

LEGISLATIVE COUNCIL BRIEF

Product Eco-responsibility Ordinance
(Chapter 603)

Product Eco-responsibility (Amendment) Bill 2013

INTRODUCTION

At the meeting of the Executive Council on 23 April 2013, the Council ADVISED and the Chief Executive ORDERED that the Product Eco-responsibility (Amendment) Bill 2013, at Annex A, should be introduced into the Legislative Council (“LegCo”) to amend the Product Eco-responsibility Ordinance (Cap 603) (“PERO”) for the extension of the Environmental Levy Scheme on Plastic Shopping Bags (“PSB Levy Scheme”).

JUSTIFICATIONS

Excessive PSB Use as an Environmental Problem

2. Plastic shopping bags (“PSBs”) are usually made of materials that are not easily degradable; their excessive use and their subsequent disposal is creating pressure on the already stretched landfill resources. The PSB Levy Scheme was launched on 7 July 2009 as the first producer responsibility scheme (“PRS”) introduced under the PERO. It seeks to address the problem of excessive PSB use in some 3 300 registered retail outlets, mostly being supermarkets, convenience stores and medicare and cosmetics stores. We reviewed the PSB Levy Scheme one year after its implementation. Several indicators jointly suggested that the PSB Levy Scheme has been implemented successfully. For instance –

- (a) According to a telephone survey conducted by the Central Policy Unit, over 75% of the respondents did not claim PSBs when shopping at a registered retail outlet.
- (b) Landfill disposal of PSBs distributed by retail categories of supermarkets, convenience stores and medicare and cosmetics stores registered over 75% decrease in

mid-2010 when compared with the same in mid-2009¹.

- (c) The actual levy income was in the region of about \$26.5 million per annum, far less than the original estimation made in 2008, i.e. \$200 million per annum².

3. Notwithstanding its initial success, the existing coverage of the PSB Levy Scheme is limited. But excessive use of PSBs remains a serious problem in Hong Kong as many other retail outlets are still distributing PSBs to their customers as a matter of routine. Within the retail categories other than the regulated sectors³, PSB disposal at the landfills was found to have increased by about 6% between mid-2009 and mid-2010.

Extending the PSB Levy Scheme

4. In May 2011, the Government launched a three-month consultation on whether and how to extend the PSB Levy Scheme. On the whole, the community was supportive of an extended coverage so as to further address the problem of excessive PSB use in Hong Kong. In particular, there was majority support for the mandatory PRS to cover also small and medium enterprises (“SMEs”). This necessitates major streamlining of the existing compliance system which when applied to SMEs might lead to major implications on the operation of and compliance costs on the businesses. At present, under the PSB Levy Scheme, a registered retailer has to submit to the Government quarterly returns setting out the number of PSBs distributed to customers in the non-exempted areas⁴ in all of the retailer’s registered retail outlets as well as the amount of levy collected for such bags. The retailer also has to pay to the Government the levy income as stated in the quarterly returns.

¹ We estimated that about 65% of the pre-levy PSB distribution under these retail categories could be attributable to registered retail outlets under the PSB Levy Scheme. Taking into account such estimation, the reduction in PSBs distributed by registered retailers since the launch of the PSB Levy Scheme in July 2009 could be as high as 90%.

² We assumed a 50% reduction in the distribution of PSBs from registered retailers and a further 50% exemption of plastic bags that do not fall under the statutory definition with an environmental levy up to \$200 million a year based on the 2005 survey figure.

³ Namely chain or large retailers such as supermarkets, convenience stores and medicare and cosmetic stores.

⁴ At present, there are two types of exemption, one for non-specified goods (i.e. goods other than food or drink, medicine or first-aid item and personal hygiene or beauty product) and the other for third-party operators.

5. Coupled with other measures to improve the effectiveness of the current PSB Levy Scheme, the following changes are proposed in the second phase –

Ban on Free PSB Distribution in Retail Sales

6. We **propose** that the extended PRS should adopt maximum coverage: If there is any goods sold by retail (including displayed or offered for sale), the seller must charge at least 50 cents for each PSB that the seller provides to the customer at the time of or in connection with the sale, display or offer; where a PSB is provided as a single item of goods or ten or more PSBs is prepackaged as a pack, each PSB or pack should be charged no less than 50 cents. Noteworthy is that there are primarily service businesses that also sell goods, e.g. tutorial schools selling books and stationery and hairdressing salons selling hair care products. Such acts on the sales of goods should also be subject to the extended PRS. This effectively will trigger the economic disincentive of a 50-cent PSB charge at every point of sales of goods, irrespective of the type of business of the seller or where the sales transaction is completed.

Exclusion of PSB Use for Food Hygiene Reasons

7. As a matter of principle, the ban on free distribution proposed in paragraph 6 should not discourage the use of PSBs which are necessary for ensuring food hygiene. The use of PSB would not be necessary where an item of food, drink or medicine for human or animal consumption (collectively as “foodstuff”) has already been properly packaged to address food hygiene concerns. Hence, we **propose** to exclude from the ban on free distribution those PSBs that contain only an item of foodstuffs except where –

- (a) the foodstuff item is already contained in airtight packaging; or
- (b) even though not contained in airtight packaging, no part of the foodstuff item is exposed to the environment, and nothing may spill out of the packaging in the course of conveyance.

8. There have been suggestions of excluding also PSBs that are used to carry frozen/chilled food or broadly “temperature-controlled goods”. At present, such food items are commonly carried in flat-top bags (not subject to the environmental levy), nominally to segregate the condensation (of water vapour) from other goods. But condensation comes about from a temperature difference and could not be avoided by

another layer of wrapping. The intended purpose of segregation could also be served with the use of separate reusable shopping bags. We therefore do not propose to exclude any bags that are used to carry securely packed frozen/chilled food.

Flat-top Bags and Other Issues

9. At present, the issue of food hygiene is handled by excluding flat-top bags from the statutory definition of PSBs across the board⁵. These flat-top bags do not have a carrying device and are hitherto usually used to wrap fresh food. With the specific exclusion proposed in paragraph 7, the current approach will become obsolete. We therefore **propose** to amend the definition such that flat-top bags will be subject to regulation under the extended PRS. This proposal will help deter the problem of excessive use of flat-top bags not solely for food hygiene purposes which is increasingly reported.

