

LEGISLATIVE COUNCIL BRIEF

Product Eco-responsibility Ordinance
(Chapter 603)

PRODUCT ECO-RESPONSIBILITY (REGULATED ARTICLES) REGULATION

INTRODUCTION

In June 2016, the Legislative Council (“LegCo”) enacted the Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Ordinance 2016 (“Amendment Ordinance”). To provide for the implementation of the producer responsibility scheme on glass beverage containers (“GPRS”), in accordance with the new section 55 of the amended Product Eco-responsibility Ordinance (Cap. 603) (“PERO”), the Secretary for the Environment (“SEN”) has made the Product Eco-responsibility (Regulated Articles) Regulation (“RAR”) at Annex A after consulting the Advisory Council on the Environment (“ACE”), which is subject to the approval of the LegCo.

A

JUSTIFICATIONS

2. The Amendment Ordinance amended the PERO and the Waste Disposal Ordinance (Cap. 354) (“WDO”) to provide for the statutory regulatory framework for the GPRS, which aims to put in place a system for the proper management and recycling of waste glass beverage containers generated in Hong Kong, and applies to beverages that are pre-packaged in sealed glass containers (hereinafter referred to as “regulated

articles”¹ (“RAs”). Suppliers² of RAs will be required to register as registered suppliers and pay a container recycling levy for the RAs distributed or consumed³ in Hong Kong. Exemption will be provided for a registered supplier who has / would have in place a recovery and reuse arrangement for the glass containers of its beverage products if certain criteria are met. The Amendment Ordinance has also put in place new regulatory measures through the WDO to impose licence control on the operation of waste disposal facilities for proper disposal of container waste⁴, including its storage, treatment, reprocessing or recycling⁵, and introduce permit control on the import and export of container waste to ensure its disposal in a proper and environmentally sound manner.

The RAR

3. The RAR seeks to provide for the necessary operational details for the implementation of the GPRS under the PERO, including (a) application for registration of suppliers of RAs and determination of the application; (b) submission of returns by registered suppliers; (c) information to be contained in the returns; (d) payment of container recycling levies by registered suppliers; (e) amount of container recycling levy for RAs; (f) keeping of records and documents relating to returns by registered suppliers; (g) submission of audit reports by registered suppliers; and (h) application for exemptions for registered suppliers with container waste reduction plan (“CWRP”) and determination of the application.

¹ Defined to mean an article constituted by (a) a product specified in column 2 of Part 2 of the new Schedule 8 of the PERO; and (b) a container that is (i) specified in column 3 of Part 2 opposite to the product and containing that product; and (ii) airtight and sealed by machine or with the aid of a tool.

² Defined to mean, in relation to an RA, (a) a person who, in the course of the person’s business of manufacturing the RA, undertakes in Hong Kong the process of sealing the container constituting part of the RA; or (b) a person who, in the course of the person’s business, imports the RA into Hong Kong for distribution, but does not include a person who (i) does not own the RA; and (ii) only provides a service for transporting the RA into Hong Kong for another person.

³ Defined to mean, in relation to an RA, (a) open the container that constitutes the RA for the first time after the container is sealed; or (b) abandon the RA.

⁴ Defined to mean a container (whether damaged or not) that (a) judging by its appearance, is a container specified in column 3 of Part 2 of the new Schedule 8 to the PERO; and (b) has been abandoned.

⁵ Save for certain exclusions, including (a) 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; (b) the storage of container waste the total volume of which does not exceed 50 m³; or (c) the storage of container waste on premises located inside a multi-storey building.

4. By making reference to the provisions of the Amendment Ordinance and the RAR, the compliance system under the PERO for the purpose of the GPRS is outlined below.

Registration of Suppliers (Sections 4-9 of the RAR)

5. Under the new section 49 of the PERO, a person⁶ may apply to the Director of Environmental Protection (“DEP”) to be registered as a registered supplier in relation to RAs in accordance with the RAR. Under the RAR, there are two types of registration –

- (a) ordinary registration: such registration will remain valid unless cancelled by DEP; and
- (b) short-term registration: such registration will last for 30 days and is intended for a supplier who may operate business of distributing RAs in Hong Kong occasionally for a short period of time and in limited scale (e.g. expo exhibitors from other places). To qualify, the applicant must satisfy DEP that his/her business of distributing RAs in Hong Kong would be likely to –
 - (i) operate for a period of not more than 30 days; and
 - (ii) give rise to a liability to pay an amount of container recycling levy not exceeding \$20,000⁷.

The above-mentioned application for registration is free of charge and should be made in a specified form.

