

Proposed regulations on mandatory recycling for packaging waste under new Draft Decree implementing the new Law on Environmental Protection

A redesigned focus on sustainable solutions for managing packaging waste

In brief

The Ministry of Natural Resources and Environment (MONRE) released a Draft Decree implementing Law No. 72/2020/QH14 on Environmental Protection ("**Draft Decree**") which introduces Extended Producer Responsibility (EPR) in the form of a mandatory recycling framework for packaging waste management in Vietnam ("**Recycling Obligations**"), as well as EPR obligations applicable to product recycling and waste treatment.¹ It is proposed that EPR for packaging waste would enter into force from 1 January 2023.²

Under the Draft Decree, producers and importers subject to Recycling Obligations for product packaging will need to:

- (i) recycle, or arrange for the recycling of packaging according to the mandatory recycling rate and specifications; or
- (ii) make a financial contribution to the Vietnam Environmental Protection Fund.

The Draft Decree subjects producers and importers of packaging in the following categories to Recycling Obligations:

- Food and beverages;
- Detergents, cosmetics, shampoo and conditioners, and pharmaceuticals; and
- Other products in paper, plastic, or metal boxes and containers or used in transporting or packing plastic goods (bottles, jars, boxes, cases, barrels) with a capacity of more than 500 ml.

This alert will highlight the following topics:

- Recycling Obligations in detail
- Exemptions from Recycling Obligations
- Packaging-specific recycling requirements
- Penalties for non-compliance

EPR obligations applicable to product recycling and waste treatment will be explored in subsequent alerts.

Recycling Obligations in detail

Producers of packaging subject to Recycling Obligations will be entitled to select between (i) independently recycling their product packaging provided that they hold an environmental license; (ii) authorizing a recycling service to carry

¹ Draft Decree implementing Law No. 72/2020/QH14 on Environmental Protection, Art. 87(2).

² *Ibid*, Appendix 55.

out the recycling on their behalf; (iii) appointing a qualified third party not-for-profit organization to recycle their product packaging; or (iv) making a contribution to the Vietnam Environmental Protection Fund ("**VEP Fund**").³ Importers may only select between option (ii), (iii) and (iv).⁴

All producers and importers subject to Recycling Obligations will be required to register and report on their recycling activities or declare their contribution to the VEP Fund every year before 31 March.⁵ If producers or importers hire a third party to recycle on their behalf, the third party is responsible for registering and reporting on recycling activities⁶

Furthermore, importers and producers must hire audit enterprises to perform independent audits and confirm recycling results before submitting them to the Vietnam EPR Office.⁷

Producers and importers must use the national recycling symbol, published by MONRE on labels and packaging. Additionally, producers and importers must provide information regarding composition of materials; guidelines for post-consumer classification, collection, reuse, recycling and treatment; and any risk warnings regarding the recycling, reuse and treatment of products and packages.⁸

The Recycling Rate⁹

$$\text{Actual recycling rate (Ra)} = \text{Disposal coefficient of products, packages (D)} \times \text{Collection coefficient of products, packages (T)}$$

The legal requirement for the quantity of each type of packaging that needs to be recycled will be called 'the required recycling rate'. This quantity will be based on the actual recycling rate of the packaging (disposal coefficient of the packaging x collection coefficient of the packaging), the national recycling target, the environmental protection requirement, and the socio-economic condition of the country.¹⁰ This required recycling rate will be measured and adjusted every three years to reflect the current socio-economic and environmental protection conditions.¹¹

If the producer/importer is already recycling at a higher rate than the required recycling rate, the difference can be reserved and carried forward to subsequent years (up to a maximum of three years).¹²

Financial Contribution to Vietnam Environmental Protection Fund¹³

To make a financial contribution to the VEP Fund, producers and importers must first submit a form declaring the quantity and volume of the produced or imported packaging to the Vietnam EPR Office every year before 31 March.¹⁴ Within 20 days of receiving the declaration form, the Vietnam EPR Office will send a payment notice to the producers/importers¹⁵. The producers/importers are then responsible for making the payment within 15 days after receiving the payment notice.¹⁶

³ Draft Decree implementing Law No. 72/2020/QH14 on Environmental Protection, Art. 92(1-2).

⁴ *Ibid*, Art. 92(3).

⁵ *Ibid*, Art. 90.

⁶ *Ibid*.

⁷ *Ibid*, Art. 90(3).

⁸ *Ibid*, Art. 97.

⁹ *Ibid*, Art. 88.

¹⁰ *Ibid*, Art. 88(1).

¹¹ *Ibid*, Art. 88(6).

¹² *Ibid*, Art. 88(4).

¹³ *Ibid*, Art. 89.

¹⁴ *Ibid*, Art. 90(4)(a).

¹⁵ *Ibid*, Art. 90(4)(b).

