

Legal Notice XX of 2018

**ACT
(CAP. ___)**

Beverage Containers Recycling Regulations, 2018

IN EXERCISE of the powers conferred by article _ of the Act, the Minister for the Environment, Sustainable Development and Climate Change has made the following regulations: -

Title, objective and commencement.

1. (1) The title of these regulations is the Beverage Containers Recycling Regulations, 2018.

(2) The objective of these regulations is to enhance the circular economy by making provision for the establishment and operation of a beverage container refund scheme, to enhance recycling of beverage containers, increase national recycling efforts, reduce litter and to fulfil the objectives of the Act.

(3) These regulations shall come into force, in full or in part, on those dates as determined by the Minister by notice in the Government Gazette after receiving advice from the Council that sufficient redemption centres have been established across the territory.

Interpretation.

2. In these regulations unless the context requires otherwise:

“Act” means the Environment Protection Act;

“Authority” means the Environment and Resources Authority established under article 6 of the Environment Protection Act;

“beverage” means any of the fluids listed in the First Schedule to these regulations;

“consumer” means every person who purchases a beverage in a container for consumption;

“container” means any individual, separate, sealed metal, glass or plastic bottle or can containing a beverage but excludes cartons, foil pouches and drink boxes;

“Council” means the Resource Recovery and Recycling Council established under article X of the Act;

“distributor” means any natural or legal person who engages in the sale of beverages in containers to any retailer for the purpose of reselling the beverage in the territory;

“Fund” means the Beverage Containers Fund established in regulation 3;

“producer” means any natural or legal person importing, bottling, canning or otherwise filling beverage containers intended for sale to consumers in the territory;

“Minister” means Minister responsible for the Environment;

“operator” means any natural or legal person who shall operate one or more redemption centres;

“place of business of a retailer” means any location at which a retailer sells or offers for sale beverages in containers to consumers;

“redemption centre” means that place where beverage containers are to be returned as specified in regulation 14;

“refillable container” is a container whereby a system of collection is in place in the territory for its reuse as specified in regulation 10(2);

“repository operator” means that undertaking selected by the Council pursuant to regulation 7 to establish a repository for returned containers, establish redemption centres across the territory and to carry out the other functions assigned to it by these regulations;

“retailer” means any natural or legal person who engages in the sale of beverage containers to consumers;

“reuse” means any operation by which a beverage container placed on the market, is refilled or reused for the same purpose for which it was designed, for a number of repetitive uses throughout its life cycle, with or without auxiliary processes which do not consist of transformation processes;

“Scheme” means the entire system set up by these regulations for the establishment and operation of a beverage container refund system;

“single use container” is a container which is not a refillable container;

“territory” means Malta as defined in article 124 of the Constitution of Malta.

Beverage Containers Fund.

3. (1) There shall be established a Beverage Containers Fund into which, and out of which, payments shall be made in accordance with these regulations.

(2) The contributions in the Fund shall include:

(a) the deposit value imposed on every beverage container in order to be placed on the market and which is payable by producers in accordance with regulation 9.

(b) administration fees payable by producers in accordance with regulation 9;

(c) registration fees payable in accordance with regulation 8;

- (d) any money received as income from the deposit of any money of the Fund;
- (e) any money borrowed by the Council for the purposes of the Scheme; and
- (f) any other money to be paid into the Fund or which is received or recovered by the Council for the purposes of the Scheme or in accordance with these regulations.

(3) There shall be paid out of the Fund:

- (a) the deposit value on every returned beverage container which is collected in accordance with regulation 16;
- (b) the handling fees due on the return of every returned beverage container in accordance with regulation 16;
- (c) the costs incurred in administering and managing the Scheme;
- (d) money required for the repayment of any money borrowed for the purposes of the Scheme;
- (e) any other money paid out by the Council for the purposes of the Scheme or in accordance with these regulations;
- (f) the costs incurred to study, implement or better operate the recycling of beverage containers; and
- (g) money paid out to the general funds of the Council in accordance with regulation 6(1)(i).

(4) The Fund shall be managed and administered by, and be under the general control of the Council which shall hold, manage and apply the Fund in accordance with these regulations.

(5). The Council shall publish annual audited accounts in relation to the Fund by not later than the end of the June of the following year.

Exchange of information.