Submission of Returns and Payment of Container Recycling Levies (Sections 10-14 and 22-24 of the RAR)

6. Under the RAR, for an ordinary registration, a registered supplier has to submit quarterly returns to DEP within 28 days after the quarterly cut-off dates of the reporting periods falling on 31 March, 30 June, 30

⁶ Including any body of persons, corporate or unincorporated.

⁷ An applicant for short-term registration may have previously obtained short-term registrations for the same registration year. To avoid potential abuse, there are provisions stipulating that the aggregate liability to pay the container recycling levies under all short-term registrations approved for the same registration year (i.e. that calendar year) will also be taken into account.

September or 31 December. Each return covering a reporting period must contain relevant information of the RAs that were distributed or consumed by the registered supplier in Hong Kong during the reporting period with the respective breakdowns to enable DEP to determine the amount of container recycling levy to be payable by the registered supplier. As for a short-term registration, since it will only last for 30 days, a short-term registered supplier will only be required to submit a return within 28 days after the expiry date of the registration, covering the entire term of registration.

7. Under the new section 52(2)(b) of the PERO, having determined the amount of container recycling levy to be payable by a registered supplier, DEP will serve on the registered supplier a payment notice. Under the RAR, the registered supplier has to pay the container recycling levy within 30 days after the service of the payment notice. In addition, DEP may also serve an assessment notice on a supplier under the new section 54 of the PERO demanding payment of the assessed amount of container recycling levy or the outstanding part of that amount that would have been payable under the new section 51 of the PERO. Such a payment shall also be settled within 30 days after the service of the assessment notice.

8. In line with the “polluter pays” principle, the container recycling levy for RAs should be set at a level adequate to recover the full costs⁸ of operating the GPRS and providing the services in this association. Having regard to the cost estimation for collection and recycling of waste glass beverage containers, the proposed charging level is \$0.98 per litre-volume of RAs as specified in the Schedule to the RAR. The level is comparable to the indicative figure⁹ mentioned during the public consultation. In future, we will review the levy level in accordance with the Government’s established mechanisms and propose adjustments as and when appropriate. We will take into account various factors that may affect the amount of container recycling levy per litre-volume of RAs, e.g. inflation rate, target recovery quantity, fluctuations in the sales volume of RAs, etc.

⁸ The full costs include the estimated expenditure on collection and treatment of waste glass beverage containers and other related expenses in the administration of the GPRS.

⁹ With reference to the experience of other places, we provided an indicative figure of the container recycling levy at around \$1 per litre-volume of beverage products in the public consultation document in 2013.

Records and Documents Relating to Returns (Section 15 of the RAR)

9. Under the new section 52(4) of the PERO, a registered supplier must keep the prescribed records and documents relating to a return for five years after the year of the submission of the return. Under the RAR, such records and documents should include records, invoices, receipts, delivery notes, inventory records or any other documents that contain sufficient details to enable DEP to readily verify the information covered by a return.

Submission of Audit Report and Adjustment of Container Recycling Levy (Sections 16-21 and 25-26 of the RAR)

10. Under the new section 53(1) of the PERO, a registered supplier must submit an audit report to DEP every year in respect of the returns submitted. 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) (“auditor”), who must not be an employee of the registered supplier. Under the RAR, at the time of registration, flexibility is allowed for DEP to specify an annual audit date¹⁰ for a registered supplier taking into account practical circumstances so as to accommodate as far as possible the different financial reporting cycles of individual registered suppliers. In an audit report, the auditor has to state whether, in his opinion and in relation to any return covered by the report –

- (a) the registered supplier has kept records and documents in compliance with the PERO and the RAR;
- (b) the return was prepared on the basis of those records and documents; and

¹⁰ An annual audit date is in effect the day on which an audit year ends. For an ordinary registration, a supplier may indicate his/her preference from amongst the options for the date to fall on 31 March, 30 June, 30 September or 31 December. Given that the term of a short-term registration will be 30 days, the audit report submitted by a short-term registered supplier will cover the return for the entire term of registration and the returns for other approved short-term registrations in the same registration year (if any).

A registered supplier may apply to DEP in writing for exemption from submitting an audit report for a particular audit year (for ordinary registration) or for the registration (for a short-term registration). However, DEP must be satisfied that the aggregate amount of container recycling levies payable for that audit year (for ordinary registration) or for all approved short-term registrations in the same registration year (for short-term registration) does not exceed \$20,000.

- (c) the litre volumes of the RAs covered by the return have been reported in accordance with the PERO.

