可處罰款 \$500,000。

22. 登記零售商就塑膠購物袋收取費用的責任

- (1) 登記零售商須就從以下地方直接或間接向顧客提供的每個塑膠購物袋，收取一個不少於徵費的款額——
 - (a) 該零售商的登記零售店；或
 - (b) (如署長按照第(3)款，為施行本條而豁免該店的部分範圍) 該店的不獲如此豁免的範圍。
- (2) 登記零售商可為施行本條，向署長申請按照《規例》豁免該零售商的任何登記零售店的部分範圍。
- (3) 署長可按照《規例》訂明的準則，批准或拒絕根據第(2)款提出的申請。
- (4) 如有人根據第2部第5分部提出上訴，反對署長根據本條作出的決定，除非署長另有決定，否則該上訴不影響該決定在該上訴待決期間的實施。
- (5) 登記零售商須確保不向顧客提供具有直接抵銷根據第(1)款所收取的款額或其任何部分的效果的回贈或折扣。
- (6) 登記零售商違反第(1)或(5)款，即屬犯罪——
 - (a) 在他首度被裁定犯該罪行時，可處罰款 \$200,000；而

C47

Part 3—Division 3
Clause 22

(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

C48

第 3 部—第 3 分部
第 23 條

(b) 在他其後每次被裁定犯該罪行時，可處罰款 \$500,000。

23. 申報及繳付徵費

(1) 登記零售商須確保——

- (a) 除非署長另行同意，否則須按《規例》訂明的頻密程度，向署長呈交《規例》就該零售商或就其每一登記零售店而規定的申報；
- (b) 該等申報以《規例》訂明的方式，在《規例》訂明的時限內，呈交予署長；及
- (c) 該等申報述明——
 - (i) 《規例》就以下塑膠購物袋而規定的資料：在該申報所關乎的期間內，由該零售商提供的塑膠購物袋；及
 - (ii) 須為該等購物袋繳付的徵費總額。

(2) 登記零售商亦須在規定根據本條向署長呈交申報的最後日期或之前，藉《規例》訂明的方法，向政府繳付該申報述明的徵費總額。

(3) 登記零售商違反第 (1) 或 (2) 款，即屬犯罪——

- (a) 在他首度被裁定犯該罪行時，可處罰款 \$200,000；而
- (b) 在他其後每次被裁定犯該罪行時，可處罰款 \$500,000。

C49

Part 3—Division 3
Clause 23

(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.

C50

第 3 部—第 3 分部
第 24 條

- (4) 凡登記零售商就他沒有繳付的某徵費款額，而被裁定犯第(3)款所訂罪行——
- (a) 他亦有法律責任繳付一項附加費，款額為在第(2)款所提述的到期日仍未繳付的徵費的款額的 5%；而
- (b) 如在第(2)款所提述的到期日後的 6 個月屆滿時，有徵費及(a)段所提述的附加費仍未繳付，他亦有法律責任繳付一項額外附加費，款額為該等未繳付的徵費及附加費的總額的 10%。
- (5) 須根據本條繳付卻未獲繳付的徵費或附加費款額，可作為欠政府的民事債項而追討。

24. 備存紀錄

- (1) 登記零售商須確保《規例》訂明的、關乎根據第 23 條呈交的每一申報的紀錄及文件須予保留，為期不少於該申報所關乎的公曆年完結後的 5 年。
- (2) 登記零售商違反第(1)款，即屬犯罪——
- (a) 在他首度被裁定犯該罪行時，可處罰款 \$200,000；而
- (b) 在他其後每次被裁定犯該罪行時，可處罰款 \$500,000。

25. 評估通知書

- (1) 如登記零售商違反第 23(1) 條，或署長合理地相信，該零售商根據該條就某期間呈交的申報述明的任何徵費款額，是虛假、不正確或具誤導性的，署長可——

C51

Part 3—Division 3
Clause 24

- (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—

C52

第 3 部—第 3 分部
第 25 條

- (a) 評估須就該零售商在該期間內提供的塑膠購物袋而繳付的徵費的款額；並
- (b) 向該零售商送達評估通知書，要求繳付該經評估款額或（如該零售商已根據第 23 條繳付該款額的部分）該款額的餘額。
- (2) 署長可隨時藉為取代某評估通知書的目的而送達的另一評估通知書，取代首述的評估通知書。
- (3) 任何根據本條送達的評估通知書亦必須述明——
 - (a) 送達該通知書的原因；
 - (b) 署長所評估的徵費的款額是如何計算得出的；
 - (c) 須於何時及如何付款；及
 - (d) 有關登記零售商針對該通知書提出上訴的權利。
- (4) 登記零售商須在評估通知書送達日期後第 21 日或之前，繳付根據該通知書被要求繳付的徵費款額。
- (5) 登記零售商違反第 (4) 款，即屬犯罪——
 - (a) 在他首度被裁定犯該罪行時，可處罰款 \$200,000；而
 - (b) 在他其後每次被裁定犯該罪行時，可處罰款 \$500,000。
- (6) 凡登記零售商被裁定犯第 (5) 款所訂罪行——
 - (a) 他亦有法律責任繳付一項附加費，款額為在第 (4) 款所提述的到期日仍未繳付的徵費款額的 5%；而

C53

Part 3—Division 3
Clause 25

- (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

C54

第 3 部—第 4 分部
第 26 條

- (b) 如在第 (4) 款所提述的到期日後的 6 個月屆滿時，有徵費及 (a) 段所提述的附加費仍未繳付，他亦有法律責任繳付一項額外附加費，款額為該等未繳付的徵費及附加費的總額的 10%。
- (7) 須根據本條繳付卻未獲繳付的徵費或附加費款額，可作為欠政府的民事債項而追討。
- (8) 如有人根據第 2 部第 5 分部提出上訴，反對根據本條送達的評估通知書，除非署長另有決定，否則任何徵費或附加費款額，在該上訴待決期間仍須根據本條繳付。
- (9) 署長可隨時藉送達具有撤回根據本條送達的評估通知書的效力的撤回通知，撤回該評估通知書。
- (10) 本條所指的任何通知或通知書如藉郵遞寄往有關登記零售商提供予署長的最後地址，即視作已妥為送達。

第 4 分部

第 3 部所訂罪行的免責辯護

26. 罪行的免責辯護

被控犯第 19(5)、21(4)、22(6)、23(3)、24(2) 或 25(5) 條所訂罪行的人，如證明他有作出應有努力避免犯該罪行，即可以此作為免責辯護。

C55

Part 3—Division 4
Clause 26

- (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.

C56

第 3 部—第 5 分部
第 27 條

第 5 分部

規例

27. 局長可就第 3 部訂立規例

局長可在諮詢環境諮詢委員會後，為以下所有或任何事項，或就以下所有或任何事項，訂立規例——

- (a) 根據第 19 條就某零售店提出的登記申請及撤銷登記申請，以及對該等申請的裁斷；
 - (b) 申請為施行第 22 條而豁免登記零售店任何範圍部分，以及署長可按照何種準則裁斷該等申請；
 - (c) 登記零售商呈交申報及繳付徵費；
 - (d) 登記零售商須備存的紀錄及文件；
 - (e) 對貫徹執行本部的條文屬必要或合宜的補充條文；
 - (f) 本條指明的事宜的任何附屬或附帶事宜。
-

C57

Part 3—Division 5
Clause 27

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.
-

附表 1

[第 18(1) 及 (4) 條]

本條例適用的塑膠購物袋

1. 塑膠購物袋的涵義

(1) 任何袋如——

- (a) 完全或部分由塑膠製成；及
 - (b) 在其上有或附有孔洞、孔口、挽手或繩索，
- 即屬本條例所適用的塑膠購物袋。

(2) 就第 (1)(a) 款而言——

塑膠 (plastic) 指包括聚乙烯、聚丙烯、聚氯乙烯及尼龍。

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.