4. For the purpose of enabling the Council to perform its functions under these regulations, the Authority shall share and exchange information with the Council, and the Council and Authority shall collaborate with one another.

Functions of the Council.

5. (1) Without prejudice to any other power or function conferred on it by these regulations or under the Act, it shall be the function of the Council:

- (a) to make all necessary arrangements for the smooth operation of the Scheme;
- (b) to make and maintain all the necessary arrangements for the receipt of monies into the Fund and the making of payments from the Fund in accordance with these regulations;
- (c) to manage and administer the Fund for the proper operation of the Scheme, and to ensure that the Fund is in receipt of all amounts monies payable to the Fund in terms of these regulations;
- (d) to select a repository operator for the territory and enter into all the necessary contractual and other arrangements to secure the successful operation of the Scheme, and to monitor and supervise the Scheme;
- (e) to ensure that sufficient redemption centres are established across the territory by such date as the Minister may impose;
- (f) to take such measures as necessary to ensure that redemption targets are met;
- (g) to establish and maintain adequate reporting information systems in a transparent manner;
- (h) to develop an operational programme for every period of three years to meet the objectives set out in these regulations;

- (i) to progressively audit the system to ensure the correct collection and disbursement of funds allocated;
- (j) to transfer accumulated funds from the Fund to the general funds of the Council with the prior authorisation of the Minister;
- (k) to provide reports on the operation of the Scheme in accordance with regulation 7;
- (l) to ensure that persons who breach their obligations under these regulations are prosecuted; and
- (m) to advise the Minister on initiatives, recycling targets and investment incentives related to the Scheme.

Report by the Council.

6. (1) At the end of each year, the Council shall submit a report to the Minister on the operation of the Scheme by not later than the end of February of the following year.

(2) The report must include, for the previous calendar year:

- (a) the number of beverage containers that have been returned for refund value as a percentage of the total number of beverage containers placed on the market, with a distinction between drawn between single use containers and refillable containers;
- (b) the number and location of beverage container redemption centres;
- (c) The volumes by weight of recyclable materials sold by the repository operator for onward recycling; and
- (d) such other matter as may be required by the Minister.

(3) The Council shall make the report public by not later than the 31st March of the following year.

Repository operator of the Scheme.

7. (1) There shall be a repository operator for the purposes of the Scheme across the entire territory of the Maltese Islands.

(2) The Council shall, through a competitive procedure, select the repository operator for the territory who shall assume all the required responsibilities for the successful operation of the Scheme in accordance with these regulations.

(3) The functions of the repository operator shall include the following:

- (a) to establish and provide a repository, meeting any technical and other requirements set by the Council, for the final receipt and processing of all beverage containers collected pursuant to these regulations;
- (b) take responsibility of all the returned beverage single use containers and meet the recycling obligations set by the Council;
- (c) to establish and provide the necessary IT solution and infrastructure to monitor and control the operations of each redemption centre;
- (d) to supply and operate the necessary number of redemption centres to ensure that the coverage stipulated in regulation 17 is achieved;
- (e) to collect all beverage containers from the redemption centres to the repository;
- (f) to sell all the processed containers as recyclable material, directly and/or through an authorised broker and to provide the Council and the Authority with the necessary documentation to that effect such that such material may count towards Malta's recycling targets;

- (g) to fulfil any other obligation which the Council deems necessary for the proper operation of the Scheme; and
- (h) to finance and participate in public campaigns to ensure the success of the scheme.

(4) The repository operator shall be entitled to keep the proceeds from the sale of the material from returned beverage containers.

(5) The Council shall enter into all necessary binding arrangements with the repository operator to ensure performance of all its obligations.

Registration.

8. (1) Any producer placing, or intending to place, on the market any beverage container shall register with the Council the required details as stipulated by the same Council, by not later than one month from the entry into force of this regulation. The same obligation shall apply to any natural or legal person intending to place any beverage container on the market after the entry into force of these regulations.

(2) The Council shall charge the applicable registration fees established in the Third Schedule.

(3) The registration fees shall be paid into the Fund.

Deposit refund of single use containers.

9. (1) Every single use container placed on the market for sale in the territory shall be subject to the payment of a deposit refund value in accordance with the Second Schedule to these regulations. The refund deposit value shall not be subject to VAT and shall be indicated separately from the price.