11. If the auditor identifies any discrepancy between a return covered by the audit report and the records and documents kept for the return in relation to the litre volumes of RAs, the auditor must set out the discrepancy in a document, i.e. discrepancy list, a copy of which must be attached to the audit report to be submitted to DEP. DEP will take into account the discrepancy as stated on the discrepancy list and make necessary adjustments in determining the container recycling levy payable as soon as practicable in relation to a subsequent return, if any, so as to offset any amount of container recycling levy that has been or will be overpaid or unpaid as a result of the discrepancy. Notwithstanding the above, DEP will also consider written claims for refund of any overpaid sum of container recycling levy set out in the discrepancy list submitted in the audit report that has not yet been recovered in any subsequent payment cycles if he is satisfied that the registered supplier is entitled to the refund.

Exemption with CWRP (Sections 27-30 of the RAR)

12. At present, some local beverage manufacturers have put in place recovery and reuse arrangements under which glass containers of their beverage products are collected for reuse after cleansing and sterilisation. These arrangements not only enable better management and utilisation of resources, but also reduce waste effectively and help alleviate the pressure on landfills.

13. Under the new section 56(1) of the PERO, the relevant registered suppliers may apply to DEP for exemptions from the requirements under section 51, 52 or 53 of the PERO, i.e. payment of the container recycling levy, submission of returns and/or annual audit reports. The exemptions seek to encourage registered suppliers to make their own arrangement for the recovery and reuse of glass beverage containers by way of a CWRP. In applying for exemptions, the registered supplier is required to pay an application fee and the application shall be accompanied with a CWRP detailing the operational arrangements for the recovery and reuse or recycling of the glass beverage containers. DEP will assess if the CWRP submitted is practicable and the arrangements for recovery and reuse or recycling of the containers concerned are environmentally sound. In accordance with the Government's policy on fees and charges to recover the full cost incurred in processing the application for exemption, the application fee is to be set at \$9,250 as specified in the RAR. Pursuant to

new section 56(5) of the PERO, in granting exemption, DEP may impose terms and conditions relating to the duration of the exemption, the implementation of the CWRP, auditing, reporting and record keeping, and any other matter DEP considers appropriate. For example, a registered supplier exempted should submit regular audit reports, demonstrating that the recovery and reuse arrangements have been implemented effectively, attained the specified recovery and reuse level, and complied with the related environmental requirements.

14. In addition, in granting the exemption, there may be terms and conditions to specify that if the registered supplier is unable to attain the specified recovery and reuse level in a given year during the exemption period, the registered supplier has to pay the relevant container recycling levy calculated on the basis of the total volume of glass beverage containers unable to be recovered in that year¹¹. Under the RAR, on a breach of any terms and conditions attached to the exemption, DEP may revoke, vary or suspend the exemption taking into account the practical circumstances of the individual case.

LEGISLATIVE TIMETABLE

15. The Government has given notice to the LegCo for moving a motion by SEN for the LegCo to approve the RAR at the meeting on 29 June 2022, subject to the decision of the House Committee.

Commencing the full implementation of the GPRS

16. Upon the approval of the RAR, we will publish the following three notices in the Gazette, which will be tabled at the LegCo –

- (a) A commencement notice to be made by SEN for bringing the relevant provisions of the Amendment Ordinance in relation to (i) registration of suppliers and application of Waste Disposal Licence under the WDO and (ii) full

¹¹ For instance, if an exempted registered supplier can only recover and reuse 60% of the glass containers from a batch of RAs that the registered supplier distributes or consumes in the local market, i.e. failing to attain the specified waste reduction rate of 80%, the registered supplier will have to pay the container recycling levy for the unrecovered glass containers (i.e. 100% - 60% = 40%) of the whole batch of RAs.

implementation of the GPRS into operation on respective dates as specified in the commencement notice;

- (b) A commencement notice to be made by SEN for bringing the relevant provisions of the RAR in relation to (i) registration of suppliers and (ii) full implementation of the GPRS into operation on the respective dates as specified in the commencement notice; and
- (c) A notice to be made by DEP under section 38 of the WDO for commencing the application of section 16 of the WDO in respect of container waste.

We target to start accepting applications for supplier registration, exemption and container waste disposal licence in early 2023 and implement the GPRS fully in the first quarter of 2023.

IMPLICATIONS OF THE PROPOSAL

17. It is estimated that the annual additional revenue arising from the collection of container recycling levy and application fee for exemption under the new section 56(1) of PERO is around \$100 million. The Government will be responsible for funding the operation of the GPRS, including the costs for appointing glass management contractors to provide collection and treatment services for waste glass beverage containers across the territory. For other implications of the GPRS, please refer to the LegCo Brief for the Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Bill 2015 (Ref: EP CR 9/150/35 Pt.4). The RAR is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effects of the PERO and its subsidiary legislation.