附表 2

[第 18(2) 及 (4) 條]

本條不適用的塑膠購物袋

1. 不在本條例適用範圍內的塑膠購物袋

本條例不適用於以下塑膠購物袋——

- (a) 以每個 \$5.00 或以上的售價出售的袋；
 - (b) 預先包裝並以每包 \$5.00 或以上的售價出售的 2 個或多於 2 個的袋；
 - (c) 符合以下說明的袋——
 - (i) 載有未經包裝貨品或多於一項貨品；及
 - (ii) 在該等貨品供應予有關零售商前已予密封。
-

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.
-

附表 3

[第 18(3) 及 (4) 條]

對塑膠購物袋的徵費

每個塑膠購物袋 5 角

Schedule 3

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

Levy on Plastic Shopping Bags

50 cents per plastic shopping bag

附表 4[第 17(1) 及
19(1) 及 (2) 條]**本條例第 3 部所適用的訂明零售商****1. 訂明零售商的涵義**

- (1) 就本條例第 19(1) 條而言，任何人如在以下地方經營零售業務，即屬訂明零售商——
- (a) 2 間或多於 2 間香港境內的合資格零售店；或
 - (b) 一間香港境內的合資格零售店，而該店的零售樓面面積不小於 200 平方公尺。
- (2) 如在某零售店被要約出售的貨品包括以下物品，該店即屬合資格零售店——
- (a) 任何食物或飲品；
 - (b) 任何藥物或急救用品；及
 - (c) 任何個人衛生或美容用品。
- (3) 如零售業務是根據專營加盟店協議進行，除非署長另行同意，否則就第(1)款而言，有關的專營權授予者即經營該業務的人。

2. 定義

在本附表中——

食物 (food)——

- (a) 包括零食、糖果、口香糖，以及在製備食物過程中用作成份的物品或物質；及

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)——

- (b) 不包括任何飲品、活動物、秣或餵飼動物的飼料，以及只用作藥物的物品或物質；

飲品 (drink) 指適合用作 (不論是否在稀釋之後) 人類飲用的液體，或擬用作該用途的液體，並包括水；

零售樓面面積 (retail floor area) 指——

- (a) 指在零售店中顧客可到的圍封空間的總樓面面積；
- (b) 包括用作通道或由收銀處、貨架或陳列貨品佔用的範圍；及
- (c) 不包括用作辦公室或貯存存貨的範圍；

藥物 (medicine) 指不包括任何通常只作為食物而食用或作為飲品而飲用的物品或物質。

- (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.

摘要說明

本條例草案的目的是——

- (a) 設立基本的法定框架以推行措施將若干種類產品對環境的影響盡量減低；及
- (b) 為該目的而實施首個規管計劃，向若干零售商就提供塑膠購物袋而徵收徵費。

第 1 部——導言

- 2. 除有關生效及釋義的條文(草案第 1 及 3 條)外，第 1 部載有關於本條例草案目的的條文，解釋本條例草案旨在藉推行生產者責任計劃或其他措施，要求不同方面的人分擔減少使用、回收、循環再造及妥善處置若干種類產品的責任，從而將該等產品對環境的影響盡量減低(草案第 2 條)。

第 2 部——訂明產品：一般條文

- 3. 第 2 部列出適用於本條例草案所規管的所有產品的一般條文。
- 4. 在第 1 分部中，草案第 4 條列明第 2 部所適用的訂明產品。現時，只有塑膠購物袋由該條指明。
- 5. 第 2 分部列出適用於任何根據本條例草案訂立的規例的一般條文(草案第 5 條)。

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).

C70

摘要說明
第 6 段

6. 根據第 3 分部，環境保護署署長（“署長”）可授權公職人員執行署長指明的本條例草案之下的任何法定職能（草案第 6 條）。獲授權人員被賦權取得資料及樣本，以及進入及搜查，以執行本條例草案（草案第 7 及 8 條）。
7. 第 4 分部將提供虛假資料及妨礙獲授權人員執行他在本條例草案下的職能訂為罪行（草案第 9 及 10 條）。
8. 第 5 分部訂定條文，組成上訴委員會以就針對本條例草案下的若干決定所提出的上訴進行聆訊及作出裁定（草案第 12 至 16 條）。

第 3 部——塑膠購物袋

9. 第 3 部列出實施塑膠購物袋徵費的規管計劃。
10. 第 1 分部列明與第 3 部有關的定義（草案第 17 條）。第 2 分部就以下事宜訂定條文——
 - (a) 附表 1 訂明的塑膠購物袋的涵義；
 - (b) 附表 2 訂明的被豁除於本條例草案適用範圍的塑膠購物袋；及
 - (c) 附表 3 訂明的須就塑膠購物袋繳付的徵費款額。

該等附表可由環境局局長（“局長”）在諮詢環境諮詢委員會後修訂（草案第 18 條）。

C71

Explanatory Memorandum
Paragraph 6

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).

C72

摘要說明
第 11 段

11. 除非某合資格零售店屬登記零售店，否則符合附表 4 的說明的訂明零售商不得從該店向其顧客提供塑膠購物袋。違反該規定即屬犯罪。局長可在諮詢環境諮詢委員會後修訂附表 4(草案第 19 條)。
12. 第 3 分部列出登記零售商的責任，當中包括以下——
 - (a) 就每一登記零售店展示由署長發出的登記證明書(草案第 21 條)；
 - (b) 收取一個不少於就從該店向顧客提供的每個塑膠購物袋所訂明的徵費的款額(草案第 22 條)；
 - (c) 向署長定期呈交關於所提供的塑膠購物袋及就該等購物袋所須繳付的徵費款額的申報(草案第 23(1) 條)；
 - (d) 向政府繳付該申報述明的徵費款額或由署長送達的評估通知書所要求繳付的徵費(草案第 23(2) 及 25 條)；及
 - (e) 保留關乎該等申報的紀錄及文件(草案第 24 條)。
13. 第 4 分部就第 3 部所訂的罪行訂明可作為法定辯護的理由(草案第 26 條)。
14. 第 5 分部賦權局長可在諮詢環境諮詢委員會後，訂立規例以實行第 3 部(草案第 27 條)。

C73

Explanatory Memorandum
Paragraph 11

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).

**《2008 年空氣污染管制 (修訂)
條例草案》**

**Air Pollution Control (Amendment)
Bill 2008**

《2008 年空氣污染管制 (修訂) 條例草案》

目錄

條次	頁次
1. 簡稱	C10
2. 修訂《空氣污染管制條例》	C10
3. 修訂第 2 條 (釋義)	C10
4. 修訂第 10 條 (空氣污染消滅通知)	C14
5. 修訂第 15 條 (批給或拒絕批給牌照)	C14
6. 加入第 IVB 部	C14
第 IVB 部	
指明牌照	
第 1 分部	
獲配限額	
26G. 局長就指明牌照分配排放限額	C16
26H. 監督確定獲配限額的數量等	C18
第 2 分部	
斷定若干條款及條件是否已獲遵從	
26I. 斷定若干條款及條件是否已獲遵從	C18

Air Pollution Control (Amendment) Bill 2008

Contents

Clause	Page
1. Short title	C11
2. Air Pollution Control Ordinance amended	C11
3. Section 2 amended (Interpretation)	C11
4. Section 10 amended (Air pollution abatement notice)	C15
5. Section 15 amended (Grant or refusal of licences)	C15
6. Part IVB added	C15
Part IVB	
Specified Licences	
Division 1	
Allocated Allowances	
26G. Secretary to allocate emission allowances in respect of specified licence	C17
26H. Authority to ascertain quantity of allocated allowances etc.	C19
Division 2	
Determination of Compliance with Certain Terms and Conditions	
26I. Determination of compliance with certain terms and conditions	C19

C4

條次	頁次
第 3 分部	
獲配限額的數量的調整	
26J. 在對上年度的獲配限額有盈餘的情況下調高獲配限額的數量	C22
26K. 在特殊事件等發生時調高獲配限額的數量	C24
26L. 在取得或轉讓獲配限額之後調高或調低該限額的數量	C26
26M. 在取得或轉讓排放配額之後調高或調低獲配限額的數量	C30
26N. 本分部若干條文適用於已失效的牌照	C34
7. 修訂第 30A 條 (違反牌照等的條款及條件)	C34
8. 修訂第 31 條 (何時可提出上訴; 及其效果)	C34
9. 修訂第 32 條 (上訴委員會的組成)	C36
10. 修訂第 33 條 (上訴委員會司法管轄權的行使)	C36
11. 修訂第 34 條 (關於上訴委員會的補充條文)	C36

