

# Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Bill 2015

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# A BILL

## To

Amend the Product Eco-responsibility Ordinance to provide for the collection of a recycling levy on the containers of certain products; to amend the Waste Disposal Ordinance to regulate the disposal of such containers; 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 Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Ordinance 2015.
  - (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.
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## Part 2

### Amendments to Product Eco-responsibility Ordinance

**2. Product Eco-responsibility Ordinance amended**

The Product Eco-responsibility Ordinance (Cap. 603) is amended as set out in sections 3 to 8.

**3. Section 2 amended (purposes of this Ordinance)**

Section 2(2)(c), after “fee”—

**Add**

“or levy”.

**4. Section 3 amended (interpretation)**

Section 3(1)—

**Add in alphabetical order**

“*regulated article* (受規管物品) means an article constituted by—

- (a) a product specified in column 2 of Part 2 of Schedule 6; and
- (b) a container that is—
  - (i) specified in column 3 of that Part opposite to the product and containing that product; and
  - (ii) airtight and sealed by machine or with the aid of a tool;”.

**5. Section 4 amended (prescribed products to which Part 2 applies)**

Section 4, after “bags”—

**Add**

“and regulated articles”.

**6. Section 5 amended (general provisions as to regulations made under this Ordinance)**

Section 5(1), after “29”—

**Add**

“or 39”.

**7. Part 4 added**

After Part 3—

**Add**

**“Part 4**

**Regulated Articles**

**Division 1—Interpretation**

**31. Interpretation of Part 4**

In this Part—

*consume* (耗用), in relation to a regulated article, means—

- (a) use the product constituting part of the article;  
or

- (b) abandon the article;

*container recycling levy* (容器循環再造徵費) means the levy prescribed for this Part by the Regulated Articles Regulation;

*distribute* (分發), in relation to a regulated article, means—

- (a) sell the article;
- (b) exchange or dispose of the article for consideration; or
- (c) give the article to another person as a prize or gift;

**registered supplier** (登記供應商) means a supplier who is registered under section 33;

**Regulated Articles Regulation** (《受規管物品規例》) means regulations made under section 39;

**return** (申報) means a return submitted under section 36;

**supplier** (供應商), in relation to a regulated article, means—

- (a) a person who, in the course of the person's business of manufacturing the article, undertakes in Hong Kong the process of sealing the container constituting part of the article; or
- (b) a person who, in the course of the person's business, causes the article to be imported into Hong Kong for distribution, but does not include a person who—
  - (i) does not own the article; and
  - (ii) only provides a service for transporting the article into Hong Kong for another person.

## **Division 2—Registration of Suppliers**

### **32. Prohibition of carrying on business of distributing regulated articles without registration**

- (1) A supplier commits an offence if, not being registered under section 33, the supplier carries on a business of distributing regulated articles in Hong Kong.

- (2) If a supplier imports a regulated article into Hong Kong solely for export, the supplier is not to be regarded as distributing the article in Hong Kong.
- (3) A person who is convicted of an offence under subsection (1) is liable to a fine at level 6.

### **33. Registration of suppliers**

The Director must register a person as a registered supplier if—

- (a) the person applies to be registered as a registered supplier in accordance with the Regulated Articles Regulation; and
- (b) the Director is satisfied that the application complies with this Ordinance.

### **34. Cancellation of registration**

If the Director is satisfied that a registered supplier no longer carries on a business mentioned in section 32(1), the Director must cancel the registration of the supplier.

## **Division 3—Obligations of Registered Suppliers**

### **35. Registered supplier must pay container recycling levy**

- (1) Subject to subsection (2), a registered supplier must pay a container recycling levy to the Director for a regulated article if the supplier—
  - (a) distributes the article in Hong Kong; or
  - (b) consumes the article in Hong Kong.
- (2) The container recycling levy is payable only once in respect of a regulated article.



- (3) An outstanding amount of container recycling levy payable under this section is recoverable as a civil debt due to the Government.