10. Under the current phase and during the public consultation for the second phase, there have been enquiries and comments concerning whether a plastic bag that is part and parcel of the goods will be subject to charge. We also **propose** to clarify that a PSB does not include a bag that forms part of the goods concerned. For the avoidance of doubt, non-woven bags which were observed to have increased in number are made of plastics and hence fall under the definition of a PSB even under the current phase.

Retention of the PSB Charge by Seller

11. At present, the PSB Levy Scheme adopts a “remittance” approach with an elaborate compliance system as outlined in paragraph 4. Such a “remittance” approach may however be too burdensome to some SMEs which form over 90% of the retail industry in Hong Kong⁶. In order to enable maximum coverage of the extended PRS, we **propose** to streamline the compliance system by adopting a

⁵ Under Section 1(1) of Schedule 1 to the PERO, a bag is a PSB to which the Ordinance applies if –

- (a) it is made wholly or partly of plastic; and
- (b) there is a handle, handle hole, perforated line for tearing out a handle hole, carrying string or strap, or any other carrying device on, or attached to, the bag.

⁶ Newspaper vendors, who operate as a high-speed cash trade, provide a case in point. Their current mode of business operation would require very fundamental changes if they are subject to the above-mentioned requirements most notably in terms of record keeping.

“retention” approach whereby a seller may retain and handle the PSB charge without the need of remitting to the Government. While the PSB charge will no longer be public moneys, we encourage a seller to donate the income generated from the PSB charge to support suitable environmental causes.

Introduction of a Fixed Penalty System

12. Under the proposed “retention” approach in the second phase, the various administrative requirements relating to registration, quarterly reporting and record keeping will become unnecessary and will be repealed. To enhance enforcement efficiency and uphold the deterrence effect, we **propose** to introduce a fixed penalty system. If the Director of Environmental Protection (or an authorized officer) has reason to believe that a person is committing or has committed an offence for failing to charge for PSBs provided at the time of the sale, the Director (or the authorized officer) may give the person a fixed penalty notice offering the person an opportunity to discharge the liability for the offence by paying a fixed penalty of \$2,000, which is also the actual level of penalty in the six convictions so far under the current phase⁷. At the same time, the option to institute criminal proceedings will be retained to tackle breaches of serious nature such as repeated or systemic contraventions.

13. Notwithstanding the need of a fixed penalty system, we envisage that non-compliance would unlikely be an extensive phenomenon but mostly involve isolated cases of a minor nature. Immediately after the gazettal of the Bill, we will stage enhanced publicity to promote the wider coverage of the extended PRS and publicize the implementation details such as the specific exclusion arrangement for food hygiene purposes. For more on publicity, please refer to paragraph 20. Within the Government, we will issue circulars to bureaux and departments advising them of the requirements to cease the free provision of PSBs to customers if they are engaged in retail sales in line with the provisions in the Bill when enacted⁸.

Potential Benefits of the Extension

14. Experiences in Hong Kong and overseas suggest that the application of an economic disincentive at the retail end could drastically reduce PSB distribution (e.g. up to 90% in the current phase

⁷ However, the fixed penalty system is not applicable for the offence of failing to charge PSBs provided in connection with the sale. Such an offence may not be equally straightforward and hence may not be suitable for a fixed penalty.

⁸ We have already issued guidelines to bureaux and departments on reducing the distribution of non-woven bags (also known as “eco-friendly bags”).

of our scheme). As at mid-2010, the total number of PSBs being disposed of at our landfills is about 4.44 billion per annum, of which over 96% were attributable to retail sectors outside the regulation of the current scheme. It would however run the risk of over-estimation by simplistically assuming that the latest disposal figure could be cut down by 90% after the PRS is extended. Such assumption requires adjustments for the food hygiene exemption. Moreover, existing registered retailers might not necessarily achieve further reduction in PSB distribution after the extension. That said, whereas the problem of excessive use prevails, there remains considerable scope of reduction. We will enhance publicity and public education so as to maximize the benefits under the extended PRS.

OTHER OPTIONS

15. Upon request by the LegCo Panel on Environmental Affairs (“EAP”), we reconsidered the option to adopt a “dual” system under which (i) in view of the proven success of the “remittance” approach applied to chain operators under the current phase, status quo is applied to the existing registered retailers, and (ii) given the better prospect of the “retention” approach in easing the burden of the wider retail industry, the “retention” approach is applied to the newly covered retailers only. But such a “dual” system would give rise to differential treatment that may not be legally justifiable. We have explained our detailed analysis to the EAP vide the information note numbered CB(1) 2667/11-12(01).

THE BILL

16. The main provisions are –
- (a) Clause 10 adds new sections 18A, 18B and 18C to the PERO, which introduce the requirement to charge for PSBs;
 - (b) Clauses 6, 11, 12, 13, 14, 16 and 20 repeal the provisions in the PERO relating to the existing regulatory regime on the imposition of an environment levy under a “remittance” approach. Clauses 3, 4, 5, 7, 8 and 9 provide for related amendments; and
 - (c) Clause 15 adds a new Division 4A to Part 3 of the PERO, providing for a fixed penalty for an offence for failing to charge for PSBs at the time of the sale and for offering rebate or discount with the effect of offsetting that charge.

The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

17. The legislative timetable of the Amendment Bill will be –

Publication in the Gazette	3 May 2013
First Reading and commencement of Second Reading debate	8 May 2013
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

18. The proposal has environment, sustainability, economic and financial and civil service implications as set out at Annex C. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no family implications. The Bill will not affect the current binding effects of the PERO.

PUBLIC CONSULTATION

19. A public consultation was conducted on the extension of the PSB Levy Scheme between May and August 2011. The result was positive with general support for extending the PRS to a wider coverage so as to further address the problem of excessive PSB use in Hong Kong. Accordingly, in November 2011, we reported our proposed way forward to the EAP and the Advisory Council on the Environment. We have also issued a note to the EAP providing an analysis on the “dual” system (cf. paragraph 15) on 28 September 2012. The Bill is broadly in line with the comments received from them.

PUBLICITY

20. We will launch a programme of publicity and public education. A press release will be issued. A spokesperson will be available to answer press enquiries. We will also publish a set of draft guidelines detailing how the extended PRS would operate. A variety of PR materials will be disseminated through the media so as to get the community ready for the extended PRS as soon as possible.

ENQUIRIES

21. For enquiries on this brief, please contact Ms Libera CHENG,

Senior Administrative Officer (Waste Management Division) at
3509-8646 or email to liberacheng@epd.gov.hk.