C5

Clause	Page
Division 3	
Adjustments to Quantity of Allocated Allowances	
26J. Increase in quantity of allocated allowances in case of surplus of allocated allowances in preceding year	C23
26K. Increase in quantity of allocated allowances upon occurrence of special event etc.	C25
26L. Increase or reduction in quantity of allocated allowances further to their acquisition or transfer	C27
26M. Increase or reduction in quantity of allocated allowances further to acquisition or transfer of emission credits	C31
26N. Application of certain provisions of this Division to licence that has ceased to be in force	C35
7. Section 30A amended (Contravention of terms and conditions of licence, etc.)	C35
8. Section 31 amended (When appeal may be brought; and effect thereof)	C35
9. Section 32 amended (Constitution of Appeal Board)	C37
10. Section 33 amended (Exercise of Appeal Board's jurisdiction)	C37
11. Section 34 amended (Supplementary provisions as to Appeal Board)	C37

C6

條次	頁次
12. 廢除第 35 條 (由總督會同行政局覆核上訴委員會的決定)	C38
13. 加入第 37D 條	C38
37D. 修訂附表	C38
14. 修訂第 42 條 (對政府及公職人員的保障)	C40
15. 修訂附表 2 (牌照的批給或豁免的繼續生效所受規限的條款及條件)	C40
16. 加入附表 2A 及 2B	C42
附表 2A 指明牌照的強制性條款及條件	C42
附表 2B 為本條例第 26K(1) 條的目的而訂明的費用	C44

C7

Clause	Page
12. Section 35 repealed (Review of Appeal Board's decision by Governor in Council)	C39
13. Section 37D added	C39
37D. Amendment of Schedules	C39
14. Section 42 amended (Protection of Government and public officers)	C41
15. Schedule 2 amended (Terms and conditions subject to which a licence may be granted or an exemption continued)	C41
16. Schedules 2A and 2B added	C43
Schedule 2A Mandatory Terms and Conditions of Specified Licence	C43
Schedule 2B Fee Prescribed for Purposes of Section 26K(1) of this Ordinance	C45

本條例草案

旨在

修訂《空氣污染管制條例》，藉以——

- (a) 藉着包括以下各項的措施，規管因進行若干電力工程而產生的二氧化硫、氮氧化物及可吸入懸浮粒子的排放——
 - (i) 將可從用於進行該等電力工程的處所排放該等污染物的權利，分配予指明牌照持有人；
 - (ii) 對指明牌照施加有關條款及條件；及
 - (iii) 指明遵從該等條款及條件的方式；
- (b) 刪除根據該條例第 35 條將根據該條例第 VI 部組成的上訴委員會的決定轉交覆核的權力；
- (c) 禁止公職人員獲委任為或出任為根據該條例第 VI 部組成的上訴委員會的主席，或獲委任為有資格獲委任為任何該等上訴委員會的委員的備選委員小組的成員；
- (d) 澄清該條例及其附屬法例中“牌照”的涵義；以及

A BILL

To

Amend the Air Pollution Control Ordinance to—

- (a) regulate the emission of sulphur dioxide, nitrogen oxides and respirable suspended particulates as a result of the conduct of certain electricity works by measures including—
 - (i) the allocation to specified licence holders of the entitlement to emit those pollutants from premises used for the conduct of such electricity works;
 - (ii) the imposition of relevant terms and conditions on the specified licences; and
 - (iii) the specification of the manner in which such terms and conditions may be complied with;
- (b) remove the right of referring for review under section 35 of the Ordinance a decision of any Appeal Board constituted under Part VI of the Ordinance;
- (c) prohibit a public officer from being appointed as or to act as Chairman of any Appeal Board constituted under Part VI of the Ordinance, or from being appointed as a member of a panel of persons eligible for appointment as members of any such Appeal Board;
- (d) clarify the meaning of “licence” in the Ordinance and its subsidiary legislation; and

C10

C11

第 1 條

(e) 就附帶事宜訂定條文。

由立法會制定。

1. 簡稱

本條例可引稱為《2008 年空氣污染管制 (修訂) 條例》。

2. 修訂《空氣污染管制條例》

第 3 至 16 條列出對《空氣污染管制條例》(第 311 章) 的修訂。

3. 修訂第 2 條 (釋義)

(1) 第 2 條, “牌照” 的定義, 在 “批給的牌照” 之後——

加入

“、根據第 16 條獲續期的牌照、根據第 17 或 18 條被更改的牌照、或根據第 18A 條而轉讓的牌照 (視何者屬適當而定)”。

(2) 第 2 條, “技術備忘錄” 的定義——

廢除

“或 9”

代以

“、9 或 26G”。

(3) 第 2 條——

加入

“**可排放量** (allowed emission) 就某類別指明污染物而言, 指可在某排放年度從某牌照所涉處所排放的該類別污染物的數量, 而該數量是藉參照以下數量而確定的: 就該排放年度而適用於有關的指明牌照的該類別污染物的獲配限額的數量;

Clause 1

(e) provide for incidental matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Air Pollution Control (Amendment) Ordinance 2008.

2. Air Pollution Control Ordinance amended

The Air Pollution Control Ordinance (Cap. 311) is amended as set out in sections 3 to 16.

3. Section 2 amended (Interpretation)

(1) Section 2, definition of “licence”, after “section 15”—

Add

“, a licence renewed under section 16, a licence varied under section 17 or 18 or a licence transferred under section 18A, as may be appropriate”.

(2) Section 2, definition of “technical memorandum”—

Repeal

“or 9”

Substitute

“, 9 or 26G”.

(3) Section 2—

Add

“**actual emission** (實際排放量), in relation to a type of specified pollutant, means the quantity, as ascertained by such method as specified in a specified licence, of that type of pollutant that has been emitted from the licensed premises;

C12

第 3 條

指明污染物 (specified pollutant) 指屬下列任何類別的空氣污染物——

- (a) 二氧化硫；
- (b) 氮氧化物；
- (c) 可吸入懸浮粒子；

指明牌照 (specified licence) 指進行附表 1 第 7 項指明的工序的牌照，但以在沒有正常電力供應時提供後備電力供應為唯一目的而進行該等工序的牌照則除外；

指明牌照持有人 (specified licence holder) 指某指明牌照的持有人；

排放年度 (emission year) 指自每年 1 月 1 日開始的為期 12 個月的期間；

排放限額 (emission allowance) 就某類別指明污染物而言，指可在某排放年度從某牌照所涉處所排放一噸該類別污染物的權利；而為免生疑問，每項該等權利均予量化為一個排放限額；

牌照所涉處所 (licensed premises) 指某指明牌照所關乎的處所；

實際排放量 (actual emission) 就某類別指明污染物而言，指藉某指明牌照指明的方法確定的、已從有關的牌照所涉處所排放的該類別污染物的數量；

C13

Clause 3

allocated allowances (獲配限額), in relation to a type of specified pollutant, means the emission allowances allocated under section 26G(1) for that type of pollutant in respect of a specified licence in relation to an emission year;

allowed emission (可排放量), in relation to a type of specified pollutant, means the quantity, as ascertained by reference to the quantity of allocated allowances for that type of pollutant as applicable to a specified licence in respect of an emission year, of that type of pollutant that may be emitted in the emission year from the licensed premises;

emission allowance (排放限額), in relation to a type of specified pollutant, means the entitlement to emit one tonne of that type of pollutant in an emission year from a licensed premises; and, for the avoidance of doubt, each such entitlement is quantified as one emission allowance;

emission year (排放年度) means a period of 12 months commencing on 1 January in each year;

licensed premises (牌照所涉處所) means the premises to which a specified licence relates;

specified licence (指明牌照) means a licence to conduct the process specified in item 7 of Schedule 1, other than a licence to conduct such process for the sole purpose of providing a stand-by power supply in the event of a loss of normal power supply;

specified licence holder (指明牌照持有人) means the holder of a specified licence;

specified pollutant (指明污染物) means an air pollutant of any of the following types—