**36. Registered supplier must submit returns**

- (1) A registered supplier must, in accordance with the Regulated Articles Regulation, periodically submit returns to the Director.
- (2) On receiving a return, the Director must—
  - (a) determine the amount of container recycling levy payable under section 35 by the registered supplier; and
  - (b) serve a payment notice on the supplier.
- (3) A registered supplier must, within the prescribed period after the date the payment notice is served, pay to the Director in the prescribed manner the container recycling levy payable under section 35 stated in the payment notice.
- (4) A registered supplier who submits a return in respect of a period in a calendar year must keep the prescribed records and documents relating to the return during the 5 years after that year.
- (5) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on the first conviction, to a fine at level 6; and
  - (b) on a subsequent conviction, to a fine of \$200,000.
- (6) A person who contravenes subsection (3) commits an offence and is liable—
  - (a) on the first conviction, to a fine at level 6; and

- (b) on a subsequent conviction, to a fine of \$200,000.
- (7) A person who contravenes subsection (4) commits an offence and is liable to a fine at level 5.
- (8) A payment notice under subsection (2)(b) is regarded as duly served on a registered supplier when it is sent by post to the last address provided by the supplier to the Director.
- (9) In subsections (3) and (4)—  
*prescribed* (訂明) means prescribed by the Regulated Articles Regulation.

**37. Registered supplier must submit annual audit report**

- (1) A registered supplier must, in accordance with the Regulated Articles Regulation, submit an audit report to the Director every year in respect of the returns submitted by the supplier.
- (2) The audit report must be prepared by a certified public accountant (practising) as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50), who must not be an employee of the registered supplier.
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

**38. Recovering container recycling levy by assessment notice**

- (1) This section applies if the supplier of a regulated article (*relevant supplier*)—
- (a) distributes the article in contravention of section 32(1); or

- 
- (b) distributes or consumes the article as a registered supplier, without having paid to the Director the container recycling levy payable under section 35 for the article (or any part of the levy).
- (2) For the purposes of subsection (1), entering into an agreement to distribute does not constitute distribution.
- (3) The Director may assess—
- (a) for the regulated article mentioned in subsection (1)(a), the amount of container recycling levy that would have been payable under section 35 for the article if the article had been distributed in compliance with section 32(1); or
- (b) for the regulated article mentioned in subsection (1)(b), the amount of container recycling levy payable under section 35.
- (4) The Director may serve an assessment notice (***assessment notice***) on the relevant supplier demanding payment of—
- (a) the assessed amount; or
- (b) if the relevant supplier has already paid part of that amount under section 35, the outstanding part of that amount.
- (5) The Director may replace an assessment notice with another assessment notice served for that purpose.
- (6) The Director may at any time withdraw an assessment notice by serving a withdrawal notice to that effect.

- (7) An assessment notice served in respect of the container recycling levy payable under section 35 for a period must be served within 5 years after the end of that period.
- (8) An assessment notice must state—
  - (a) the reasons for serving the notice;
  - (b) how the amount of container recycling levy assessed by the Director is calculated;
  - (c) when and how the relevant supplier must pay; and
  - (d) the right of the relevant supplier to appeal against the notice.
- (9) The relevant supplier must pay the amount demanded under the assessment notice within the period prescribed by the Regulated Articles Regulation.
- (10) A person who contravenes subsection (9) commits an offence and is liable—
  - (a) on the first conviction, to a fine at level 6; and
  - (b) on a subsequent conviction, to a fine of \$200,000.
- (11) A person who is convicted of an offence under subsection (10) is also liable to pay—
  - (a) a surcharge of 5% of the amount of container recycling levy that is outstanding at the expiry of the period mentioned in subsection (9); and
  - (b) an additional surcharge of 10% of the total amount of container recycling levy and the surcharge mentioned in paragraph (a) that are

outstanding at the expiry of 6 months after the period mentioned in subsection (9).

- (12) An outstanding amount of container recycling levy or surcharges payable under this section is recoverable as a civil debt due to the Government.
- (13) If an appeal is made under Division 5 of Part 2 against an assessment notice, any amount of container recycling levy or surcharges that is outstanding remains payable under this section pending the determination of the appeal unless the Director decides otherwise.
- (14) A notice under this section is regarded as duly served on a relevant supplier when it is sent by post—
  - (a) if the relevant supplier is a registered supplier, to the last address provided by the supplier to the Director; or
  - (b) in any other case, to the last known address of the supplier.

