

L.N. 69 of 2009

**PRODUCT ECO-RESPONSIBILITY ORDINANCE
AND
INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

PRODUCT ECO-RESPONSIBILITY (PLASTIC SHOPPING BAGS)
REGULATION**

Resolution made and passed by the Legislative Council under section 29 of the Product Eco-responsibility Ordinance (32 of 2008) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1) on 23 April 2009.

RESOLVED that the Product Eco-responsibility (Plastic Shopping Bags) Regulation, made by the Secretary for the Environment on 31 December 2008, be approved, subject to the following amendments—

- (a) in section 2(1), in the Chinese text, in the definition of “登記冊”, by deleting the full stop and substituting a semicolon;
- (b) in section 2(1), by adding—
 - ““criteria for a Type 1 exemption” (第 1 類豁免準則) means the criteria specified in section 8(3);
 - “criteria for a Type 2 exemption” (第 2 類豁免準則) means the criteria specified in section 8(5);
 - “exempted area” (獲豁免範圍), in relation to a registered retail outlet, means an area of the retail outlet that is exempted by the Director for the purposes of section 23 of the Ordinance;”;
- (c) by deleting section 3(4) and substituting—
 - “(4) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.”;
- (d) by deleting section 4(2)(a) and substituting—
 - “(a) the applicant has not complied with a requirement under section 3(1), (3) or (4);”;
- (e) in section 4, by adding—
 - “(5) Before rejecting an application, the Director must—
 - (a) give the applicant prior notice in writing of the Director’s intention to do so and the reasons; and

- (b) give the applicant an opportunity to make representations.”;
- (f) by deleting section 6(4) and substituting—
 - “(4) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.”;
- (g) by deleting section 7(2)(a) and substituting—
 - “(a) the applicant has not complied with a requirement under section 6(1), (3) or (4);”;
- (h) in section 7, by adding—
 - “(5) Before rejecting an application, the Director must—
 - (a) give the applicant prior notice in writing of the Director’s intention to do so and the reasons; and
 - (b) give the applicant an opportunity to make representations.”;
- (i) by deleting sections 8 and 9 and substituting—

“8. Application for exemption of part of the area of registered retail outlets or variation of exemption

(1) For the purposes of section 23(2) of the Ordinance, a registered retailer may apply to the Director for the exemption of part of the area of a registered retail outlet of that retailer, or for the variation of an exemption, based on the criteria for a Type 1 exemption or the criteria for a Type 2 exemption.

(2) An application under subsection (1) must be made in writing and in the specified form.

(3) The following are specified as the criteria for a Type 1 exemption in relation to a registered retail outlet—

- (a) the total floor area of the retail outlet in which only non-specified goods are displayed or offered for sale is more than 50% of the retail floor area of the retail outlet; and
- (b) each part of the area to be exempted is a cashier’s counter that accepts payment for non-specified goods only.

(4) For the purposes of subsection (3), “retail floor area” (零售樓面面積) has the same meaning as in Schedule 4 to the Ordinance.

(5) The following are specified as the criteria for a Type 2 exemption in relation to a registered retail outlet—

- (a) the part of the area of the retail outlet to be exempted is used for the purposes of a business of a third party (not being the registered retailer) registered under the Business Registration Ordinance (Cap. 310);
- (b) that area is demarcated clearly by a counter and is used exclusively for the purposes of the third party's business;
- (c) the name, trade name, trade mark or brand name of the third party is displayed conspicuously in that area;
- (d) that area is staffed by an employee of the third party; and
- (e) all plastic shopping bags provided from that area bear the name, trade name, trade mark or brand name of the third party.

(6) For an application based on the criteria for a Type 1 exemption, the specified form must be accompanied by a floor plan of the retail outlet indicating—

- (a) any area in which only non-specified goods are displayed or offered for sale; and
- (b) which part of the area of the retail outlet is intended to be exempted, or how an exempted area is intended to be varied, according to the criteria for a Type 1 exemption.

(7) For an application based on the criteria for a Type 2 exemption, the specified form must be accompanied by a floor plan of the retail outlet indicating which part of the area of the retail outlet is intended to be exempted, or how an exempted area is intended to be varied, according to the criteria for a Type 2 exemption.

(8) The applicant may, by giving the Director notice in writing, withdraw the application under this section at any time before it is determined under section 9.

(9) If a change in the information provided to the Director under this section occurs before the determination of the application, the applicant must, as soon as reasonably practicable, give the Director notice of the change in writing unless the application has been withdrawn.

(10) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.

**9. Determination of application
for exemption or variation
of exemption**

(1) For the purposes of section 23(3) of the Ordinance, the Director must approve an application under section 8 unless it is rejected under subsection (2).