- (a) sulphur dioxide;

C14

C15

第 4 條

獲配限額 (allocated allowances) 就某類別指明污染物而言，指根據第 26G(1) 條，就某排放年度及某指明牌照而為該類別污染物分配的排放限額；”。

4. 修訂第 10 條 (空氣污染消減通知)

第 10(2)(a) 條，在“備忘錄”之後——

加入

“(根據第 26G 條發出的技術備忘錄除外)”。

5. 修訂第 15 條 (批給或拒絕批給牌照)

第 15(4) 條——

廢除

在“合理期間，”之後的所有字句

代以

“並——

(a) 在不損害根據 (b) 段施加的任何條款或條件 (如適用的話) 的原則下，可受監督認為適當的條款及條件 (包括關乎附表 2 所列的事項的條款及條件) 規限；及

(b) (如有關的牌照屬指明牌照) 自 2010 年 1 月 1 日起，亦須受附表 2A 所列的條款及條件規限。”。

6. 加入第 IVB 部

在第 IVA 部之後——

加入

Clause 4

(b) nitrogen oxides;

(c) respirable suspended particulates;”.

4. Section 10 amended (Air pollution abatement notice)

Section 10(2)(a), after “technical memorandum”——

Add

“(other than a technical memorandum issued under section 26G)”.

5. Section 15 amended (Grant or refusal of licences)

Section 15(4)——

Repeal

everything after “2 years and”

Substitute

“——

(a) without prejudice to any term or condition imposed under paragraph (b) (if applicable), may be subject to such terms and conditions (including terms and conditions relating to the matters set out in Schedule 2) as the Authority thinks fit; and

(b) where the licence concerned is a specified licence, shall from 1 January 2010 onwards also be subject to such terms and conditions as may be set out in Schedule 2A.”.

6. Part IVB added

After Part IVA——

Add

C16

第 6 條

“第 IVB 部

指明牌照

第 1 分部

獲配限額

26G. 局長就指明牌照分配排放限額

- (1) 為施行本條例，局長須藉技術備忘錄，就於 2010 年 1 月 1 日或之後開始的每一排放年度，以及就每一指明牌照，為每一類別指明污染物分配某數量的排放限額。
- (2) 在根據第 (1) 款為某類別指明污染物作出分配時，局長須——
 - (a) 顧及防止排放該類別污染物的最好的切實可行方法；
 - (b) 以達致與保持任何有關的空氣質素指標作為其目標；及
 - (c) 顧及排放該類別污染物是否會或相當可能會損害健康。
- (3) 就第 (1) 款而言，局長亦可藉指明用以確定排放限額數量的方法，分配排放限額的數量。

C17

Clause 6

“Part IVB

Specified Licences

Division 1

Allocated Allowances

26G. Secretary to allocate emission allowances in respect of specified licence

- (1) For the purposes of this Ordinance, the Secretary shall by technical memorandum allocate a quantity of emission allowances for each type of specified pollutant in respect of each specified licence in relation to each emission year commencing on or after 1 January 2010.
- (2) In making an allocation under subsection (1) for a type of specified pollutant, the Secretary shall—
 - (a) have regard to the best practicable means for preventing the emission of that type of pollutant;
 - (b) have as his purpose the attainment and maintenance of any relevant air quality objective; and
 - (c) have regard to whether the emission of that type of pollutant would be, or be likely to be, prejudicial to health.
- (3) For the purposes of subsection (1), the Secretary may allocate a quantity of emission allowances also by specifying the method for ascertaining the quantity.

C18

C19

第 6 條

- (4) 除非根據第 (1) 款為作出某項分配而發出的技術備忘錄，已於某排放年度開始前最少 4 年之前生效，否則根據該款作出的該項分配，並不就該排放年度而具有效力。
- (5) 凡任何分配藉着為施行第 (1) 款而具有效力的首份技術備忘錄而作出，第 (4) 款不適用於該項分配。

26H. 監督確定獲配限額的數量等

- (1) 如有排放限額的數量按第 26G(3) 條描述的方式分配，監督須在合理切實可行範圍內，盡快使用根據該條在有關的技術備忘錄內指明的方法，確定該數量。
- (2) 監督在根據第 (1) 款確定數量後，須在合理切實可行範圍內，盡快將如此確定的數量，以書面通知有關的指明牌照持有人。

第 2 分部

斷定若干條款及條件是否已獲遵從

26I. 斷定若干條款及條件是否已獲遵從

- (1) 凡有條款或條件規定某人作為指明牌照持有人須確保在某排放年度內，從有關的牌照所涉處所排放的某類別指明污染物的實際排放量，不多於就該排放年度而適用於

Clause 6

- (4) An allocation under subsection (1) does not have effect in respect of an emission year unless the technical memorandum issued under that subsection for making the allocation has commenced to have effect at least 4 years before the commencement of the emission year.
- (5) Subsection (4) does not apply to any allocation made by the first technical memorandum having effect for the purposes of subsection (1).

26H. Authority to ascertain quantity of allocated allowances etc.

- (1) Where an allocation of a quantity of emission allowances is made in the manner described in section 26G(3), the Authority shall as soon as reasonably practicable ascertain the quantity by using the method specified under that section in the relevant technical memorandum.
- (2) After ascertaining the quantity under subsection (1), the Authority shall as soon as reasonably practicable notify the relevant specified licence holder in writing of the quantity so ascertained.

Division 2

Determination of Compliance with Certain Terms and Conditions

26I. Determination of compliance with certain terms and conditions

- (1) For the purposes of this Ordinance, in determining whether a person has contravened any term or condition that requires him, as a specified licence holder, to ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission

C20

第 6 條

該指明牌照的該類別污染物的可排放量，則在為施行本條例而斷定該人是否已違反該條款或條件時——

- (a) 於該等條款或條件中提述就該排放年度而適用的該類別污染物的可排放量，須解釋為提述可在該排放年度從該處所排放的該類別污染物的數量，而該數量是藉參照以下數量而確定的：就該排放年度而根據第 3 分部為本條的目的而調高或調低的有關的獲配限額的數量；及
 - (b) (如就對上年度而言，有任何該等條款或條件已就該牌照及該類別污染物而遭違反) 在顧及就斷定有該項違反而根據本款作出的調整後得出的有關的實際排放量超逾如此得出的有關的可排放量的數量，須被視為該排放年度的該類別污染物的實際排放量的一部分。
- (2) 凡有關於就某排放年度而違反第 (1) 款提述的條款或條件的罪行，則就該罪行而根據第 30A 條進行的法律程序，須於緊接該排放年度之後的年份的 3 月 31 日之後方可展開。
- (3) 就本條而言——
- 對上年度** (preceding year) 就某排放年度而言，指緊接該排放年度之前的排放年度。

C21

Clause 6

of that type of pollutant as applicable to the specified licence in respect of the emission year—

- (a) a reference in such term or condition to the allowed emission of that type of pollutant as applicable in respect of the emission year shall be construed as a reference to the quantity, as ascertained by reference to the quantity of the relevant allocated allowances as may be increased or reduced for the purposes of this section under Division 3 in respect of the emission year, of that type of pollutant that may be emitted in the emission year from the licensed premises; and
 - (b) where there has been a contravention of such term or condition in respect of the preceding year in relation to the licence and that type of pollutant, the quantity by which the relevant actual emission exceeds the relevant allowed emission, after taking into account the adjustments under this subsection for the purpose of determining that there has been the contravention, shall be taken as part of the actual emission of that type of pollutant in the emission year.
- (2) Proceedings under section 30A for an offence relating to the contravention of any term or condition referred to in subsection (1) in respect of an emission year shall only be instituted after 31 March in the year immediately following the emission year.
- (3) For the purposes of this section—
- preceding year** (對上年度), in relation to an emission year, means the emission year immediately preceding that emission year.