PUBLIC CONSULTATION

18. Since the enactment of the Amendment Ordinance, we have been keeping in touch with stakeholders in developing the compliance system and finalising the operational details under the RAR. On 19 July 2018, we briefed the Panel on Environmental Affairs (“EA Panel”) of the last LegCo term on the preparation work for implementation of the GPRS, including matters to be prescribed under the RAR. Members were generally supportive of implementing the GPRS and raised no objection to

the proposal. The ACE was consulted on the same in April 2019 and was supportive of the GPRS. The EA Panel of the current LegCo term was also briefed on the latest progress of the GPRS and the content of the RAR by way of an information paper circulated on 16 May 2022.

PUBLICITY

19. A Government spokesperson is available to answer media and public enquiries. We have arranged necessary compliance facilitation for the affected trades, including preparing relevant guidelines for reference of the trade sectors. We have also maintained contact with the Hong Kong Food Drink & Grocery Association (FDGA)¹² and other trade groups. Upon the approval of the RAR, we will arrange briefings to assist suppliers of glass-bottled beverages in better understanding their statutory obligations, including elaboration on how to become registered suppliers and apply for exemptions with CWRPs.

ENQUIRIES

20. For enquiries on this brief, please contact Ms Iris Lee, Assistant Director of Environmental Protection (Waste Management Policy) at 3509 8614 or iris_lee@epd.gov.hk.

Environment Bureau / Environmental Protection Department
8 June 2022

¹² FDGA comprises relevant trade associations including the Hong Kong Wine & Spirits Industry Coalition, the Hong Kong Beer Coalition and the Hong Kong Beverage Association Limited.

Product Eco-responsibility (Regulated Articles) Regulation

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Product Eco-responsibility (Regulated Articles) Regulation

(Made by the Secretary for the Environment under section 55 of the Product Eco-responsibility Ordinance (Cap. 603) after consulting the Advisory Council on the Environment and subject to the approval of the Legislative Council)

Part 1

Preliminary

1. Commencement

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

2. Interpretation

(1) In this Regulation—

cancel (撤銷) means cancel under section 50 of the Ordinance;

cancellation date (撤銷日期), in relation to a registration, means the date on which the registration is cancelled;

consume (耗用) has the meaning given by section 47 of the Ordinance;

discrepancy list (差異清單) means a document prepared under section 20(2);

distribute (分發) has the meaning given by section 47 of the Ordinance;

expiry date (屆滿日期), in relation to a short-term registration, means the date on which the registration expires in accordance with section 7(3);

first cut-off date (首個截數日期), in relation to an ordinary registration, means the date specified for the registration under section 7(1)(c)(ii);

levy (徵費) means the container recycling levy payable under section 51(1) of the Ordinance;

ordinary registration (一般登記) means an ordinary registration mentioned in section 5(1)(a);

registered supplier (登記供應商) has the meaning given by section 47 of the Ordinance;

registration (登記) means a registration under section 49 of the Ordinance;

registration date (登記日期), in relation to a registration, means the date specified for the registration under section 7(1)(b);

registration year (登記年度), in relation to a short-term registration, means the calendar year in which its registration date falls;

reporting period (申報期)—see section 12;

return (申報) has the meaning given by section 47 of the Ordinance;

short-term registration (短期登記) means a short-term registration mentioned in section 5(1)(b);

specified form (指明表格) means a form specified under section 31;

supplier (供應商) has the meaning given by section 47 of the Ordinance.

(2) In this Regulation, a reference to a “type” of regulated article is a reference to an item in Part 2 of Schedule 8 to the Ordinance.

3. Litre volume of regulated article

(1) In this Regulation, a reference to litre volume of a regulated article is a reference to litre volume of the product contained in the container.

(2) For the purposes of this Regulation, an indication on the container of a regulated article of the litre volume of the product contained in it is evidence of the litre volume of the product unless the contrary is proved.

(3) In this section—

container (容器), in relation to a regulated article, means the container that constitutes the article as mentioned in paragraph (b) of the definition of **regulated article** in section 3(1) of the Ordinance;

product (產品), in relation to a regulated article, means the product that constitutes the article as mentioned in paragraph (a) of the definition of **regulated article** in section 3(1) of the Ordinance.

Part 2

Matters Related to Registered Suppliers

Division 1—Registration

4. Application of Division 1

This Division applies to an application for registration under section 49 of the Ordinance.