(2) A refund deposit logo, as indicated in Schedule IV to these regulations shall be stamped or affixed to the external surface of every beverage container before being placed on the market and it shall contain a notice that the consumer may redeem the deposit refund once the beverage container is duly returned at a redemption centre:

Provided that the Council shall determine the precise wording of this notice.

(3) Deposit refund logos as specified by the Council, may be production printed or manually affixed to the beverage container, provided it is clearly visible and properly and steadily affixed. Importers and manufacturers shall, at time of registration, indicate to the Council the method they intend to adopt for the display of the refund deposit logo. The Council may approve or otherwise the proposed method depending on the ability of the deposit logo to be used as a singular means of maintaining an audit trail of the beverage container life cycle.

(4) The Council shall charge the administration fee in respect of beverage containers placed on the market as indicated in the Second Schedule to these regulations.

(5) Producers shall pay into the Fund the deposit refund value and the administration fees prior to placing the beverage containers on the market.

(6) Producers shall re-claim the full deposit value on the onward sale of product to distributor, wholesaler, retailer or consumer, as the case may be, but shall not have any claim for any portion of the administration or handling fee.

(7) Only producers that are duly registered with the Council pursuant to regulation 8 may stamp or affix the deposit refund logo to their beverage packaging.

Exemption from the Scheme for refillable containers.

10. (1) Producers may make a request to the Council that refillable containers be exempt from the Scheme.

(2) The Council shall grant the exemption to a producer provided that:

(a) the producer is registered with the Council in accordance with regulation 8;

(b) the Council is satisfied that the producer has in place an appropriate system for the collection and reuse of its containers within the territory which system shall require consumers to pay a deposit as stipulated in the Second Schedule in respect of the container at the moment of purchase and which deposit is to be returned to consumer by retailers on the return of the container at no additional cost to the consumer, in accordance with these regulations; and

(c) the producer undertakes to meet all obligations set out in these regulations with respect to refillable containers and such conditions as may be imposed by the Council when granting the exemption.

(3) A refund deposit logo, as indicated in the Fifth Schedule to these regulations shall be stamped or affixed to the external surface of every refillable container before being placed on the market. It shall contain a notice that the consumer may redeem the deposit refund once the beverage container is duly returned to a retailer. The Council shall determine the precise wording of this notice.

(4) Deposit refund logos may be production printed or manually affixed to the beverage container, provided it is clearly visible and properly and steadily affixed. Importers and manufacturers shall, at time of registration, indicate to the Council the method they intend to adopt for the display of the refund deposit logo. The Council may approve or otherwise the proposed method depending on the ability of the deposit logo to be used as a singular means of maintaining an audit trail of the beverage container life cycle.

(5) Every refillable container placed on the market for sale in the territory shall be subject to the payment of a deposit refund value as indicated in the Second Schedule. The refund deposit value shall not be subject to VAT and shall be indicated separately from the price.

(6) Producers shall claim the full deposit value on the onward sale of refillable containers to distributors, wholesalers, retailers or consumers, as the case may be.

(7) Producers shall refund the full deposit value on receipt of empty containers to the distributor, wholesaler, retailer or consumer, as the case may be.

(8) Producers shall maintain and operate a separate deposit refund account maintaining all financial movements of receipts and payments of the said deposits.

(9) Only producers that are duly registered with the Council pursuant to regulation 8 may stamp or affix the deposit refund logo to the refillable container.

(10) Every producer of refillable containers shall supply the Council with the number of beverage containers that have been returned for refund value as a percentage of the total number of beverage containers placed on the market categorized by product, container material, design and size typology, together with such other information as may be required by the Council from time to time.

(11) The Council shall have the right to audit producers and may, at any time, revoke the exemption granted in accordance with subregulation 2 where it considers that the system for the collection and reuse of the containers within the territory is no longer appropriate or where the Council determines that the producer has breached his obligations under these regulations.

Trading in beverage containers.

11. (1) Distributors, wholesalers, retailers, or any other undertaking in the chain of supply to the consumer shall not trade in beverages sold in containers falling within the scope of these regulations unless they possess a refund deposit logo in accordance with regulation 9(2) or regulation 10(3).

(2) Distributors, wholesalers, retailers, or any other undertaking in the chain of supply to the consumer, shall pay the full deposit refund value to his predecessor in the chain of supply. The deposit value is to be clearly indicated separately on each invoice.

Selling by retailers of beverages in containers for consumption.