第 3 分部

Division 3

獲配限額的數量的調整

Adjustments to Quantity of Allocated Allowances

26J. 在對上年度的獲配限額有盈餘的情況下調高獲配限額的數量

26J. Increase in quantity of allocated allowances in case of surplus of allocated allowances in preceding year

- (1) 凡在某排放年度，有關情況就某指明牌照及某類別指明污染物而存在，則就該排放年度而適用於該牌照的該類別污染物的獲配限額的數量，須為第 26I 條的目的而調高，幅度為第 (3) 款指明的數量。
- (2) 為施行第 (1) 款，如符合以下說明，有關情況即屬在某排放年度就某指明牌照及某類別指明污染物而存在：在顧及為按照第 26I(1) 條就對上年度作出有關斷定而根據該條作出的調整後，有關的可排放量超逾有關的實際排放量。
- (3) 第 (1) 款提述的數量為——
 - (a) 第 (2) 款提述的超逾之數；或
 - (b) 就對上年度而適用於有關的指明牌照的有關類別的指明污染物的獲配限額的數量的 2%，
 兩者以較少者為準。
- (4) 為施行第 (3)(b) 款，如根據該款計算所得之數並非整數，則該所得之數須向上調整至最接近的整數。

- (1) Where the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity specified in subsection (3).
- (2) For the purposes of subsection (1), the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year if, for the purpose of making the relevant determination in accordance with section 26I(1) in relation to the preceding year, the relevant allowed emission exceeds the relevant actual emission, after taking into account the adjustments under that section for the purpose of making the determination.
- (3) The quantity referred to in subsection (1) is—
 - (a) the excess referred to in subsection (2); or
 - (b) 2% of the quantity of the allocated allowances for the relevant type of specified pollutant as applicable to the relevant specified licence in respect of the preceding year,
 whichever is the lesser.
- (4) For the purposes of subsection (3)(b), where the result of the calculation under that subsection is a fraction, the result is to be rounded up to the next whole number.

第 6 條

(5) 就本條而言——

對上年度 (preceding year) 就某排放年度而言，指緊接該排放年度之前的排放年度。

26K. 在特殊事件等發生時調高獲配限額的數量

- (1) 凡在某排放年度，有關情況就某指明牌照及某類別指明污染物而存在，則為施行第 26I 條，監督可應有關的指明牌照持有人按照該牌照的條款及條件而提出的申請，在附表 2B 訂明的費用 (如適用的話) 已獲繳付後，調高就該排放年度而適用於該牌照的該類別污染物的獲配限額的數量，幅度為他認為適當的數量。
- (2) 為施行第 (1) 款，如符合以下說明，有關情況即屬在某排放年度就某指明牌照及某類別指明污染物而存在——
 - (a) (i) 某特殊事件發生，引致在該排放年度有該類別污染物從有關的牌照所涉處所排放；或
 - (ii) 在有准許根據第 26M 條就任何數量的排放配額而批給後，申請人已訂立協議，以取得該數量的排放配額或其任何部分，但申請人未能根據該協議取得該數量的排放配額或其該部分 (視屬何情況而定)；

Clause 6

(5) For the purposes of this section—

preceding year (對上年度), in relation to an emission year, means the emission year immediately preceding that emission year.

26K. Increase in quantity of allocated allowances upon occurrence of special event etc.

- (1) Where the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year, the Authority may, for the purposes of section 26I, upon application by the specified licence holder in accordance with the terms and conditions of the licence and upon payment of the fee (if applicable) prescribed in Schedule 2B, increase the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year by such quantity as he thinks fit.
- (2) For the purposes of subsection (1), the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year if—
 - (a) (i) that type of pollutant has been emitted in the emission year from the licensed premises as a result of the occurrence of a special event; or
 - (ii) further to an approval under section 26M in respect of any quantity of emission credits, the applicant has entered into an agreement for the acquisition of that quantity of emission credits or any part of it but has failed to acquire that quantity of emission credits or that part of it (as the case may be) under the agreement;

C26

第 6 條

- (b) 發生該特殊事件或未能取得上述排放配額 (視屬何情況而定) 的原因, 為並非申請人所能控制者; 及
 - (c) 申請人已作出一切應盡的努力, 以防止該特殊事件的發生, 或避免未能取得該排放配額的情況 (視屬何情況而定)。
- (3) 根據第 (1) 款就某排放年度提出的申請, 可於緊接該排放年度之後的年份的 1 月 1 日起至 3 月 1 日止的期間內提出。
- (4) 監督在收到第 (1) 款所指的申請後, 須在合理切實可行範圍內, 盡快 (但無論如何須在收到申請後 10 個工作天內) 將他根據該款作出的決定, 以書面通知申請人。
- (5) 為施行第 (2) 款——

特殊事件 (special event) 指在有關的指明牌照中指明為就本條而言屬特殊事件的任何事件。

26L. 在取得或轉讓獲配限額之後調高或調低該限額的數量

- (1) 指明牌照持有人可按照該指明牌照的條款及條件, 從另一指明牌照的持有人處取得 (或向另一指明牌照的持有人轉讓) 任何數量的就某排放年度而適用的某類別指明污染物的獲配限額, 或任何數量的就某排放年度而適用的、根據本條或第 26J 條調高的某類別指明污染物的獲配限額。
- (2) 凡某指明牌照 (“受讓人牌照”) 的持有人, 已按照受讓人牌照的條款及條件, 取得任何數量的就某排放年度而適用於另一指明牌照 (“轉讓人牌照”) 的某類別指明污染物的獲配限額, 或任何數量的就某排放年度而適用於

C27

Clause 6

- (b) the special event or the failure (as the case may be) occurred for reasons beyond the control of the applicant; and
 - (c) the applicant exercised all due diligence to prevent the occurrence of the special event or the failure (as the case may be).
- (3) An application under subsection (1) in relation to an emission year may be made during the period commencing on 1 January and ending on 1 March in the year immediately following the emission year.
- (4) The Authority shall as soon as reasonably practicable, and in any event within 10 working days, after receiving an application under subsection (1), notify the applicant in writing of his decisions under that subsection.
- (5) For the purposes of subsection (2)—

special event (特殊事件) means any event specified in the relevant specified licence as a special event for the purposes of this section.

26L. Increase or reduction in quantity of allocated allowances further to their acquisition or transfer

- (1) A specified licence holder may, in accordance with the terms and conditions of the specified licence, acquire from or transfer to the holder of another specified licence any quantity of allocated allowances, or any quantity of allocated allowances increased under this section or section 26J, for a type of specified pollutant as applicable in respect of an emission year.
- (2) Where the holder of a specified licence (“transferee licence”) has, in accordance with the terms and conditions of the transferee licence, acquired any quantity of allocated allowances or any quantity of

第 6 條

轉讓人牌照的、根據本條或第 26J 條調高的某類別指明污染物的獲配限額 (視屬何情況而定)，則——

- (a) 就該排放年度而言，適用於受讓人牌照的該類別污染物的獲配限額的數量，須為第 26I 條的目的而調高，幅度為如此取得的獲配限額的數量；及
 - (b) 就該排放年度而言，適用於轉讓人牌照的該類別污染物的獲配限額的數量，須為第 26I 條的目的而調低，幅度為如此取得的獲配限額的數量。
- (3) 除非有以下情況，否則對就某排放年度而取得的某數量的獲配限額而言，第 (2) 款不適用——
- (a) 該數量的獲配限額，是在該排放年度的 1 月 1 日起至緊接該排放年度之後的年份的 3 月 31 日止的期間內取得的；及
 - (b) 各有關的指明牌照持有人，已於取得該數量的獲配限額後的 5 個工作天內 (但無論如何須於緊接該排放年度之後的年份的 3 月 31 日之前)，共同將取得該數量的獲配限額一事，以書面通知監督，並隨該通知附上監督所要求的支持文件或資料。

Clause 6

allocated allowances increased under this section or section 26J (as the case may be) for a type of specified pollutant as applicable to another specified licence (“transferor licence”) in respect of an emission year—

- (a) the quantity of the allocated allowances for that type of pollutant as applicable to the transferee licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity of the allocated allowances so acquired; and
 - (b) the quantity of the allocated allowances for that type of pollutant as applicable to the transferor licence in respect of the emission year is to be reduced for the purposes of section 26I by the quantity of the allocated allowances so acquired.
- (3) Subsection (2) does not apply in respect of a quantity of allocated allowances acquired in respect of an emission year unless—
- (a) the acquisition has taken place during the period commencing on 1 January in the emission year and ending on 31 March in the year immediately following the emission year; and
 - (b) the relevant specified licence holders have jointly notified the Authority in writing of the acquisition, and have accompanied the notification with such supporting documents or information as might have been required by the Authority, within 5 working days after the acquisition, and in any event not later than 31 March in the year immediately following the emission year.