Environment Bureau/Environmental Protection Department
April 2013

Product Eco-responsibility (Amendment) Bill 2013

Contents

Clause	Page
1. Short title and commencement	1
2. Product Eco-responsibility Ordinance amended	1
3. Section 2 amended (purposes of this Ordinance).....	1
4. Section 3 amended (interpretation)	2
5. Section 7 amended (powers to obtain information, enter places for routine inspection, etc.).....	2
6. Section 13 amended (appeals).....	2
7. Section 17 amended (interpretation of Part 3).....	3
8. Part 3, Division 2 heading amended (levy on plastic shopping bags and registration of prescribed retailers)	3
9. Section 18 amended (levy on plastic shopping bags)	4
10. Sections 18A, 18B and 18C added.....	4
18A. Duty of seller to charge for plastic shopping bags	4
18B. Offences relating to section 18A	5
18C. Liability of franchisers and franchisees	6
11. Sections 19 and 20 repealed.....	6
12. Section 21 amended (Secretary may amend Schedules).....	7
13. Part 3, Division 3 repealed (obligations of registered	

Clause	Page
retailers)	7
14. Part 3, Division 4 repealed (supplementary provisions as to offences under Part 3)	7
15. Part 3, Division 4A added.....	7
Division 4A—Fixed Penalty and Related Provisions	
28A. Director may give penalty notice	8
28B. No prosecution or conviction if compliance with penalty notice.....	8
28C. Director may demand personal details and inspect proof of identity	9
28D. Director may serve demand notice in case of failure to pay fixed penalty etc.	10
28E. No prosecution or conviction if compliance with demand notice.....	11
28F. Withdrawal of penalty or demand notice.....	11
28G. Recovery of fixed penalty	12
28H. Consequences of compliance with recovery order or failure to do so.....	14
28I. Application for review of recovery order	14
28J. Outcome of review	15
28K. Power to rescind order on application by Director	16

Clause	Page
28L. Dispute of liability for offence	16
28M. Protection of Director and authorized officers	17
28N. Legislative Council may amend certain amounts.....	18
16. Section 29 amended (Secretary may make regulations in respect of Part 3).....	18
17. Schedule 1 amended (plastic shopping bags to which this Ordinance applies).....	18
18. Schedule 2 amended (plastic shopping bags to which this Ordinance does not apply)	19
19. Schedule 3 amended (levy on plastic shopping bags).....	20
20. Schedule 4 repealed (prescribed retailers to whom Part 3 of this Ordinance applies).....	21

A BILL To

Amend the Product Eco-responsibility Ordinance to require a retail seller of goods to charge a customer for plastic shopping bags provided at the time of or in connection with the sale; to provide for a fixed penalty for the offence of contravening the requirement at the time of the sale and the recovery of the penalty; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Product Eco-responsibility (Amendment) Ordinance 2013.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Product Eco-responsibility Ordinance amended

The Product Eco-responsibility Ordinance (Cap. 603) is amended as set out in sections 3 to 20.

3. Section 2 amended (purposes of this Ordinance)

Section 2(2)(d), after “levy”—

Add

“or a charge”.

4. Section 3 amended (interpretation)

Section 3(1)—

Add in alphabetical order*“body corporate* (法人團體) means—

- (a) a company as defined by section 2(1) of the Companies Ordinance (Cap. 32); or
- (b) a company incorporated outside Hong Kong;”.

5. Section 7 amended (powers to obtain information, enter places for routine inspection, etc.)

Section 7(2) and (3)(b), after “levy”—

Add

“, charge”.

6. Section 13 amended (appeals)

(1) Section 13(1)—

Repeal

“any of the matters specified in subsection (2)”

Substitute

“an appealable matter”.

(2) Section 13—

Repeal subsection (2)**Substitute**

“(2) In this section—

appealable matter (可上訴事宜) means a matter that is—

- (a) provided by a regulation made under this Ordinance; and

- (b) specified in the regulation as a matter on which an appeal may be made under this section.”.

7. Section 17 amended (interpretation of Part 3)

(1) Section 17(1)—

- (a) definition of *certificate of registration*;
- (b) definition of *levy*;
- (c) definition of *prescribed retailer*;
- (d) definition of *qualified retail outlet*;
- (e) definition of *registered retail outlet*;
- (f) definition of *registered retailer*;
- (g) definition of *regulation*—

Repeal the definitions.

(2) Section 17(1)—

Add in alphabetical order*“demand notice* (繳款通知書) means a notice served under section 28D(2);*fixed penalty* (定額罰款) means the penalty referred to in section 28A(2);*penalty notice* (罰款通知書) means a notice given under section 28A(2);*recovery order* (追討令) means an order made under section 28G(2).”.

(3) Section 17—

Repeal subsections (2) and (3).**8. Part 3, Division 2 heading amended (levy on plastic shopping bags and registration of prescribed retailers)**

Part 3, Division 2, heading—

Repeal

“Levy on plastic shopping bags and registration of prescribed retailers”

Substitute

“Charge on Plastic Shopping Bags”.

9. Section 18 amended (levy on plastic shopping bags)

- (1) Section 18, heading—

Repeal

“Levy on plastic shopping bags”

Substitute

“Plastic shopping bags to which this Ordinance applies”.

- (2) Section 18—

Repeal subsection (3).

10. Sections 18A, 18B and 18C added

After section 18—

Add**“18A. Duty of seller to charge for plastic shopping bags**

- (1) This section applies if there is a sale by retail of goods to a person (*customer*).
- (2) The seller must charge the customer an amount not less than that prescribed in Schedule 3 for each plastic shopping bag, or each pre-packaged pack of 10 or more plastic shopping bags, provided by the seller directly or indirectly to the customer—
- at the time of the sale;
 - for promoting the goods; or

(c) otherwise in connection with the sale.

- (3) The seller must not offer any rebate or discount to the customer with the effect of directly offsetting the amount charged under subsection (2) or any part of that amount.

- (4) In this section—

- a reference to a sale by retail of goods is a reference to a sale of goods to a person who obtains the goods for purposes other than wholesale; and
- a reference to a plastic shopping bag includes anything that can be easily turned into a plastic shopping bag.

- (5) In this section—

sale (出售) includes a display or offer for sale, and *sale by retail* (以零售方式出售) and *seller* (賣方) are to be construed accordingly.