12 (1) A retailer or similar undertaking who sells or offers for sale, beverages in containers for consumption by consumers away from his place of business, must display a clear and prominent notice in his retail outlet that there is a separate charge for the refund deposit value and that the consumer may redeem the deposit refund once the container is duly returned. The Council shall determine the specifications and the precise wording of the notice to be displayed by retailers for the purposes of this provision for the case of refillable and non-refillable containers.

(2) A retailer or similar undertaking who sells or offers for sale beverages in containers for consumption by the consumer on the place of business of the retailer, as in the case of bars, coffee shops, restaurants and the like, shall not charge consumers for the deposit refund value but shall be obliged to return the used beverage containers to designated redemption centres and collect the deposit refund value at such designated redemption centres.

(3) A retailer or similar undertaking selling beverages in containers for intended consumption by consumers away from the place of business and whose retail premises have a total floor area greater than one hundred and fifty (150) square metres shall provide for a redemption centre on his premises for the return of beverages containers. The retailer shall be obliged to accept from any person any used beverage container. Redemption centres shall be of the type required by the Council pursuant to regulation 14.

(4) A retailer or similar undertaking whose retail premises have a total floor area which is less than one hundred and fifty (150) square metres shall be exempted from having a redemption centre but may apply with the Council to operate a redemption centre.

(5) Retailers cannot claim any handling or similar fees for fulfilling their obligations in terms of these Regulations, except any fees due to them as prescribed by these regulations.

(6) Every redemption centre must be registered with the Council and shall be established at a location within the retail outlet which is easily accessible by the general public and which has been approved by the Council. This approval shall not constitute an exemption from obtaining any necessary permits from the relevant authorities.

(7) The repository operator shall offer to collect all compacted returned beverage containers from the redemption centres at retail outlets that operate an automated reverse vending machine. In any other case the retailer shall transport all used beverage containers to the repository operator.

(8) The repository operator shall refund to the redemption centre the amounts refunded to consumers on the return of beverage containers, except in those cases where the redemption centre is operated directly by the repository operator in which case the consumer shall be refunded directly from the repository operator.

Recovery of deposit refund value.

13. (1) Consumers shall be entitled to recover the full deposit refund value paid on the purchase of beverage containers from redemption centres available at the premises of retailers or from redemption centres provided by the repository operator across the territory.

(2) The consumer shall be refused a refund if:

(a) the empty beverage container does not have affixed the logo pursuant to regulations 9(2) or 11(3); or

(b) the affixed logo is damaged to an extent that the beverage container refund cannot be processed; or

(c) the empty beverage container contains or is otherwise contaminated by a substance other than water, residue of the original contents or ordinary dust.

(3) Each redemption centre shall have a clearly visible and legible sign containing the information indicated in subregulations (2) and (3). The Council shall determine the specifications and the precise wording of the notice to be displayed by retailers for the purposes of this provision for the case of refillable and non-refillable containers.

Redemption centres.

14. (1) Redemption centres shall be automated reverse vending machines with compaction which refund the deposit refund value to consumers through machine, as the Council considers adequate for the successful operation of the Scheme.

(2) The Council may exceptionally authorize, subject to such conditions as the Council may deem fit to impose, other types of redemption centres including redemption centres which are manually operated or semi-automated.

Number of redemption centres.

15. (1) The repository operator shall ensure that the number of redemption centres in every town and village shall not be less than as indicated in the Seventh Schedule.

(2) The Council shall have the power to request additional redemption centres beyond the minimum specified in the Seventh Schedule to be installed if targets in regulation 19 are not met. Without prejudice to the foregoing, the Council shall also have the power to require additional redemption centres in those areas across the territory having a high influx of tourists or areas with a concentration of retail outlets to cater for the return of used beverage containers by retailers who supply consumers with beverages in containers for consumption at the place of business of the retailer.

Charge on the Fund.

16. (1) There shall be paid from the Fund an amount to the repository operator that covers the cost of operation of the repository operator and redemption centres. The monies paid to the redemption centres shall be as indicated in the Seventh Schedule.

(2) The repository operator shall undertake to refund the deposit and handling fees to third parties operating redemption centres on a regular basis but not exceeding 90 days from collection.

Reports by the repository operator.

17. The repository operator shall file reports with the Council on a quarterly basis but in any case not later than fifteen (15) days from each quarter with information on volumes and type of empty containers processed.