第 6 條

26M. 在取得或轉讓排放配額之後調高或調低獲配限額的數量

- (1) 指明牌照持有人可就某排放年度，按照該指明牌照的條款及條件，從另一人處取得任何數量的某類別指明污染物的排放配額，或向另一人轉讓任何數量的該等排放配額。
- (2) 凡指明牌照持有人已按照該指明牌照的條款及條件，就某排放年度而取得任何數量的某類別指明污染物的排放配額，則就該排放年度而適用於該牌照的該類別污染物的獲配限額的數量，須為第 26I 條的目的而調高，幅度為如此取得的排放配額的數量。
- (3) 凡指明牌照持有人已按照該指明牌照的條款及條件，就某排放年度而向另一人轉讓任何數量的某類別指明污染物的排放配額，則就該排放年度而適用於該牌照的該類別污染物的獲配限額的數量，須為第 26I 條的目的而調低，幅度為如此轉讓的排放配額的數量。
- (4) 除非有以下情況，否則對就某排放年度而取得的某數量的排放配額而言，第 (2) 款不適用——
 - (a) 監督已應一項在該排放年度的 12 月 31 日或之前按照有關申請人的指明牌照的條款及條件提出的申請，

Clause 6

26M. Increase or reduction in quantity of allocated allowances further to acquisition or transfer of emission credits

- (1) A specified licence holder may, in accordance with the terms and conditions of the specified licence, acquire from or transfer to another person any quantity of emission credits for a type of specified pollutant in respect of an emission year.
- (2) Where a specified licence holder has, in accordance with the terms and conditions of the specified licence, acquired any quantity of emission credits for a type of specified pollutant in respect of an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity of the emission credits so acquired.
- (3) Where a specified licence holder has, in accordance with the terms and conditions of the specified licence, transferred to another person any quantity of emission credits for a type of specified pollutant in respect of an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be reduced for the purposes of section 26I by the quantity of the emission credits so transferred.
- (4) Subsection (2) does not apply in respect of a quantity of emission credits acquired in respect of an emission year unless—
 - (a) the Authority has, upon an application made in accordance with the terms and conditions of the applicant's specified licence on or before 31 December in the emission year, granted an approval in respect of that quantity (whether the approval has been granted in respect of any

第 6 條

為施行第 (2) 款，就該數量的排放配額批給准許 (不論該准許是否就更大數量的排放配額而批給的)；

- (b) 申請人已於緊接該排放年度之後的年份的 3 月 31 日或之前，將取得該數量的排放配額一事，以書面通知監督，並隨該通知附上監督所要求的支持文件或資料；及
 - (c) 申請人已於緊接該排放年度之後的年份的 3 月 31 日或之前，就該數量的排放配額而遵從根據第 (5) 款施加的條款及條件。
- (5) 監督可在他認為適當的條款及條件規限下，根據第 (4) 款批給准許。
- (6) 監督在收到第 (4) 款提述的申請後，須在合理切實可行範圍內，盡快 (但無論如何須在收到申請後 20 個工作天內) 將他根據本條作出的決定，以書面通知申請人。
- (7) 為施行本條——

排放配額 (emission credit) 就某類別指明污染物而言，指可排放一噸該類別污染物的權利，而該權利是根據認可排放交易計劃取得或轉讓 (視屬何情況而定) 的；而為免生疑問，每項該等權利均予量化為一個排放配額；

認可排放交易計劃 (recognized emission trading scheme) 指——

Clause 6

further quantity of emission credits) of emission credits for the purposes of subsection (2);

- (b) the applicant has notified the Authority in writing of the acquisition, and has accompanied the notification with such supporting documents or information as might have been required by the Authority, on or before 31 March in the year immediately following the emission year; and
 - (c) the applicant has, in relation to that quantity of emission credits, complied with such terms and conditions as might have been imposed under subsection (5) on or before 31 March in the year immediately following the emission year.
- (5) The Authority may grant an approval under subsection (4) subject to such terms and conditions as he thinks fit.
- (6) The Authority shall as soon as reasonably practicable, and in any event within 20 working days, after receiving an application referred to in subsection (4), notify the applicant in writing of his decisions under this section.
- (7) For the purposes of this section—

emission credit (排放配額), in relation to a type of specified pollutant, means the entitlement to emit one tonne of that type of pollutant as may be acquired or transferred (as the case may be) under a recognized emission trading scheme; and, for the avoidance of doubt, each such entitlement is quantified as one emission credit;

recognized emission trading scheme (認可排放交易計劃) means—

C34

第 7 條

- (a) 監督與廣東省環境保護局於 2007 年 1 月 30 日訂立的“珠江三角洲火力發電廠排污交易試驗計劃實施方案”；或
- (b) 監督認可的與 (a) 段提述的計劃性質相似的任何其他計劃。

26N. 本分部若干條文適用於已失效的牌照

為施行本分部，凡指明牌照於緊接有關的排放年度之後的年份的 3 月 31 日或之前已失效，則第 26J、26K、26L 及 26M 條須解釋為猶如在有以下情況下適用：該牌照在其條款及條件的規限下繼續有效，直至緊接該排放年度之後的年份的 3 月 31 日終結時為止。”。

7. 修訂第 30A 條 (違反牌照等的條款及條件)

第 30A 條——

廢除

“其獲監督批給牌照所受規限”

代以

“牌照”。

8. 修訂第 31 條 (何時可提出上訴；及其效果)

在第 31(1)(n) 條之後——

加入

C35

Clause 7

- (a) the “Implementation Framework of the Emission Trading Pilot Scheme for Thermal Power Plants in the Pearl River Delta Region” entered into by the Authority and the Guangdong Environmental Protection Bureau on 30 January 2007; or
- (b) any other scheme of a nature similar to the scheme referred to in paragraph (a) as recognized by the Authority.

26N. Application of certain provisions of this Division to licence that has ceased to be in force

For the purposes of this Division, where a specified licence has ceased to be in force on or before 31 March in the year immediately following the relevant emission year, sections 26J, 26K, 26L and 26M are to be construed as having application as if the licence had continued in force subject to its terms and conditions until the end of 31 March in the year immediately following the emission year.”.

7. Section 30A amended (Contravention of terms and conditions of licence, etc.)

Section 30A—

Repeal

“subject to which the licence is granted to him by the Authority”

Substitute

“of the licence”.

8. Section 31 amended (When appeal may be brought; and effect thereof)

After section 31(1)(n)—

Add

第 9 條

- “(na) 第 26K(1) 條 (拒絕在特殊事件等發生時調高獲配限額的數量) ;
- (nb) 第 26M(4)(a) 條 (拒絕為施行第 26M(2) 條而批給准許) ;
- (nc) 第 26M(5) 條 (為施行第 26M(2) 條而在批給准許時施加條款及條件) ;”。

9. 修訂第 32 條 (上訴委員會的組成)

- (1) 第 32(2) 條, 在“專業資格”之後——
加入
“而並非公職人員”。
- (2) 第 32(4) 條, 在“上訴委員會委員”之後——
加入
“而並非公職人員”。
- (3) 在第 32(6) 條之後——
加入
“(7) 在第 (2) 款中——
公職人員 (public officer) 不包括法官或區域法院法官。”。

10. 修訂第 33 條 (上訴委員會司法管轄權的行使)

- 第 33 條——
廢除第 (4) 款。

11. 修訂第 34 條 (關於上訴委員會的補充條文)

- (1) 第 34(1) 條, 在“專業資格”之後——

Clause 9

- “(na) section 26K(1) (refusing to increase a quantity of allocated allowances upon occurrence of a special event etc.);
- (nb) section 26M(4)(a) (refusing to grant an approval for the purposes of section 26M(2));
- (nc) section 26M(5) (imposing terms and conditions upon granting an approval for the purposes of section 26M(2));”.