## **Division 4—Regulations**

### **39. Secretary may make regulations for Part 4**

- (1) The Secretary may, after consulting the Advisory Council on the Environment, make regulations in respect of one or more of the following matters—
  - (a) an application for registration under section 33 and the determination in relation to the application;
  - (b) the cancellation of registration under section 34;
  - (c) the container recycling levy for each type of regulated article;

- (d) the payment of container recycling levy by registered suppliers;
  - (e) the submission of returns by registered suppliers;
  - (f) the information to be contained in the returns;
  - (g) the records and documents to be kept by registered suppliers;
  - (h) the submission of audit reports by registered suppliers;
  - (i) an exemption under section 40.
- (2) A regulation made under subsection (1) is subject to the approval of the Legislative Council.

## **Division 5—Supplementary Provisions**

### **40. Exemptions for registered supplier with container waste reduction plan**

- (1) A registered supplier may, in accordance with the Regulated Articles Regulation, apply to the Director for exemption from section 35, 36 or 37 in relation to any type of regulated article.
- (2) The application must be accompanied by—
  - (a) an application fee prescribed by the Regulated Articles Regulation; and
  - (b) a container waste reduction plan specifying, in relation to the type of regulated article for which the exemption is sought, the arrangement for the recovery and reuse or recycling of the containers concerned.

- (3) The Director must refuse the application if the Director considers that the container waste reduction plan—
  - (a) is impracticable; or
  - (b) cannot ensure the recovery and reuse or recycling of the containers concerned in an environmentally sound manner.
- (4) A registered supplier who is aggrieved by the Director's refusal of the application may lodge an appeal in accordance with section 13.
- (5) The Director may grant the exemption subject to any terms and conditions relating to—
  - (a) its duration;
  - (b) the implementation of the container waste reduction plan;
  - (c) auditing, reporting and record keeping; and
  - (d) any other matter the Director considers appropriate.

**41. Secretary may amend Schedule 6**

- (1) The Secretary may, after consulting the Advisory Council on the Environment, by notice published in the Gazette, amend Schedule 6.
- (2) A notice made under subsection (1) is subject to the approval of the Legislative Council.”.

**8. Schedule 6 added**

After Schedule 5—

**Add**

**“Schedule 6** [ss. 3 & 41]

**Regulated Articles to which this Ordinance  
Applies**

**Part 1**

**Interpretation**

**1. Interpretation**

In this Schedule—

*beverage* (飲料)—

- (a) means every type of drink; and
- (b) includes water.

**Part 2**

**Regulated Articles**

Column 1	Column 2	Column 3
Item	Product	Container
1.	Beverage	Glass container, whether in the form of a bottle, jar or otherwise”.

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## Part 3

### Amendments to Waste Disposal Ordinance

#### 9. Waste Disposal Ordinance amended

The Waste Disposal Ordinance (Cap. 354) is amended as set out in sections 10 to 14.

#### 10. Section 2 amended (interpretation)

(1) Section 2(1)—

**Repeal the definition of *disposal***

**Substitute**

**“*disposal* (處置)—**

- (a) in relation to chemical waste and clinical waste, includes treatment, reprocessing and recycling; and
- (b) in relation to container waste, includes storage, treatment, reprocessing and recycling, but does not include reuse;”.

(2) Section 2(1), definition of **waste**, after “construction waste,”—

**Add**

“container waste,”.

(3) Section 2(1)—

**Add in alphabetical order**

“**container waste** (容器廢物) means a container (whether damaged or not) that—

- (a) judging by its appearance, is a container specified in column 3 of Part 2 of Schedule 6 to the Product Eco-responsibility Ordinance (Cap. 603); and
- (b) has been abandoned;”.

**11. Section 16 amended (prohibition of unauthorized disposal of waste)**

(1) After section 16(2)(e)—

**Add**

- “(ea) the treatment, reprocessing or recycling of container waste on land or premises with a waste disposal facility that is capable of treating, reprocessing or recycling not more than one tonne of container waste per day;
- (eb) the storage of container waste the total volume of which does not exceed 50 m<sup>3</sup> (measured by the maximum width by the maximum height by the maximum length);
- (ec) the storage of container waste on premises located inside a multi-storey building;”.