Targets to be reached by the Council.

18. Further to the objective of increasing national recycling efforts, the Council shall endeavor to reach the following targets:

- a) in the first year of operation the percentage of recycled beverage containers pursuant to these regulations is to exceed 70%;
- b) in the second year, the percentage is to exceed 80%; and
- c) 90% recycling targets thereafter.

Information to be submitted by the repository operator, redemption centre and producers.

19. (1) The repository operator, redemption centre and producers shall regularly supply the Council with all information and documentation in relation to the operation of the Scheme and the fulfilment of their obligations under these regulations, as the Council may require from time to time.

(2) Without prejudice to sub-regulation (1), the Council shall be empowered to request any specific information and documentation from any person subject to these regulations to ensure compliance with these regulations.

(3) Officers or officials of the Council shall with the assistance of the Police be empowered to carry out inspections at any place of business of a person subject to these regulations to ensure compliance with these regulations.

(4) Any person who refuses or fails, without sufficient cause, to provide any information or documentation required by the Council in accordance with subregulations (1) and (2), or who refuses to give access to the Council in accordance with subregulation (3), shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding one thousand five hundred euro (1,500) or to imprisonment not exceeding three months, or to both such fine and imprisonment.

Offences.

20. (1) Any producer who contravenes the provisions of regulation 8(1) or regulation 9(5), and any person who contravenes the provisions of regulation 11(1), shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not less than five thousand euro (5,000) and not more than fifty thousand (50,000) euro or to imprisonment not exceeding six months, or to both such fine and imprisonment.

(2) Any person who makes any declaration to the Council as required by these regulations which is false, misleading or incorrect in any material respect, shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not less than two thousand five hundred (2,500) euro and not more than twenty thousand euro (20,000) or to imprisonment not exceeding three months, or to both such fine and imprisonment.

(3) Any producer, distributor, wholesaler or retailer who acts in contravention of any obligation under regulations, other than an obligation referred to in subregulations (1) or (2) of this regulation, shall be liable on conviction to a fine (*multa*) not less than two hundred and fifty euro (250) exceeding two thousand five hundred euro (2,500).

(4) The Court, besides awarding the punishment referred in accordance with the preceding paragraphs, may order the offender to comply with his obligations under these regulations within a time sufficient for the purpose, but in any case not exceeding three months from the date of the judgment, to be fixed by the court; and if the offender fails to comply with any such order within the time so fixed, he shall be liable to a fine (*multa*) of not less than fifty euro (50) and not more than one hundred euro (100), as the court may fix, for every day the default continues after the expiration of the said time and the court may also order the modification, suspension or revocation of any authorisation.

Schedule I

Beverages falling within the scope of these regulations (Regulation 3)

- a) water and flavoured water;
- b) fruit juices and nectars;
- c) carbonated soft drinks;
- d) ciders, beers and other malt beverages;
- e) wines;
- f) other alcoholic beverages with an alcohol level not greater than 20% by volume;
- g) any other beverage, except for dairy products and alcoholic beverages with an alcohol level of at least 20% by volume, which is readily available for human consumption.

Schedule II

Part I

Deposit Refund Value (Regulation 9)

All beverage containers shall be subject to a deposit refund value of ten euro cents (€ 0.10).

Part II
Administration Fees
(Regulation 8)

The administration fee in respect of any beverage container placed on the market shall be one euro cent (€ 0.01).

Schedule III

Registration Fees
(Regulation 8)

Producers shall be subject to a one-time registration fee with the Council of two hundred fifty euro (€ 250).

Producers shall also be subject to a registration fee for every beverage type intended to be placed on the market individually distinguished by product, container material, design or size typology. This registration fee shall be a one-time fee of one hundred euro (€ 100) per unique typology registered.

Schedule IV

Logo for non-exempt beverage containers
(Regulation 9)

Schedule V

Logo for exempt refillable beverage containers
(Regulation 10)

Schedule VI

Number of Redemption Centres
(Regulation 7)

The minimum number of unique redemption centres shall be 350.

Schedule VII

Handling Fees paid by Repository Operator to the Redemption Centres
(Regulation 16)

The repository operator shall be obliged to pay redemption centres the amount of four euro (€ 4) per 1,000 containers handled by the retailer and returned to the repository operator.

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