¹⁶ *Ibid*, Art. 90(4)(c).

$$\text{Financial contribution (F)} = \text{Recycling rate (R)} \times \text{Volume of products or packages (V)} \times \text{Cost norm of recycling products and packages (Fs)} + \text{Cost of recycling management and organization (Fm)}$$

The above formula will determine the financial contribution that producers and importers subject to EPR Obligations must make to the Vietnam Environmental Protection Fund if they choose not to recycle. MONRE will determine the value of the 'cost norm of recycling' (Fs) and the 'cost of recycling management and organization' (Fm) for each type of product and packaging.

Exemptions from Recycling Obligations

Producers and importers of **food and beverages** using the following containers will be exempt from Recycling Obligations:

Low volume food and beverage packaging ¹⁷		
containers made of paper-mixed materials with a capacity of 100ml or less	metal containers with a capacity of 300ml or less	synthetic resin containers with a capacity of 300ml or less

Producers and importers of **detergents, cosmetics, shampoo and conditioners, and pharmaceutical products** using the following containers will be exempt from Recycling Obligations:

Low volume detergents, cosmetics, shampoo and conditioners, and pharmaceutical products packaging ¹⁸		
metal containers with a capacity of 300ml and less	synthetic resin containers with a capacity of 100ml and less	glass bottles with a capacity of 100ml and less

Small scale producers and importers of 'other products with packaging' – paper, plastic, or metal boxes and containers or packaging used in transporting or packing plastic goods with a capacity of more than 500 ml – will be exempt from Recycling Obligations if they are:

Small scale producers and importers of 'other products with packaging' ¹⁹	
Producers with a total annual turnover of less than VND 100 billion	Producers with an annual consumption amount of less than 50 tons
or	or
Importers with a total annual import value of less than VND 50 billion.	Importers with an annual import volume which has not increased by at least 25 tons since the previous year.

¹⁷ *Ibid*, Appendix 55.

¹⁸ *Ibid*, Appendix 55.

¹⁹ *Ibid*, Appendix 55.

Package-specific recycling requirements

Below package-specific recycling requirements are identified. All treatment solutions employed must meet the requirements of environmental protection for the collection, storage, and treatment of the specified waste.²⁰ Additionally, producers and importers are responsible for providing information about the product packaging, registering recycling plans, and reporting recycling results annually to the Vietnam EPR Office before 31 March of each year.²¹ Information on the performance of producers and importers subject to Recycling Obligations will be registered, gathered, managed and publicized on the National EPR Portal.²²

Food and Beverages ²³			
Categories	Scale	Recycling Specifications	
Containers made of paper-mixed materials with a capacity of more than 100 ml.	Applies to all producers and importers.	Recycling solutions: <ol style="list-style-type: none"> 1. Recycle into paper products such as toilet paper, paperboard, paper boxes, etc. 2. Sort, clean, and export as recycled materials. 	Specific Requirements: <ol style="list-style-type: none"> 1. Recover at least 80% of the paper in a product unit in the form of paper products.
Metal containers with a capacity of more than 300 ml.	Applies to all producers and importers.	Recycling solutions: <ol style="list-style-type: none"> 1. Sort, clean, and pack into scrap bales used as raw materials for industries. 2. Sort, clean, bale, and export as recycled materials. 	Specific Requirements: <ol style="list-style-type: none"> 1: Recover at least 80% of metal in a product unit in the form of scrap qualifying as raw materials for production.
Synthetic resin containers with a capacity of more than 300 ml.	Applies to all producers and importers.	Recycling solutions: <ol style="list-style-type: none"> 1. Produce raw recycled materials in the form of secondary plastic particles or pieces to meet the requirements of using scrap as raw materials for industries. 2. Produce recycled plastic products. 3. Produce chemical (including oil). 4. Sort, clean, bale, and export as recycled materials. 	Specific Requirements: <ol style="list-style-type: none"> 1: Recover at least 90% of plastic in a product unit in the form of scrap meeting the requirements as raw materials for production. 2&3: recycle at least 90% of plastic volume into commercial products
Glass bottles with a capacity of more than 300 ml.	Applies to all producers and importers.	Recycling solutions: <ol style="list-style-type: none"> 1. Clean, reuse 2. Sort, grind into cullets for glass production. 3. Grind into aggregates for construction. 	Specific Requirements: <ol style="list-style-type: none"> 2: Recover at least 90% of the glass in a product unit in the form of scrap to meet the requirements as raw materials for production.

²⁰ *Ibid*, Appendix 55.

²¹ *Ibid*, Art. 90(1) and Art. 97(5).

²² *Ibid*, Art. 98(1).

²³ *Ibid*, Appendix 55.