9. Section 32 amended (Constitution of Appeal Board)

- (1) Section 32(2), after “in law”—
Add
“and who is not a public officer”.
- (2) Section 32(4), after “of persons”—
Add
“, not being public officers.”.
- (3) After section 32(6)—
Add
“(7) In subsection (2)—
public officer (公職人員) does not include a judge or District Judge.”.

10. Section 33 amended (Exercise of Appeal Board’s jurisdiction)

- Section 33—
Repeal subsection (4).

11. Section 34 amended (Supplementary provisions as to Appeal Board)

- (1) Section 34(1)—

C38

C39

第 12 條

加入

“而並非公職人員”。

(2) 在第 34(4) 條之後——

加入

“(5) 在第 (1) 款中——

公職人員 (public officer) 不包括法官或區域法院法官。”。

12. 廢除第 35 條 (由總督會同行政局覆核上訴委員會的決定)

第 35 條——

廢除該條。

13. 加入第 37D 條

在第 37C 條之後——

加入

“37D. 修訂附表

(1) 局長可藉於憲報刊登的公告修訂附表 2A 及 2B。

(2) 在附表 2B 訂明的各項費用——

(a) 可定在足以收回以下開支的水平：在管理、規管及管制因根據第 26K 條調高獲配限額的數量而出現或相當可能出現的指明污染物的排放方面，所招致的

Clause 12

Repeal

“qualified in law”

Substitute

“who is qualified in law and who is not a public officer”.

(2) After section 34(4)—

Add

“(5) In subsection (1)—

public officer (公職人員) does not include a judge or District Judge.”.

12. **Section 35 repealed (Review of Appeal Board's decision by Governor in Council)**

Section 35—

Repeal the section.

13. **Section 37D added**

After section 37C—

Add

“37D. Amendment of Schedules

(1) The Secretary may, by notice published in the Gazette, amend Schedules 2A and 2B.

(2) Any fee prescribed in Schedule 2B—

(a) may be fixed at levels that provide for the recovery of the expenditure incurred or likely to be incurred in relation generally to the administration, regulation and control of the emission of specified pollutants that may take place or is likely to take place as a result of

C40

C41

第 14 條

一般開支，或相當可能在該方面招致的一般開支；
及

- (b) 不得藉參照提供任何特定服務、設施或事物而招致或相當可能招致的行政費或其他費用的款額，而予以局限。”。

14. 修訂第 42 條 (對政府及公職人員的保障)

第 42(1) 條——

廢除

“或豁免根據本條例獲得批給或繼續有效”

代以

“根據本條例獲得批給、續期、更改或轉讓，或任何豁免根據本條例獲得批給或繼續有效。”。

15. 修訂附表 2 (牌照的批給或豁免的繼續生效所受規限的條款及條件)

(1) 附表 2——

廢除標題

代以

“牌照或豁免的條款及條件可關乎的事項”。

(2) 附表 2，在緊接第 1 段之前——

加入

“第 1 部”。

(3) 附表 2，在第 1 部之後——

加入

Clause 14

increases in the quantity of allocated allowances under section 26K; and

- (b) shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the provision of any particular service, facility or matter.”.

14. Section 42 amended (Protection of Government and public officers)

Section 42(1)—

Repeal

“or exemption is granted or continued”

Substitute

“is granted, renewed, varied or transferred or any exemption is granted or continued”.

15. Schedule 2 amended (Terms and conditions subject to which a licence may be granted or an exemption continued)

(1) Schedule 2—

Repeal the heading

Substitute

“Matters to which Terms and Conditions of Licence or Exemption may Relate”.

(2) Schedule 2, immediately before paragraph 1—

Add

“Part 1”.

(3) Schedule 2, after Part 1—

Add

C42

C43

第 16 條

“第 2 部

指明牌照——條款及條件可關乎的附加事項

1. 附表 2A 所列的任何條款及條件所關乎的任何事項。
2. 關乎本條例第 IVB 部的施行的任何事項。”。

16. 加入附表 2A 及 2B
在附表 2 之後——
加入

“附表 2A [第 15 及 37D 條
及附表 2]

指明牌照的強制性條款及條件

實際排放量不得多於可排放量

1. 指明牌照持有人須確保在某排放年度內，從有關的牌照所涉處所排放的某類別指明污染物的實際排放量，不多於就該排放年度而適用於該指明牌照的該類別污染物的可排放量。

Clause 16

“Part 2

**Specified Licences—Additional Matters to which
Terms and Conditions may Relate**

1. Any matters to which any of the terms and conditions set out in Schedule 2A relates.
2. Any matters relating to the operation of Part IVB of this Ordinance.”.

16. **Schedules 2A and 2B added**
After Schedule 2—
Add

“Schedule 2A [ss. 15 & 37D
& Sch. 2]

**Mandatory Terms and Conditions of Specified
Licence**

Actual emission not greater than allowed emission

1. The specified licence holder shall ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission of that type of pollutant as applicable to the specified licence in respect of the emission year.

C44

第 16 條

附表 2B[第 26K 及
37D 條]**為本條例第 26K(1) 條的目的而訂明的費用**

項目	描述	款額
1.	須就參照本條例第 26K(2)(a)(i) 條提出申請而繳付的費用	無
2.	須就參照本條例第 26K(2)(a)(ii) 條提出申請而繳付的費用	(就所尋求調高的 每一個排放限額 而言) \$20,000”。

C45

Clause 16

Schedule 2B[ss. 26K &
37D]**Fee Prescribed for Purposes of Section 26K(1) of
this Ordinance**

Item	Description	Amount
1.	Fee payable for an application made by reference to section 26K(2)(a)(i) of this Ordinance	nil
2.	Fee payable for an application made by reference to section 26K(2)(a)(ii) of this Ordinance	\$20,000 for each emission allowance sought to be increased”.

摘要說明

本條例草案旨在修訂《空氣污染管制條例》(第 311 章) (“條例”), 藉以——

- (a) 藉着包括以下各項的措施, 規管因進行條例附表 1 第 7 項指明的工序 (以在沒有正常電力供應時提供後備電力供應為唯一目的而進行的該等工序除外) (“電力工程”) 而產生的二氧化硫、氮氧化物及可吸入懸浮粒子 (“指明污染物”) 的排放——
 - (i) 將可從用於進行該等電力工程的處所排放指明污染物的權利, 分配予指明牌照持有人;
 - (ii) 對指明牌照施加有關條款及條件; 及
 - (iii) 指明遵從該等條款及條件的方式;
- (b) 刪除根據條例第 35 條將根據條例第 VI 部組成的上訴委員會 (“上訴委員會”) 的決定轉交覆核的權力;
- (c) 禁止公職人員獲委任為或出任為上訴委員會的主席, 或獲委任為有資格獲委任為上訴委員會的委員的備選委員小組的成員; 以及
- (d) 澄清條例及其附屬法例中 “牌照” 的涵義。

2. 草案第 1 條訂定簡稱。

Explanatory Memorandum

The object of this Bill is to amend the Air Pollution Control Ordinance (Cap. 311) (“the Ordinance”) to—

- (a) regulate the emission of sulphur dioxide, nitrogen oxides and respirable suspended particulates (“specified pollutants”) as a result of the conduct of the process specified in item 7 of Schedule 1 to the Ordinance (other than the conduct of such process for the sole purpose of providing a stand-by power supply in the event of a loss of normal power supply) (“electricity works”) by measures including—
 - (i) the allocation to specified licence holders of the entitlement to emit specified pollutants from premises used for the conduct of such electricity works;
 - (ii) the imposition of relevant terms and conditions on the specified licences; and
 - (iii) the specification of the manner in which such terms and conditions may be complied with;
- (b) remove the right of referring for review under section 35 of the Ordinance a decision of any Appeal Board constituted under Part VI of the Ordinance (“Appeal Board”);
- (c) prohibit a public officer from being appointed as or to act as Chairman of any Appeal Board, or from being appointed as a member of a panel of persons eligible for appointment as members of any Appeal Board; and
- (d) clarify the meaning of “licence” in the Ordinance and its subsidiary legislation.