- (6) For the purposes of this section, a plastic shopping bag is provided to a person—

- whether it is provided as the subject of the sale or is provided in addition to the subject of the sale; and
- whether or not it is provided together with another product as a single item of goods.

18B. Offences relating to section 18A

- A person who contravenes section 18A(2) or (3) commits an offence.
- A person who commits an offence under subsection (1) is liable—
 - to a fine at level 6 on the first occasion on which the person is convicted of the offence for

contravening subsection (2) or (3) of section 18A;
and

- (b) to a fine of \$200,000 on each subsequent occasion on which the person is convicted of the offence for contravening that subsection.
- (3) If a person is charged with an offence under subsection (1), it is a defence to prove that the person exercised due diligence to avoid committing the offence.

18C. Liability of franchisers and franchisees

- (1) This section applies if the sale mentioned in section 18A(1) is carried on in the course of a business under a franchise agreement.
- (2) Unless the Director otherwise agrees, the franchiser is the seller for the purposes of section 18A(2) and (3).
- (3) If, because of an act or default of a franchisee, the franchiser commits an offence under section 18B(1), or would have committed the offence except for the reliance on the defence under section 18B(3)—
 - (a) the franchisee also commits the offence and is liable on conviction to the penalty provided for the offence, whether or not the franchiser is charged with or convicted of the offence; and
 - (b) the franchisee may also rely on the defence under section 18B(3).”.

11. Sections 19 and 20 repealed

Sections 19 and 20—

Repeal the sections.

12. Section 21 amended (Secretary may amend Schedules)

(1) Section 21(1)—

Repeal

“, 3 or 4”

Substitute

“or 3”.

(2) Section 21(2)—

Repeal

“, 2 or 4”

Substitute

“or 2”.

13. Part 3, Division 3 repealed (obligations of registered retailers)

Part 3—

Repeal Division 3.

14. Part 3, Division 4 repealed (supplementary provisions as to offences under Part 3)

Part 3—

Repeal Division 4.

15. Part 3, Division 4A added

Part 3, before Division 5—

Add

“Division 4A—Fixed Penalty and Related Provisions**28A. Director may give penalty notice**

- (1) This section applies if the Director has reason to believe that a person is committing or has committed a specified offence.
- (2) The Director may give the person a notice in the prescribed form offering the person an opportunity to discharge the person’s liability for the offence by paying a fixed penalty of \$2,000 within 21 days after the date on which the notice is given.
- (3) A penalty notice may be given to the person personally or by affixing it to the person’s place of business.
- (4) In this section—

specified offence (指明罪行) means an offence under section 18B(1)—

- (a) for contravening section 18A(2)(a); or
- (b) for contravening section 18A(3) by offering any rebate or discount to the customer with the effect of directly offsetting the amount charged under section 18A(2)(a) or any part of that amount.

28B. No prosecution or conviction if compliance with penalty notice

- (1) This section applies to a person who has been given a penalty notice in respect of an offence.
- (2) Subject to section 28F, the person is not liable to be prosecuted or convicted for the offence if the person has paid the fixed penalty within 21 days after the date on which the notice is given.

28C. Director may demand personal details and inspect proof of identity

- (1) This section applies if the Director has reason to believe that a person is committing or has committed an offence under section 18B(1).
- (2) The Director may, for issuing or serving a summons or other document in relation to the offence, require the person—
 - (a) for an individual—
 - (i) to supply the person’s name, date of birth, address and contact telephone number (if any); and
 - (ii) to produce for inspection the person’s proof of identity; or
 - (b) for a body corporate—
 - (i) to supply the person’s corporate name, registered or principal office address and contact telephone number (if any); and
 - (ii) to produce for inspection the person’s business registration certificate issued under section 6 of the Business Registration Ordinance (Cap. 310).
- (3) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (2) commits an offence and is liable on conviction to a fine at level 2.
- (4) In this section—

proof of identity (身分證明文件) has the same meaning as in section 17B of the Immigration Ordinance (Cap. 115).

28D. Director may serve demand notice in case of failure to pay fixed penalty etc.

- (1) This section applies if—
 - (a) a person has been given a penalty notice in respect of an offence, and has not paid the fixed penalty within 21 days after the date on which the notice is given; or
 - (b) a person refuses to accept a penalty notice intended to be given to the person in respect of an offence.
- (2) The Director may serve on the person a notice in the prescribed form—
 - (a) demanding payment of the fixed penalty;
 - (b) informing the person that the person must notify the Director in writing if the person wishes to dispute liability for the offence; and
 - (c) stating that the payment or notification must be made within 10 days after the date on which the demand notice is served.
- (3) A demand notice may not be served later than—
 - (a) if subsection (1)(a) applies, 6 months after the date on which the penalty notice is given; or
 - (b) if subsection (1)(b) applies, 6 months after the date on which the person refuses to accept the penalty notice.
- (4) A demand notice may be served by sending it by post to the person's address (in the case of an individual) or the person's registered or principal office address (in the case of a body corporate).

- (5) A certificate of posting in the prescribed form purporting to be signed by or for the Director is admissible in evidence in any proceedings under this Part.
- (6) Unless there is evidence to the contrary, it is presumed—
 - (a) that the certificate of posting was signed by or for the Director; and
 - (b) that the demand notice to which the certificate of posting relates was duly served.

28E. No prosecution or conviction if compliance with demand notice

- (1) This section applies to a person on whom a demand notice has been served in respect of an offence.
- (2) Subject to section 28F, the person is not liable to be prosecuted or convicted for the offence if the person has paid the fixed penalty within 10 days after the date on which the notice is served.

28F. Withdrawal of penalty or demand notice

- (1) The Director may withdraw a penalty notice given, or a demand notice served, in respect of an offence—
 - (a) at any time before a recovery order is made; or
 - (b) at any time before any proceedings for the offence commences.
- (2) If a penalty or demand notice is withdrawn—
 - (a) the Director must serve notice of the withdrawal on the person to whom, or on whom, the penalty or demand notice has been given or served; and
 - (b) on application by the person, the Director must refund, through the Director of Accounting Services, any amount paid for the fixed penalty.

- (3) If a penalty or demand notice is withdrawn, proceedings for the offence may only be commenced where—
- (a) the ground, or one of the grounds, on which the notice is withdrawn is that it contains incorrect information; and
 - (b) the incorrect information was supplied by the person to whom, or on whom, the notice was given or served.