5. Application for registration

- (1) A supplier, or a person who proposes to be a supplier, may apply to the Director in the specified form for either—
 - (a) an ordinary registration; or
 - (b) a short-term registration.
- (2) The applicant may, by giving the Director a written notice, withdraw the application at any time before it is determined.
- (3) If, before the application is withdrawn or determined, a change in the information provided to the Director for the application occurs, the applicant must, before the end of the period of 7 days after the day on which the change comes to the notice of the applicant, give the Director a written notice of the change.
- (4) If the applicant has already had an ordinary registration approved and the registration has not yet been cancelled, the applicant must specify in the application the date on which the applicant is expected to cease to be a supplier in relation to that registration.
- (5) The Director may, by written notice, require the applicant to provide further information and documents for the application.

6. Requirements for application

- (1) For the purposes of section 49(b) of the Ordinance, an application does not comply with the Ordinance if any of the following conditions is not fulfilled—
 - (a) the application is made in the specified form;
 - (b) the applicant complies with section 5(3) and (4), and any notice given under section 5(5);
 - (c) the applicant is a supplier, or will become a supplier, according to the information provided for the application;
 - (d) the material information provided for the application is correct and not misleading;
 - (e) at the time the application is determined, there is not, in relation to a preceding registration of the applicant, any payment required under section 51(1) or 54(9) of the Ordinance, or any submission required under section 52(1) or 53(1) of the Ordinance, that remains outstanding.
- (2) For the purposes of subsection (1)(e), a payment or submission remains outstanding if—
 - (a) for a levy required to be paid under section 51(1) of the Ordinance—the applicant has failed to comply with section 23(a), and has still not yet paid the levy in full;
 - (b) for an amount required to be paid under section 54(9) of the Ordinance—the applicant has failed to comply with section 24(a), and has still not yet paid the amount in full;
 - (c) for a return required to be submitted under section 52(1) of the Ordinance—the applicant has failed to comply with section 13 or 14, and has still not yet submitted the return in compliance with section 14; or
 - (d) for an audit report required to be submitted under section 53(1) of the Ordinance—the applicant has failed to

comply with section 19 or 20, and has still not yet submitted the report in compliance with section 20.

- (3) Without affecting subsection (1), for the purposes of section 49(b) of the Ordinance, an application for a short-term registration does not comply with the Ordinance if any of the following conditions is not fulfilled—
- (a) should the application be approved, the applicant's business of distributing regulated articles in Hong Kong under the short-term registration—
- (i) would be likely to operate for a period of not more than 30 days; and
- (ii) would be likely to give rise to a liability to pay an amount of levy not exceeding \$20,000;
- (b) if the applicant has already had one or more than one short-term registration approved for the same registration year—should the application be approved, the applicant's business of distributing regulated articles in Hong Kong under all of the applicant's short-term registrations approved for that year would be likely to give rise to an aggregate liability to pay 2 or more amounts of levy not exceeding \$20,000.

- (4) In subsection (1)(e)—

preceding registration (先前登記), in relation to an application, means a registration of the applicant the registration date of which precedes the date of the application.

7. Application approved

- (1) If an application is approved, the Director must issue a certificate of registration to the applicant and specify in the certificate—

- (a) a registration number assigned by the Director;
- (b) the date on which the registration becomes effective; and
- (c) for an ordinary registration—
- (i) an annual audit date for the registration; and
- (ii) the first cut-off date for the registration.
- (2) The first cut-off date must fall on 31 March, 30 June, 30 September or 31 December.
- (3) A short-term registration expires at the end of the period of 30 days beginning on the registration date.

8. Application refused

If an application is refused, the Director must—

- (a) give the applicant a written notice of the decision; and
- (b) set out the reasons for the decision in the notice.

Division 2—Change of Address after Registration

9. Notice of change of address

- (1) If the address of a registered supplier provided to the Director for an application made under section 5(1) has changed, the supplier must give the Director notice of the change in the specified form before the end of the period of 30 days after the day on which the change occurs.
- (2) A registered supplier who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

Division 3—Obligations and Related Matters

Subdivision 1—Returns

10. Form of returns

A return must be submitted in the specified form.