2. Clause 1 provides for the short title.

C48

摘要說明
第 3 段

3. 草案第 3(1) 條澄清條例第 2 條中“牌照”的定義的涵義。草案第 3(3) 條載有定義，在解釋條例草案的條文時必須參照該等定義。
4. 草案第 5 條修訂條例第 15(4) 條，以訂定自 2010 年 1 月 1 日起，指明牌照除須受根據建議的第 15(4)(a) 條施加的條款及條件規限外，亦須受建議的附表 2A 所列的條款及條件規限。
5. 草案第 6 條在條例中加入新的第 IVB 部。建議的第 IVB 部包含 3 個分部。
6. 第 1 分部 (建議的第 26G 及 26H 條) 就排放限額的分配，訂定條文。
7. 建議的第 26G 條規定，環境局局長 (“局長”) 須就於 2010 年 1 月 1 日或之後開始的每一排放年度，以及就每一指明牌照，為每一類別指明污染物分配某數量的排放限額。
8. 建議的第 26H 條規定在若干情況下，監督須確定獲配限額的數量及將如此確定的數量通知有關的指明牌照持有人。
9. 第 2 分部 (建議的第 26I 條) 規定，在斷定某人是否已違反指明牌照的某一條款或條件時，須顧及根據建議的第 IVB 部的第 3 分部對有關的獲配限額的數量所作出的調整，以及顧及對有關的實際排放量所作出的調整。
10. 第 3 分部 (建議的第 26J 至 26N 條) 就對獲配限額的數量作出調整方面，訂定條文。

C49

Explanatory Memorandum
Paragraph 3

3. Clause 3(1) clarifies the meaning of the definition of “licence” in section 2 of the Ordinance. Clause 3(3) contains the definitions with reference to which the provisions of the Bill are to be interpreted.
4. Clause 5 amends section 15(4) of the Ordinance to provide that, from 1 January 2010 onwards, a specified licence shall, in addition to such terms and conditions as may be imposed under the proposed section 15(4)(a), also be subject to such terms and conditions as may be set out in the proposed Schedule 2A.
5. Clause 6 adds a new Part IVB to the Ordinance. The proposed Part IVB contains 3 Divisions.
6. Division 1 (proposed sections 26G and 26H) provides for the allocation of emission allowances.
7. The proposed section 26G requires the Secretary for the Environment (“the Secretary”) to allocate a quantity of emission allowances for each type of specified pollutant in respect of each specified licence in relation to each emission year commencing on or after 1 January 2010.
8. The proposed section 26H requires the Authority to ascertain the quantity of allocated allowances and notify the relevant specified licence holders of the quantity so ascertained in certain cases.
9. Division 2 (proposed section 26I) provides that, in determining whether or not a person has contravened a particular term or condition of a specified licence, the adjustments to the relevant quantity of allocated allowances under Division 3 of the proposed Part IVB and to the relevant actual emission shall be taken into account.
10. Division 3 (proposed sections 26J to 26N) provides for the adjustments to the quantity of allocated allowances.

C50

摘要說明
第 11 段

11. 建議的第 26J 條規定，凡於緊接有關的排放年度之前的一年，獲配限額有盈餘，則獲配限額的數量須予調高。
12. 建議的第 26K 條規定，在若干事件發生時，及在監督就有關的申請批給准許後，獲配限額的數量須予調高。就有關的申請所尋求調高的每一個排放限額而言，須繳付建議的附表 2B 訂明的費用。
13. 建議的第 26L 條規定，在指明牌照持有人之間取得或轉讓獲配限額後，獲配限額的數量須予調高或調低。
14. 建議的第 26M 條規定，在根據任何認可排放交易計劃取得或轉讓排放配額後，獲配限額的數量須予調高或調低。該條賦權監督為某項擬調高獲配限額的數量的申請而批給准許，或拒絕為該申請而批給准許。
15. 建議的第 26N 條規定，建議的第 26J、26K、26L 及 26M 條適用於在緊接有關的排放年度之後的年份的 3 月 31 日或之前已失效的指明牌照，直至緊接該排放年度之後的年份的 3 月 31 日終結時為止。
16. 草案第 8 條訂定，可針對監督根據建議的第 26K(1) 及 26M(4)(a) 及 (5) 條作出的決定而根據條例第 31 條提出上訴。

C51

Explanatory Memorandum
Paragraph 11

11. The proposed section 26J provides for the increase in the quantity of allocated allowances where there has been a surplus of allocated allowances in the year immediately preceding the relevant emission year.
12. The proposed section 26K provides for the increase in the quantity of allocated allowances upon occurrence of certain events and upon approval by the Authority of the relevant application. Any fee prescribed in the proposed Schedule 2B is to be charged for each emission allowance sought to be increased under the relevant application.
13. The proposed section 26L provides for the increase or reduction in the quantity of allocated allowances further to their acquisition or transfer among specified licence holders.
14. The proposed section 26M provides for the increase or reduction in the quantity of allocated allowances further to the acquisition or transfer of emission credits under any recognized emission trading scheme. That section empowers the Authority to grant or refuse to grant an approval for the purposes of a proposed increase in the quantity of allocated allowances.
15. The proposed section 26N provides for the application of the proposed sections 26J, 26K, 26L and 26M to a specified licence that has ceased to be in force on or before 31 March in the year immediately following the relevant emission year until the end of that day.
16. Clause 8 provides for appeals under section 31 of the Ordinance against a decision by the Authority under the proposed sections 26K(1) and 26M(4)(a) and (5).

C52

摘要說明
第 17 段

17. 草案第 9、10 及 11 條分別修訂條例第 32、33 及 34 條，以禁止公職人員 (法官或區域法院法官除外) 獲委任為或出任為上訴委員會的主席，及禁止公職人員獲委任為有資格獲委任為上訴委員會的委員的備選委員小組的成員。
18. 草案第 12 條廢除條例第 35 條，以刪除根據該條將上訴委員會的決定轉交覆核的權力。
19. 草案第 13 條賦權局長藉於憲報刊登的公告修訂建議的附表 2A 及 2B。該條亦訂定可在建議的附表 2B 訂明費用。
20. 草案第 15 條在條例附表 2 中加入新的第 2 部。建議的第 2 部就指明牌照的條款及條件可關乎的附加事項，訂定條文。
21. 草案第 16 條在條例中加入新的附表 2A 及 2B。建議的附表 2A 列明憑藉建議的第 15(4)(b) 條而自 2010 年 1 月 1 日起規限指明牌照的條款及條件。建議的附表 2B 訂明須就參照建議的第 26K(2)(a)(i) 及 (ii) 條提出申請而繳付的費用。

C53

Explanatory Memorandum
Paragraph 17

17. Clauses 9, 10 and 11 amend sections 32, 33 and 34 respectively of the Ordinance to prohibit a public officer (other than a judge or District Judge) from being appointed as or to act as Chairman of any Appeal Board, and to prohibit a public officer from being appointed as a member of a panel of persons eligible for appointment as members of any Appeal Board.
18. Clause 12 repeals section 35 of the Ordinance to remove the right of referring a decision of any Appeal Board for review under that section.
19. Clause 13 empowers the Secretary to amend the proposed Schedules 2A and 2B by notice published in the Gazette. It also provides for the prescription of fees in the proposed Schedule 2B.
20. Clause 15 adds a new Part 2 to Schedule 2 to the Ordinance. The proposed Part 2 provides for the additional matters to which the terms and conditions of a specified licence may relate.
21. Clause 16 adds new Schedules 2A and 2B to the Ordinance. The proposed Schedule 2A sets out the terms and conditions to which a specified licence shall, by virtue of the proposed section 15(4)(b), be subject from 1 January 2010 onwards. The proposed Schedule 2B prescribes the fees payable for an application made by reference to the proposed section 26K(2)(a)(i) and (ii).