28G. Recovery of fixed penalty

- (1) This section applies if a person on whom a demand notice has been served—
- (a) fails to pay the fixed penalty in accordance with the notice; and
 - (b) fails to notify the Director in accordance with the notice that the person wishes to dispute liability for the offence.
- (2) On application made in the name of the Secretary for Justice and production of the documents specified in subsection (5), a magistrate must order the person to pay, within 14 days after the date of service of notice of the order—
- (a) the fixed penalty;
 - (b) an additional penalty equal to the amount of the fixed penalty; and
 - (c) \$300 by way of costs.
- (3) An application may be made in the absence of the person. The Secretary for Justice may appoint a person or class of persons to make an application.
- (4) A magistrate must cause notice of a recovery order to be served on the person against whom it is made. The

- notice may be served by sending it by post to the person's address (in the case of an individual) or the person's registered or principal office address (in the case of a body corporate).
- (5) The documents specified for subsection (2) are—
- (a) a copy of the demand notice;
 - (b) a certificate of posting the demand notice under section 28D(5); and
 - (c) an evidentiary certificate, in the prescribed form, stating the following matters—
 - (i) that the person specified in the certificate had not, before the date of the certificate, paid the fixed penalty;
 - (ii) that the person specified in the certificate had not, before the date of the certificate, notified the Director that the person wished to dispute liability for the offence;
 - (iii) that the address specified in the certificate was, at the date specified in the certificate in relation to the address, the person's address (in the case of an individual) or the person's registered or principal office address (in the case of a body corporate).
- (6) An evidentiary certificate referred to in subsection (5)(c) and purporting to be signed by or for the Director is admissible in evidence in any proceedings under this Part.
- (7) Unless there is evidence to the contrary—
- (a) it is presumed that the evidentiary certificate was signed by or for the Director; and

- (b) the evidentiary certificate is evidence of the facts stated in it.

28H. Consequences of compliance with recovery order or failure to do so

- (1) This section applies to a person against whom a recovery order is made.
- (2) If the person has complied with the recovery order, the person is not liable to be prosecuted or convicted for the offence to which the order relates.
- (3) If the person fails to comply with the recovery order, the person—
 - (a) is to be regarded, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), as having failed to pay the sum adjudged to be paid by a conviction; and
 - (b) is liable to be imprisoned under that section.

28I. Application for review of recovery order

- (1) A person against whom a recovery order is made may apply to a magistrate for review of the order.
- (2) An application must be made within 14 days after the date on which the recovery order first came to the personal notice of the applicant.
- (3) The applicant must give reasonable notice of the application to the Director.
- (4) An application may be made in person or by counsel or solicitor.
- (5) For securing the attendance of witnesses and generally for conducting the proceedings, the magistrate has all the

powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).

28J. Outcome of review

- (1) On application under section 28I, a magistrate may rescind a recovery order if the magistrate is satisfied that the demand notice did not come to the personal notice of the applicant without any fault of the applicant.
- (2) If the magistrate rescinds a recovery order, and the applicant wishes to dispute liability for the offence to which the order relates, the magistrate must give leave to that effect.
- (3) If the magistrate rescinds a recovery order, and the applicant does not wish to dispute liability for the offence to which the order relates, the magistrate—
 - (a) must order the applicant to pay the fixed penalty within 10 days after the date of an order made under this paragraph; and
 - (b) must order that, if the applicant fails to pay the fixed penalty within that period, the applicant must immediately pay—
 - (i) the fixed penalty;
 - (ii) an additional penalty equal to the amount of the fixed penalty; and
 - (iii) \$300 by way of costs.
- (4) Despite section 26 of the Magistrates Ordinance (Cap. 227), if a magistrate gives leave under subsection (2), proceedings may be taken within 6 months after the date on which the magistrate gives the leave.
- (5) If the applicant fails to comply with the order under subsection (3)(b), the applicant—

- (a) is to be regarded, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), as having failed to pay the sum adjudged to be paid by a conviction; and
 - (b) is liable to be imprisoned under that section.
- (6) If the applicant has complied with the order under subsection (3)(a) or (b), the applicant is not liable to be prosecuted or convicted for the offence to which the order relates.

28K. Power to rescind order on application by Director

At any time, a magistrate may for good cause, on application by the Director, rescind—

- (a) an order for the payment of the fixed penalty; and
- (b) any other order made under this Division in the same proceedings.

28L. Dispute of liability for offence

- (1) This section applies if a person—
- (a) has notified the Director in accordance with a demand notice that the person wishes to dispute liability for an offence; or
 - (b) has been given leave to dispute liability for an offence under section 28J(2).
- (2) A summons issued in any proceedings against the person for the offence may be served on the person in accordance with section 8 of the Magistrates Ordinance (Cap. 227).
- (3) If—

- (a) in consequence of the notification or leave, the person appears in any proceedings in answer to a summons; and
 - (b) the person is convicted of the offence after having offered no defence or a defence that is frivolous or vexatious,
- the magistrate before whom the proceedings are heard must, in addition to any other penalty and costs, impose an additional penalty equal to the amount of the fixed penalty.
- (4) Any proceedings taken against a person falling within subsection (1)(a) must terminate if the person pays in accordance with subsection (5)—
- (a) the fixed penalty;
 - (b) an additional penalty equal to the amount of the fixed penalty; and
 - (c) \$500 by way of costs.
- (5) Payment under subsection (4) must be made at any magistracy not less than 2 days before the day specified in the summons for the person's appearance, and the summons must be produced at the time of the payment.
- (6) No public holiday may be included in the computation of the 2 days' period mentioned in subsection (5).

28M. Protection of Director and authorized officers

- (1) The Director or an authorized officer is not personally liable for anything done or omitted to be done by the Director or officer in good faith in the performance or purported performance of a function under this Division.

- (2) The protection conferred by subsection (1) does not affect any liability of the Government for the act or omission.

28N. Legislative Council may amend certain amounts

The Legislative Council may, by resolution, amend the amount specified in section 28A(2), 28G(2)(c), 28J(3)(b)(iii) or 28L(4)(c)."

16. Section 29 amended (Secretary may make regulations in respect of Part 3)

- (1) Section 29(1)—

Repeal paragraphs (a), (b), (c) and (d).