11. Coverage of returns

- (1) A return submitted for an ordinary registration must cover—
 - (a) for the first return—the period beginning on the registration date and ending on the first cut-off date; or
 - (b) for a further return—each quarter ending on 31 March, 30 June, 30 September or 31 December.
- (2) A return submitted for a short-term registration must cover the period beginning on the registration date and ending on the expiry date.
- (3) However—
 - (a) if the registration is cancelled during the period mentioned in subsection (1)(a), the reference to “first cut-off date” in that subsection is to be construed as a reference to “cancellation date”;
 - (b) if the registration is cancelled during a quarter mentioned in subsection (1)(b), that quarter is deemed to end on the cancellation date; and
 - (c) if the registration is cancelled during the period mentioned in subsection (2), the reference to “expiry date” in that subsection is to be construed as a reference to “cancellation date”.

12. Meaning of *reporting period*

In this Regulation—

reporting period (申報期)—

- (a) in relation to a return submitted in accordance with section 11(1)(a), means the period mentioned in that section, as modified by section 11(3)(a) if applicable;
- (b) in relation to a return submitted in accordance with section 11(1)(b), means the quarter mentioned in that section, as modified by section 11(3)(b) if applicable; or
- (c) in relation to a return submitted in accordance with section 11(2), means the period mentioned in that section, as modified by section 11(3)(c) if applicable.

13. Timing of returns

Subject to section 35(1), a return must be submitted within 28 days after the last day of every reporting period.

14. Content of returns

A return covering a reporting period must contain, in relation to each type of regulated article—

- (a) the total litre volume of those articles that were distributed by the registered supplier in Hong Kong during the reporting period, with a breakdown of—
 - (i) the total litre volume of those articles that were manufactured by the supplier in Hong Kong; and
 - (ii) the total litre volume of those articles that were imported by the supplier; and
- (b) the total litre volume of those articles that were consumed by the registered supplier in Hong Kong during the reporting period, with a breakdown of—
 - (i) the total litre volume of those articles that were manufactured by the supplier in Hong Kong; and

- (ii) the total litre volume of those articles that were imported by the supplier.

Subdivision 2—Records and Documents Relating to Returns

15. Record keeping

- (1) This section applies to the keeping of records and documents under section 52(4) of the Ordinance.
- (2) A registered supplier must keep records, invoices, receipts, delivery notes, inventory records or any other documents that contain sufficient details to enable the Director to readily verify, in relation to each type of regulated article covered by a return—
- (a) the total litre volume of those articles that were manufactured in Hong Kong, imported into Hong Kong or otherwise acquired by the supplier in Hong Kong during the reporting period; and
- (b) the total litre volume of those articles that were distributed or consumed in Hong Kong, or exported out of Hong Kong, by the supplier during the reporting period.

Subdivision 3—Audit Reports

16. Application of Subdivision 3

This Subdivision applies to the submission of audit reports under section 53(1) of the Ordinance.

17. Interpretation: Subdivision 3

- (1) In this Subdivision—
- annual audit date* (周年審計日期), in relation to an ordinary registration, means the date specified for the registration under section 7(1)(c)(i);

auditor (核數師), in relation to an audit report, means the person who prepares the report under section 53(2) of the Ordinance.

- (2) In this Subdivision, a reference to an audit year, in relation to an ordinary registration, is a reference to—
- (a) the period beginning on the registration date and ending on the first annual audit date; or
- (b) each subsequent period ending on an annual audit date.
- (3) However—
- (a) if the registration is cancelled during the period mentioned in subsection (2)(a), the reference to “first annual audit date” in that subsection is to be construed as a reference to “cancellation date”; and
- (b) if the registration is cancelled during a period mentioned in subsection (2)(b), the annual audit date is, in relation to that period, deemed to fall on the cancellation date.

18. Coverage of audit reports

- (1) An audit report submitted for an ordinary registration must cover a return if any day of the reporting period of the return falls within the relevant audit year.
- (2) An audit report submitted for a short-term registration must cover—
- (a) the return submitted for the registration; and
- (b) if the registered supplier has already had one or more than one short-term registration approved for the same registration year—the return submitted for such a short-term registration.

19. Timing of audit reports

Subject to section 35(1), an audit report must be submitted within 3 months after—

- (a) for an ordinary registration—the last day of every audit year; or
- (b) for a short-term registration—the expiry date.

20. Content of audit reports

- (1) An auditor must state in an audit report whether, in the opinion of the auditor and in relation to any return covered by the report—
 - (a) the registered supplier had kept records and documents in compliance with section 52(4) of the Ordinance and section 15;
 - (b) the return was prepared on the basis of those records and documents; and
 - (c) the litre volumes of the regulated articles covered by the return had been reported in accordance with the Ordinance.
- (2) If the auditor identifies any discrepancy between a return covered by the audit report and the records and documents kept for the return as mentioned in subsection (1)(a) in relation to any litre volume of regulated articles, the auditor must set out the discrepancy in a document prepared in the specified form.
- (3) If a discrepancy list has been prepared for an audit report under subsection (2), a copy of the discrepancy list must be attached to the report.