(2) The Director may reject the application if the Director considers that—

- (a) the applicant has not complied with a requirement under section 8(1), (2), (6), (7), (9) or (10);
- (b) the information provided in relation to the application is incorrect or misleading; or
- (c) the retail outlet does not meet the following—
 - (i) if the application is based on the criteria for a Type 1 exemption, any of the criteria for a Type 1 exemption; or
 - (ii) if the application is based on the criteria for a Type 2 exemption, any of the criteria for a Type 2 exemption.

(3) If an application is approved, the Director must—

- (a) for the purposes of section 23 of the Ordinance, exempt the part of the area of the registered retail outlet, or vary the exemption, as indicated in the application subject to the following conditions—
 - (i) if the application is based on the criteria for a Type 1 exemption, all the conditions set out in subsection (4); or
 - (ii) if the application is based on the criteria for a Type 2 exemption, all the conditions set out in subsection (5);
- (b) give the applicant notice in writing of the decision; and
- (c) specify in the notice the conditions to which the exemption or the variation of the exemption is subject.

(4) For the purposes of subsection (3)(a)(i), if the application is based on the criteria for a Type 1 exemption, the following are the conditions to which the exemption, or variation of the exemption, of part of the area of the registered retail outlet is subject—

- (a) the retail outlet continues to meet the criteria for a Type 1 exemption;
- (b) plastic shopping bags may be provided from such an exempted area without payment of the charge required by section 23(1) of the Ordinance only if—
 - (i) they are provided to customers who make payment for non-specified goods in that area; and
 - (ii) the number of bags so provided is not more than necessary for carrying those goods; and
- (c) such other conditions as the Director may reasonably impose from time to time.

(5) For the purposes of subsection (3)(a)(ii), if the application is based on the criteria for a Type 2 exemption, the following are the conditions to which the exemption, or variation of the exemption, of part of the area of the registered retail outlet is subject—

- (a) the retail outlet continues to meet the criteria for a Type 2 exemption;
- (b) plastic shopping bags may be provided from such an exempted area without payment of the charge required by section 23(1) of the Ordinance only if—
 - (i) they are provided to customers who purchase the goods offered for sale by the third party concerned in that area; and
 - (ii) the number of bags so provided is not more than necessary for carrying those goods; and
- (c) such other conditions as the Director may reasonably impose from time to time.

(6) The Director must also give the applicant notice in writing of any conditions imposed under subsection (4)(c) or (5)(c).

(7) Before imposing any conditions under subsection (4)(c) or (5)(c), the Director must—

- (a) give the applicant prior notice in writing of the conditions that the Director intends to impose; and
 - (b) give the applicant an opportunity to make representations as to why the conditions should not be imposed.
- (8) If an application is rejected, the Director must—
 - (a) give the applicant notice in writing of the decision; and
 - (b) include in the notice a statement setting out the reasons for the decision.
- (9) Before rejecting an application, the Director must—
 - (a) give the applicant prior notice in writing of the Director's intention to do so and the reasons; and
 - (b) give the applicant an opportunity to make representations.
- (10) An exemption, or variation of an exemption, approved under this section applies only to the registered retailer by whom the application is made.”;
- (j) in section 10, by renumbering subsection (5) as subsection (6);
- (k) in section 10, by adding—
 - “(5) Before revoking an exemption under subsection (1), the Director must—
 - (a) give the registered retailer prior notice in writing of the Director's intention to do so and the reasons; and
 - (b) give that retailer an opportunity to make representations.”;
- (l) in section 11(1)(b), by deleting “9(5)(a)(iii)” and substituting “9(4)(c) or (5)(c)”;
- (m) by deleting section 12(3) and substituting—
 - “(3) The return in respect of a registered retail outlet for each quarter must contain the following information—
 - (a) the total number of plastic shopping bags delivered to the retail outlet during that quarter, except for any bags to be provided from an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption;
 - (b) the total number of plastic shopping bags provided directly or indirectly to customers during that quarter from—
 - (i) the retail outlet; or

- (ii) if there is an exempted area in the retail outlet, any area of the retail outlet that is not exempted; and
 - (c) the total amount of levies payable for the bags referred to in paragraph (b).
- (4) In relation to a quarter in which the application for registration or deregistration in respect of a retail outlet is approved, the return for that quarter must also specify the date on which the retail outlet becomes registered or deregistered.”;
- (n) by deleting section 14(a), (b) and (c) and substituting—
 - “(a) the number of plastic shopping bags provided to a customer in each retail transaction of the retail outlet, except for any bags provided from an exempted area of the retail outlet;
 - (b) the amount charged for those bags by the retailer under section 23(1) of the Ordinance;
 - (c) the number of plastic shopping bags contained in each shipment of plastic shopping bags to the retail outlet, except for any bags to be provided from an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption; and
 - (d) the number of plastic shopping bags procured by the retailer and relating to each shipment referred to in paragraph (c).”.

Pauline NG Man-wah
Clerk to the Legislative Council

23 April 2009