			3: recover at least 90% of glass in the form of aggregate to meet the requirements in construction.
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Detergents, cosmetics, shampoo and conditioners, and pharmaceutical products ²⁴

Categories	Scale	Recycling Specifications	
Metal containers with a capacity of more than 300 ml	Applies to all producers and importers.	Recycling solutions: 1. Sort, clean, and pack into scrap bales used as raw materials for industries. 2. Sort, clean, bale, and export as recycled materials.	Specific Requirements 1: Recover at least 70% of metal in a product unit in the form of scrap meeting the requirements as raw materials for production.
Synthetic resin containers with a capacity of more than 100 ml	Applies to all producers and importers.	Recycling solutions: 1. Produce raw recycled materials in the form of secondary plastic particles or pieces to meet the requirements of using scrap as raw materials for industries. 2. Produce recycled plastic products. 3. Produce chemical (including oil). 4. Sort, clean, bale, and export as recycled materials.	Specific Requirements 1: Recover at least 90% of plastic in a product unit in the form of scrap meeting the requirements as raw materials for production. 2&3: recycle at least 90% of plastic volume into commercial products.
Glass bottles with a capacity of more than 100 ml	Applies to all producers and importers.	Recycling solutions: 1. Clean, reuse 2. Sort, grind into cullets for glass production. 3. Grind into aggregates for construction.	Specific Requirements 2: Recover at least 90% of the glass in a product unit in the form of scrap to meet the requirements as raw materials for production. 3: recover at least 90% of glass in the form of aggregate to meet the requirements in construction.

Other products in packaging with a capacity of more than 500 ml²⁵

Categories	Scale		Recycling Specifications	
	Revenue	Volume/ quantity		
Other products in paper boxes and containers	Producers with a total annual turnover of VND	Producers with an annual consumption amount of 50 tons or more	Recycling solutions: 1. Recycle into paper products such as toilet paper, paperboard, paper boxes, etc. 2. Sort, clean, and export as recycled materials.	Specific Requirements 1: recover at least 80% of the paper in a product unit in the form of paper products.

²⁴ Draft Decree implementing Law No. 72/2020/QH14 on Environmental Protection, Appendix 55.

²⁵ *Ibid*, Appendix 55.

Other products in plastic boxes and containers	100 billion or more or importers with a total import value of VND 50 billion or more in the year	or importers with an annual import volume of 25 tons or more in the previous year.	Recycling solutions: 1. Produce raw recycled materials in the form of secondary plastic particles or pieces to meet the requirements of using scrap as raw materials for industries. 2. Produce recycled plastic products. 3. Produce chemical (including oil). 4. Sort, clean, bale, and export as recycled materials.	Specific Requirements: 1: recover at least 90% of plastic in a product unit in the form of scrap meeting the requirements as raw materials for production. 2&3: recycle at least 90% of plastic into commercial products.
Other products in metal boxes and containers	VND 50 billion or more in the year		Recycling solutions: 1. Sort, clean, and pack into scrap bales that can be used as raw materials for industries. 2. Sort, clean, bale, and export as recycled materials.	Specific Requirements: 1: Recover at least 70% of metal in a product unit in the form of scrap meeting the requirements as raw materials for production.

Products used in transporting or packing goods ²⁶

Category	Scale		Recycling Specifications	
	Revenue	Volume/ quantity		
Products used in transporting or packing plastic goods (bottles, jars, boxes, cases, barrels) with a capacity of over 500 ml	Producers with a total annual turnover of VND 100 billion or more or importers with a total import value of VND 50 billion or more in the year	Producers with an annual consumption amount of 50 tons or more or importers with an annual import volume of 25 tons or more in the previous year.	Recycling solutions: 1. Produce raw recycled materials in the form of secondary plastic particles or pieces to meet the requirements of using scrap as raw materials for industries. 2. Produce recycled plastic products. 3. Produce chemical (including oil). 4. Sort, clean, bale, and export as recycled materials.	Specific Requirements: 1: Recover at least 90% of plastic in a product unit in the form of scrap meeting the requirements as raw materials for production. 2&3: Recycle at least 90% of plastic into commercial products.

²⁶ Draft Decree implementing Law No. 72/2020/QH14 on Environmental Protection, Appendix 55.

Penalties for non-compliance

Producers and importers who do not meet the Recycling Obligations will be subject to the costs of recycling all packagings which have not been recycled and an additional 30% of the arrears on top of those costs.²⁷ If payment is not made before the next three-year period, an additional 10% of the arrears may be imposed²⁸.

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Please note that the Draft Decree is open for public comments until 15 August 2021. If you would like assistance to provide feedback on the Recycling Obligations for packaging waste or developing an EPR compliant recycling plan, please let us know.

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²⁷ Draft Decree implementing Law No. 72/2020/QH14 on Environmental Protection, Art. 91(1).

²⁸ *Ibid.*