21. Exemption from submission of audit reports

- (1) A registered supplier may apply to the Director in writing for exemption from submitting an audit report—
 - (a) for an ordinary registration—for a particular audit year; or
 - (b) for a short-term registration—for the registration.

- (2) Subject to section 35(1), the application must be made within 1 month after—
 - (a) for an ordinary registration—the last day of the relevant audit year; or
 - (b) for a short-term registration—the expiry date.
- (3) The Director must approve the application if—
 - (a) for an ordinary registration—the Director is satisfied that the aggregate amount of levies payable for the reporting periods falling within the relevant audit year does not exceed \$20,000; or
 - (b) for a short-term registration—the Director is satisfied that—
 - (i) the amount of levy payable for the registration does not exceed \$20,000; and
 - (ii) if the applicant has already had one or more than one short-term registration approved for the same registration year—the aggregate amount of levies payable for all of the applicant's short-term registrations approved for that year does not exceed \$20,000.

Subdivision 4—Container Recycling Levy

22. Amount of levy

For the purposes of Part 5 of the Ordinance, the amount of levy payable for each type of regulated article is prescribed in the Schedule.

23. Payment on payment notice

A payment under section 52(3) of the Ordinance must be made—

- (a) before the end of the period of 30 days after the day on which the payment notice was served under section 52(2)(b) of the Ordinance; and
- (b) in accordance with the payment instructions contained in the payment notice.

24. Payment on assessment notice

A payment under section 54(9) of the Ordinance must be made—

- (a) before the end of the period of 30 days after the day on which the assessment notice was served under section 54(4) or (5) (as applicable) of the Ordinance; and
- (b) in accordance with the payment instructions contained in the assessment notice.

25. Adjustment of payable amount with reference to discrepancy list

- (1) This section applies if a registered supplier has submitted an audit report under section 53(1) of the Ordinance with a discrepancy list attached in relation to a return (*reported return*) in accordance with section 20(3).
- (2) In determining the amount of levy payable in relation to a subsequent return (if any), the Director may, with reference to the discrepancy list mentioned in subsection (1), adjust the amount so as to offset any amount of levy that has been or will be overpaid or unpaid by the registered supplier in relation to the reported return as a result of a discrepancy set out in the discrepancy list.
- (3) In subsection (2)—

subsequent return (其後申報) means a return submitted by the registered supplier after the submission of the audit report as mentioned in subsection (1).

26. Refund of overpaid sum

- (1) This section applies if a person has paid an amount of money to the Director for compliance with section 51(1) of the Ordinance.
- (2) The person (*claimant*) may lodge a written claim with the Director for refund of any overpaid sum paid by the claimant.
- (3) The claim must be accompanied by evidence of the claimant's entitlement to the refund.
- (4) For the purposes of subsection (3), a discrepancy list attached to an audit report in accordance with section 20(3) is evidence of a discrepancy set out in the discrepancy list unless the contrary is proved.
- (5) On receiving the claim, the Director must, to the extent that the overpaid sum has not been recovered by the claimant by the operation of section 25, refund the overpaid sum to the claimant if the Director is satisfied that the claimant is entitled to the refund.
- (6) In this section—
overpaid sum (超額款項) means an amount of money that was paid by a person as mentioned in subsection (1) for regulated articles in excess of the amount of levy that was payable by the person for the articles.

Division 4—Exemption for Suppliers with Container Waste Reduction Plan

27. Application of Division 4

This Division applies to an application made under section 56(1) of the Ordinance.

28. Application under section 56(1) of Ordinance

- (1) An application must be made in the specified form.
- (2) The applicant may, by giving the Director a written notice, withdraw the application at any time before it is determined.
- (3) If, before the application is withdrawn or determined, a change in the information provided to the Director for the application occurs, the applicant must, before the end of the period of 7 days after the day on which the change comes to the notice of the applicant, give the Director a written notice of the change.
- (4) The Director may, by written notice, require the applicant to provide further information and documents for the application.
- (5) The application fee for an application is \$9,250.

29. Determination of application

- (1) In addition to section 56(3) of the Ordinance, the Director must refuse an application if—
 - (a) the application is not made in the specified form;
 - (b) the applicant does not comply with section 28(3) or a notice given under section 28(4); or
 - (c) any material information provided for the application is incorrect or misleading.
- (2) The Director must give the applicant a written notice of the decision in respect of the application.
- (3) If the application is refused, the Director must set out the reasons for the decision in the notice.