- (2) Before section 29(1)(e)—

Add

"(da) notices and certificates required to be prescribed for this Part;

(db) payment of fixed penalties, additional penalties and other amounts payable under this Part;"

17. Schedule 1 amended (plastic shopping bags to which this Ordinance applies)

- (1) Schedule 1, section 1—

Repeal subsection (1)

Substitute

"(1) A bag made wholly or partly of plastic is a plastic shopping bag to which this Ordinance applies, whether or not there is a handle, handle hole, perforated line for tearing out a handle hole, carrying string or strap, or any other carrying device on, or attached to, the bag."

- (2) Schedule 1, section 1(2)—

Repeal

"(1)(a),"

Substitute

"(1),".

18. Schedule 2 amended (plastic shopping bags to which this Ordinance does not apply)

- (1) Schedule 2, section 1(1)—

Repeal

"subsection (2)"

Substitute

"subsection (3)".

- (2) Schedule 2, section 1(1)—

Repeal paragraphs (a) and (b).

- (3) Schedule 2, section 1(1)(c)(ii)—

Repeal

"retailer concerned."

Substitute

"seller concerned;"

- (4) Schedule 2, after section 1(1)(c)—

Add

"(d) a bag that only contains an item of food, drink or medicine for human or animal consumption;

(e) a bag that forms part of the goods concerned."

- (5) Schedule 2, section 1—

Repeal subsection (2).

- (6) Schedule 2, at the end of section 1—

Add

- “(3) Subsection (1) does not apply to a bag mentioned in subsection (1)(d)—
- (a) if the item of food, drink or medicine is already contained in airtight packaging; or
- (b) if—
- (i) the item of food, drink or medicine is already contained in such packaging that no part of the item is exposed to the environment; and
- (ii) nothing may spill out of the packaging in the course of any conveyance of the item.
- (4) For the purposes of subsection (1)(e), a bag is to be regarded as forming part of the goods if—
- (a) the bag is specifically designed for containing the goods;
- (b) the bag contains the goods, and the quality of the goods would deteriorate if they were not contained in the bag;
- (c) the goods are in liquid form and contained in the bag, or the goods are in liquid contained in the bag; or
- (d) information on how to consume or use the goods is printed, written or labelled on the bag.”

19. Schedule 3 amended (levy on plastic shopping bags)

- (1) Schedule 3—

Repeal

“[ss. 18(3)]”

Substitute

“[ss. 18A(2)].”

- (2) Schedule 3, heading—

Repeal

“LEVY ON PLASTIC SHOPPING BAGS”

Substitute

“AMOUNT PRESCRIBED FOR SECTION 18A(2).”

- (3) Schedule 3—

Repeal

“per plastic shopping bag”.

20. Schedule 4 repealed (prescribed retailers to whom Part 3 of this Ordinance applies)

Schedule 4—

Repeal the Schedule.

Explanatory Memorandum

The Product Eco-responsibility Ordinance (Cap. 603) (*Ordinance*) was enacted—

- (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 regime to be implemented for that purpose, to provide for the imposition of a levy on certain retailers for the provision of plastic shopping bags.
2. The object of this Bill is to amend the Ordinance to replace the regulatory regime under paragraph 1(b) with a requirement on a retail seller of goods to charge a customer for plastic shopping bags provided at the time of or in connection with the sale or the display or offer for sale, and to provide for a fixed penalty for the offence of contravening the requirement at the time of the sale or the display or offer for sale.
 3. Clause 1 contains preliminary provisions. It sets out the short title and provides for commencement.
 4. Clause 10 adds new sections 18A, 18B and 18C to the Ordinance. New section 18A provides for the requirement to charge for plastic shopping bags. In particular, new section 18A(2) requires a retail seller of goods to charge a customer for plastic shopping bags provided at the time of or in connection with the sale or the display or offer for sale. New section 18A(3) prohibits the seller from offering any rebate or discount to any customer with the effect of directly offsetting the amount charged under new section 18A(2). It is an offence under new section 18B(1) to contravene new section 18A(2) or (3).

5. Clauses 17, 18 and 19 amend Schedules 1, 2 and 3 to the Ordinance respectively for the requirement. In particular, new section 1(1)(d) and (e) of Schedule 2 introduces 2 kinds of plastic shopping bags to which the Ordinance does not apply. New section 1(1)(d) and (e) of Schedule 2 has to be read with new section 1(3) and (4) of that Schedule.
6. Clauses 6, 11, 12, 13, 14, 16 and 20 repeal the provisions relating to the regulatory regime on the imposition of a levy. Clauses 3, 4, 5, 7, 8 and 9 provide for related amendments.
7. Clause 15 adds a new Division 4A to Part 3 of the Ordinance. The new Division provides for a fixed penalty for an offence under new section 18B(1) for contravening new section 18A(2)(a) or the relevant provisions of new section 18A(3). In particular, new section 28A provides that if the Director of Environmental Protection (*Director*) has reason to believe that a person is committing or has committed the offence, the Director may give the person an opportunity to discharge the liability for the offence by the payment of a fixed penalty within a statutory time limit. This is done by giving the person a penalty notice. New section 28D empowers the Director to issue a demand notice to the person if the person has not paid the fixed penalty within the statutory time limit or if the person refuses to accept a penalty notice. New section 28G provides for the recovery of the fixed penalty by a recovery order made by a magistrate. New sections 28I and 28J provide for the review of a recovery order.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	2	Purposes of this Ordinance	L.N. 86 of 2009	30/04/2009
----------	---	----------------------------	-----------------	------------

- (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, schemes based on the “polluter pays” principle, or other measures, which may require manufacturers, importers, wholesalers, retailers, consumers or any other parties to share the responsibility for the reduction in the use, or the recovery, recycling or 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).

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	3	Interpretation	L.N. 86 of 2009	30/04/2009
----------	---	----------------	-----------------	------------

- (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.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	7	Powers to obtain information, enter places for routine inspection, etc.	L.N. 86 of 2009	30/04/2009
----------	---	---	-----------------	------------

- (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) An authorized officer may require a person to provide information relating to any levy or fee imposed under this Ordinance that is in the possession of the person and is reasonably necessary to enable the officer to ascertain whether this Ordinance has been or is being complied with.

(3) For the purpose of ascertaining whether this Ordinance has been or is being complied with, an authorized officer may, at any reasonable time, enter a place to which the public are permitted to have access, and may do all or any of the following—

- (a) observe and inspect any activity, operation, process or procedure involving prescribed products;
- (b) require a person in charge of the place to produce any record or document relating to prescribed products or to any levy or fee imposed under this Ordinance;
- (c) make copies of any record or document produced under paragraph (b);
- (d) subject to subsection (4), take such samples of any products as the officer may reasonably require for the purpose of examination and investigation.

