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## Product Eco-responsibility (Amendment) Bill 2013

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# 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—
  - (a) at the time of the sale;
  - (b) 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) 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
  - (b) 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—
- (a) whether it is provided as the subject of the sale or is provided in addition to the subject of the sale; and
  - (b) whether or not it is provided together with another product as a single item of goods.

### **18B. Offences relating to section 18A**

- (1) A person who contravenes section 18A(2) or (3) commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) 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.**

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## 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.