(2) After section 16(2)—

**Add**

- “(2A) Despite subsection (2)(ea), (eb) and (ec), a person may apply to the Director for a licence to use any land or premises for the disposal of container waste.
- (2B) The Secretary may, after consulting the Advisory Council on the Environment and subject to the approval of the Legislative Council, by notice published in the Gazette, amend—

- (a) subsection (2)(ea) by varying the weight mentioned in that subsection; or
- (b) subsection (2)(eb) by varying the total volume mentioned in that subsection.”.

**12. Section 20A amended (permit required for the import of waste into Hong Kong)**

- (1) Section 20A(1)(a)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (2) Section 20A(1)(b)—

**Repeal**

“Sixth Schedule,”

**Substitute**

“Sixth Schedule; or”.

- (3) After section 20A(1)(b)—

**Add**

“(c) any container waste that does not fall within the description of paragraph (a) or (b),”.

**13. Section 20B amended (permit required for the export of waste from Hong Kong)**

- (1) Section 20B(1)(a)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (2) Section 20B(1)(b)—

**Repeal**

“Sixth Schedule,”

**Substitute**

“Sixth Schedule; or”.

- (3) After section 20B(1)(b)—

**Add**

“(c) any container waste that does not fall within the description of paragraph (a) or (b),”.

**14. Section 21A substituted**

Section 21A—

**Repeal the section**

**Substitute**

**“21A. Circumstances under which waste disposal licence for chemical waste, clinical waste or container waste is to be granted**

Without limiting section 21(4), if a person applies for a waste disposal licence in respect of any land or premises, the licensing authority must not grant the licence in respect of chemical waste, clinical waste or container waste under that section unless the licensing authority is satisfied that the land or premises have a waste disposal facility that—

- (a) has the capacity to dispose of such minimum quantity of chemical waste, clinical waste or container waste (as the case requires) and within such period as may be prescribed; or

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2015

Part 3  
Clause 14

C1333

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- (b) is capable of disposing of chemical waste, clinical waste or container waste (as the case requires) in such other manner as may be prescribed.”.
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## **Explanatory Memorandum**

This Bill seeks to introduce a recycling levy on the suppliers of certain articles and to regulate the disposal of container waste. The Bill contains 3 Parts.

### **Part 1—Preliminary**

2. Clause 1 sets out the short title and provides for commencement.

### **Part 2—Amendments to Product Eco-responsibility Ordinance (Cap. 603) (Cap. 603)**

3. Clause 4 introduces the definition of *regulated article*.
4. Clauses 3, 5 and 6 contain related amendments to Cap. 603.
5. Clause 7 adds a new Part 4 to Cap. 603 for implementing the recycling levy. That Part consists of 5 Divisions.
6. Division 1 adds definitions for the new Part 4.
7. Division 2 provides for the registration of suppliers of regulated articles. Under the new section 32, a person who, without registration, carries on a business of distributing regulated articles in Hong Kong commits an offence.
8. Division 3 provides for the obligations of registered suppliers. The new sections 35, 36 and 37 mainly require a registered supplier distributing regulated articles to pay container recycling levies for the articles and submit returns and an annual audit report to the Director of Environmental Protection (*Director*).

9. Division 4 empowers the Secretary for the Environment to make regulations for the new Part 4.
10. Division 5 contains supplementary provisions—
  - (a) The new section 40 allows a registered supplier to be exempted from paying the container recycling levy and other obligations on application to the Director.
  - (b) Clause 8 adds Schedule 6 to Cap. 603 to further define the regulated articles to which Cap. 603 applies.

**Part 3—Amendments to Waste Disposal Ordinance (Cap. 354) (Cap. 354)**

11. Clause 10 gives the definitions of *container waste* and *disposal* to Cap. 354.
12. Clause 11 amends section 16 of Cap. 354 to control the unauthorized disposal of container waste.
13. Clauses 12 and 13 introduce requirements for a permit for importing container waste into, and exporting container waste out of, Hong Kong.
14. Clause 14 substitutes section 21A of Cap. 354 to provide for the circumstances under which a waste disposal licence for container waste is to be granted.