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

- (a) the market price of the samples he proposes to take; or
- (b) if the market price is unknown or not readily ascertainable, a reasonable price of those samples.

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

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

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

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	13	Appeals	L.N. 86 of 2009	30/04/2009
----------	----	---------	-----------------	------------

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

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

- (a) rejection of an application for registration or deregistration in respect of a retail outlet under section 19;
- (b) rejection of an application for the exemption of part of the area of a registered retail outlet for the purposes of section 23;
- (c) an assessment notice served under section 26; 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.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	17	Interpretation of Part 3	L.N. 86 of 2009	30/04/2009
----------	----	--------------------------	-----------------	------------

(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 22(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(2) that has been approved under section 19(6);

“regulation” (《規例》) means any regulation made under section 29.

- (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(2);
 - (b) that application has been approved under section 19(6); and
 - (c) no application for deregistration in respect of the outlet has been approved under section 19(6), whether or not the outlet continues to be a qualified retail outlet.

(3) For the purposes of this Part, a plastic shopping bag is provided if it is given free of charge or sold at a price, whether or not it is given or sold together with another product as a single item of goods.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Part:	3	Levy on plastic shopping bags and registration of prescribed	L.N. 86 of 2009	30/04/2009
Division:	2	retailers		

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	18	Levy on plastic shopping bags	L.N. 86 of 2009	07/07/2009
----------	----	-------------------------------	-----------------	------------

(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 24 for each plastic shopping bag that he provides to a customer.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	19	Restrictions on provision of plastic shopping bags by, and registration of, prescribed retailers	L.N. 86 of 2009	07/07/2009
----------	----	--	-----------------	------------

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

(2) 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.

(3) 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.

(4) A prescribed retailer who contravenes subsection (3) commits an offence and is liable—

- (a) to a fine at level 6 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of \$200000 on each subsequent occasion on which he is convicted of the offence.

(5) 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;
- (b) that outlet is no longer a qualified retail outlet;
- (c) that retailer ceases to provide plastic shopping bags from that outlet; or
- (d) that retailer is no longer a prescribed retailer.

(6) The Director may approve or reject an application under subsection (2) or (5) in accordance with the regulation.

(7) 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.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	20	Director to maintain register	L.N. 86 of 2009	30/04/2009
----------	----	-------------------------------	-----------------	------------

- (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.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	21	Secretary may amend Schedules	L.N. 86 of 2009	30/04/2009
----------	----	-------------------------------	-----------------	------------

- (1) The Secretary may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, amend Schedule 1, 2, 3 or 4.
- (2) An order made under this section to amend Schedule 1, 2 or 4 is subject to the approval of the Legislative Council.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Part:	3	Obligations of registered retailers	L.N. 86 of 2009	30/04/2009
Division:	3			

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	22	Display of certificate of registration	L.N. 86 of 2009	07/07/2009
----------	----	--	-----------------	------------

- (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 registered retailer who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.
- (4) 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.
- (5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 5.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	23	Duty of registered retailers to charge for plastic shopping bags	L.N. 86 of 2009	07/07/2009
----------	----	--	-----------------	------------

- (1) A registered retailer shall charge a customer an amount of not less than the levy for each plastic shopping bag provided directly or indirectly to the 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 at level 6 on the first occasion on which he is convicted of the offence; and
- (b) to a fine of \$200000 on each subsequent occasion on which he is convicted of the offence.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	24	Returns and payment of levies	L.N. 86 of 2009	07/07/2009
----------	----	-------------------------------	-----------------	------------

(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 on conviction to a fine at level 5.

(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.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	25	Record keeping	L.N. 86 of 2009	07/07/2009
----------	----	----------------	-----------------	------------

(1) A registered retailer shall ensure that such records and documents as prescribed by the regulation relating to each return submitted under section 24 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 on conviction to a fine at level 5.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	26	Assessment notice	L.N. 86 of 2009	07/07/2009
----------	----	-------------------	-----------------	------------

- (1) This section applies if a registered retailer—
 - (a) is convicted of an offence under section 9 relating to any record, document or information on any amount of levies stated in a return submitted by the retailer in respect of a period under section 24(1);
 - (b) is acquitted of an offence mentioned in paragraph (a) in reliance on the defence under section 9;
 - (c) is convicted of an offence under section 24(3) for failing to submit a return in respect of a period according to the requirements in section 24(1); or
 - (d) is acquitted of an offence mentioned in paragraph (c) in reliance on the defence under section 27.
- (2) The Director may—
 - (a) assess the amount of levies payable for the plastic shopping bags provided by the retailer during that period; and
 - (b) serve an assessment notice on the retailer demanding payment of that assessed amount or, if the retailer has already paid part of that amount under section 24, the balance of that amount.
- (3) The Director may replace an assessment notice with another assessment notice served for that purpose.
- (4) An assessment notice served under this section in respect of plastic shopping bags provided during a period may only be served within 5 years after the end of that period.
- (5) 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.
- (6) A registered retailer shall pay the amount of the demanded levies under an assessment notice within such time limit as is prescribed by the regulation.
- (7) A registered retailer who contravenes subsection (6) commits an offence and is liable on conviction to a fine at level 5.
- (8) A registered retailer who is convicted of an offence under subsection (7) 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 (6); 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 (6).
- (9) Any outstanding amount of levies or surcharges payable under this section is recoverable as a civil debt due to the Government.
- (10) 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.
- (11) The Director may at any time withdraw an assessment notice served under this section by serving a withdrawal notice to that effect.
- (12) 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.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Part:	3	Supplementary provisions as to offences under Part 3	L.N. 86 of 2009	07/07/2009
Division:	4			

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Section:	27	Defence to offences	L.N. 86 of 2009	07/07/2009
----------	----	---------------------	-----------------	------------

It is a defence to a charge under section 19(4), 23(6), 24(3), 25(2) or 26(7) for a person charged to prove that he

exercised due diligence to avoid the commission of the offence.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
Section:	28	Liability of franchisees	L.N. 86 of 2009	07/07/2009

(1) In this section, “franchised retail outlet” (專營加盟零售店) means a qualified retail outlet at which a retail business is carried on under a franchise agreement.