30. Breach of terms or conditions

- (1) On a breach of any terms or conditions imposed under section 56(5) of the Ordinance, the Director may—

- (a) revoke the exemption concerned, so that it ceases to have effect either—
 - (i) on the breach; or
 - (ii) on the date that the Director specifies;
 - (b) vary that exemption in the way that the Director specifies; or
 - (c) suspend that exemption, so that it has no effect—
 - (i) for the period that the Director specifies; or
 - (ii) until compliance with any other terms or conditions that the Director imposes.
- (2) If the Director exercises a power under subsection (1) in respect of a person, the Director must—
- (a) give the person a written notice of the decision; and
 - (b) set out the reasons for the decision in the notice.
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Part 3

Miscellaneous

Division 1—Specified Forms

31. Director may specify forms

The Director may specify any forms required for the purposes of this Regulation.

32. General requirements

- (1) A specified form may require that—
 - (a) it be completed in a specified way;
 - (b) specified information or documents be included in or attached to it; and
 - (c) it be submitted in a specified way.
- (2) If a certain requirement under subsection (1) is not complied with in relation to a specified act, the act is to be treated as not done in the specified form.
- (3) The Director must make copies of a specified form available—
 - (a) during office hours at any office of the Director that is specified by the Director; or
 - (b) by any other way that the Director considers appropriate.
- (4) In subsection (2)—

specified act (指明作為) means—

 - (a) the making of an application under section 49 or 56(1) of the Ordinance;
 - (b) the submission of a return under section 52(1) of the Ordinance;

- (c) the giving of a notice under section 9(1); or
- (d) the preparation of a discrepancy list.

33. Electronic record as specified form

- (1) If the Director specifies an electronic record as a specified form, the requirement for a signature in the form is satisfied by a password assigned or approved under subsection (2).
- (2) The Director may, for enabling a person to use an electronic record as a specified form, from time to time assign or approve any sequence or combination of letters, characters, numbers or symbols as the person's password.

Division 2—Other Matters

34. Appeal to Appeal Board

- (1) In addition to the decision specified in section 56(4) of the Ordinance, the following decisions are appealable matters for the purposes of section 13(2) of the Ordinance—
 - (a) the refusal of an application made under section 49 of the Ordinance;
 - (b) the cancellation of a registration;
 - (c) the refusal to grant an exemption applied for under section 21(1);
 - (d) the service of a payment notice under section 52(2)(b) of the Ordinance;
 - (e) the service of an assessment notice under section 54(4) or (5) of the Ordinance;
 - (f) the refusal of a claim lodged under section 26(2);
 - (g) the revocation, variation or suspension of an exemption under section 30(1).

- (2) If an appeal is made under section 13(1) of the Ordinance against a decision specified in subsection (1) or section 56(4) of the Ordinance, the appeal does not affect the operation of the decision pending the determination of the appeal unless the Director decides otherwise.

35. Extension of periods

- (1) If the last day of the period within which a specified act may be done falls on an excluded day, the act is considered done within that period if it is done on the next following day, not being an excluded day.
- (2) In subsection (1)—
- excluded day** (豁除日) means—
- (a) a Saturday;
 - (b) a general holiday; or
 - (c) a gale warning day, or black rainstorm warning day, as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

specified act (指明作為) means—

- (a) the submission of a return in accordance with section 13;
- (b) the submission of an audit report in accordance with section 19; or
- (c) the making of an application in accordance with section 21(2).

Schedule

[s. 22]

Amount of Levy

Column 1	Column 2	Column 3
Item	Type of regulated article (item in Part 2 of Schedule 8 to the Ordinance)	Amount of levy
1.	Item 1	\$0.98 per litre volume of the regulated article



Secretary for the Environment

2022.6.6

Explanatory Note

The Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Ordinance 2016 (13 of 2016) amends, among other legislation, the Product Eco-responsibility Ordinance (Cap. 603) to implement a mandatory producer responsibility scheme on glass beverage containers. The new section 55 of the Product Eco-responsibility Ordinance empowers the Secretary for the Environment to make regulations for the implementation of the scheme. This Regulation is a regulation made under that section.

2. This Regulation provides for—
 - (a) matters related to registered suppliers, including the registration of suppliers, submission of returns, keeping of records and documents, submission of audit reports, payment of container recycling levies, and exemptions with container waste reduction plan; and
 - (b) the better carrying out of the provisions and purposes of the Product Eco-responsibility Ordinance.