(2) If an offence under section 19(4), 22(3) or 23(6) involving a franchised retail outlet is committed, or would have been committed except for the reliance on the defence under section 27 (if applicable), by its franchiser owing to an act or default of its franchisee—

- (a) the franchisee also commits the offence and is liable on conviction to the penalty provided, whether or not the franchiser is charged with or convicted of the offence; and
- (b) the franchisee may also rely on the defence under section 27 in the case of an offence under section 19(4) or 23(6).

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
Section:	29	Secretary may make regulations in respect of Part 3	L.N. 86 of 2009	30/04/2009

(1) The Secretary may, after consultation with the Advisory Council on the Environment, make regulations 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 23, 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.
- (2) A regulation made under this section is subject to the approval of the Legislative Council.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
Schedule:	1	PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE APPLIES	L.N. 86 of 2009	30/04/2009

[sections 18(1) & 21(1) & (2)]

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 a handle, handle hole, perforated line for tearing out a handle hole, carrying string or strap, or any other carrying device on, or attached to, the bag.

(2) For the purposes of subsection (1)(a), “plastic” (塑膠) includes polyethylene, polypropylene, polyvinyl chloride and nylon.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Schedule:	2	PLASTIC SHOPPING BAGS TO WHICH THIS ORDINANCE DOES NOT APPLY	L.N. 86 of 2009	30/04/2009
-----------	---	--	-----------------	------------

[sections 18(2) & 21(1) & (2)]

1. Plastic shopping bags excluded from application of this Ordinance

(1) Subject to subsection (2), 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 piece of goods; and
 - (ii) is sealed before the goods are supplied to the retailer concerned.

(2) Subsection (1) does not apply to a bag mentioned in subsection (1)(a) or a pack of bags mentioned in subsection (1)(b) if—

- (a) it is given free of charge or sold at a price together with another product as a single item of goods; or
- (b) a rebate or discount is offered to the purchaser of the bag or pack,

with the effect of directly offsetting the price or part of the price of the bag or pack, so that it is in effect given free of charge or sold at a net price of less than \$5.00.

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Schedule:	3	LEVY ON PLASTIC SHOPPING BAGS	L.N. 86 of 2009	07/07/2009
-----------	---	-------------------------------	-----------------	------------

[sections 18(3) & 21(1)]

50 cents per plastic shopping bag

Chapter:	603	PRODUCT ECO-RESPONSIBILITY ORDINANCE	Gazette Number	Version Date
----------	-----	--------------------------------------	----------------	--------------

Schedule:	4	PRESCRIBED RETAILERS TO WHOM PART 3 OF THIS ORDINANCE APPLIES	L.N. 86 of 2009	30/04/2009
-----------	---	---	-----------------	------------

[sections 17(1), 19(1) & 21(1) & (2)]

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) 5 or more qualified retail outlets in Hong Kong; or
- (b) at least 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 all of the following categories of goods—

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

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

2. Definitions

In this Schedule—

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

“food” (食物)—

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

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

“retail floor area” (零售樓面面積)—

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

Implications of the Proposal

Environmental Implications

The Environmental Levy Scheme on Plastic Shopping Bags (“PSB Levy Scheme”) has been effective in addressing the excessive use of plastic shopping bags (“PSBs”) within the retail sectors being regulated. We estimate that the reduction in PSBs distributed by registered retailers since the launch of the PSB Levy Scheme in July 2009 could be as high as 90%. According to a telephone survey conducted by the Central Policy Unit before the public consultation in 2011, over 75% of the respondents did not claim PSBs when shopping at a registered retail outlet; nearly 80% considered that the PSB Levy Scheme has helped them develop the Bring Your Own Bag (“BYOB”) habit.

2. Yet our landfill surveys reveal that PSB disposal attributable to retail sectors outside the scope of the Levy Scheme has risen by 6% between mid-2009 and mid-2010. The problem of excessive PSB use remains serious. Extending the mandatory producer responsibility scheme (“PRS”) on the basis of the success of the current phase will better enable us to tackle this environmental problem further, thus ensuring our precious landfill resources are properly utilized. Such extension is also in line with our comprehensive waste management strategy as well as the international trend.

Sustainability Implications

3. The PSB Levy Scheme is the first mandatory PRS in Hong Kong. It is based on the “polluter pays” principle which is in line with the Government’s First Sustainable Development Strategy for Hong Kong. At its current phase, it has encouraged more sustainable use of natural resources, reduce the volume of plastic waste, and further enhance community-wide awareness of environmental protection. The proposed extension will build upon the successful experience in the current phase and achieve further benefits along the same direction. As the BYOB culture takes root in our community, there would be other benefits associated with enhanced green awareness.

Economic Implications

4. Apparently, the PSB Levy Scheme is proven effective in discouraging excessive use of PSBs that generates negative environmental externalities. The current proposal to extend its coverage across the board should help further reduce PSB use. This in turn should help reduce pressure on our landfills in the long run, and ensure a level-playing field in the domestic retail business.

5. Allowing retailers to retain the PSB charge has the advantage of minimizing compliance cost. This new approach is essential to small and medium enterprises, many of whom do not possess the necessary administrative capability to cope with the present “remittance” regime which requires

registration, periodic reporting and record-keeping. There are however concerns that the extent to which the extended PRS could achieve its objectives depends very much on the degree of compliance. In reality, the majority of the Hong Kong people have been practising BYOB and adopting the retention approach would not affect the economic disincentive brought by the PSB Levy Scheme nor reverting the BYOB habit.

6. As for the PSB manufacturers, they may suffer some further loss in business if the proposal successfully achieves its target of further reducing PSB use. Nevertheless, in view of the growing awareness of environmental conservation over the past years, they have already been facing strong market forces to phase out less eco-friendly products.

Financial and Civil Service Implications

7. The proposal, if implemented, will lead to revenue forgone. In the current phase, the PSB Levy Scheme covers some 3 300 registered retail outlets and raises an annual income of about \$26.5 million. Yet the PSB Levy Scheme was introduced as an economic tool to discourage the excessive use of PSBs. It has never been our policy intent to take it as a revenue-generating measure for the Government.

8. The Environmental Protection Department will absorb the financial requirements of the enhanced publicity and public education within the existing resources. Upon the implementation of the extended PRS, the existing compliance system could be significantly streamlined and there will be room for redeployment of existing staffing resources. We will review and assess more accurately the overall manpower requirements for implementing the extended PRS after the operational details are worked out. Additional manpower requirements, if any, will be sought through the established resource allocation mechanism.