

LEGAL NOTICE NO.....

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT
(No. 8 of 1999)**

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (EXTENDED
PRODUCER RESPONSIBILITY) REGULATIONS, 2020**

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THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999
(No. 8 of 1999)

IN EXERCISE of the powers conferred by section 86 of the Environmental Management and Co-ordination Act, 1999, the Cabinet Secretary for Environment and Forestry, on the recommendation of the National Environment Management Authority, makes the following Regulations—

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (EXTENDED
PRODUCER RESPONSIBILITY) REGULATIONS, 2020**

PART I — PRELIMINARY

Citation. **1.** These Regulations may be cited as the Environmental Management and Co-ordination (Extended Producer Responsibility) Regulations, 2020.

Interpretation. **2.** In these Regulations unless the context otherwise requires—

“Act” means the Environmental Management and Co-ordination Act, Cap 387, Laws of Kenya;

“Actors” refers different players in the extended producer responsibility value chain.

“Authority” means the National Environment Management Authority established under the Act;

“Circular Economy” –refers to initiatives for designing and redesigning out waste from products, extraction of maximum value from natural resources, closing of material loops and creation of new value from materials that would otherwise have been wasted.

“Converter” means an entity that transforms two secondary raw materials or combines two secondary raw materials to create a new product

“Consumer,” refers to end user of a product.

“Compliance schemes,” refers to both individual and collective extended producer responsibility schemes”.

“Deposit Refund scheme” refers to a collection system that requires a monetary deposit on a product at the point of sale. Consumers redeem the surcharge when they return the product.

“Entity,” refers to both individual persons and registered organizations’.

“Extended producer responsibility”- refers to the obligation of a producer to reduce pollution through environmentally sound

practices in all phases of a product lifecycle including post-consumer and safe end of life stage. It includes but is not limited to design for re-use and recyclability, creation of take back schemes, recycling, composting and other suitable recovery and disposal measures.

“Environmental friendly/ecodesign- refers to the practice of reducing environmental degradation and pollution by making products that comply with environmental sustainability that includes but is not limited to minimal waste production, reusability, recyclability, compostability, biodegradability and safe disposability.

“Filler” refers to an entity that fills empty packaging with their products before being placed in the market.

“Free rider” means an entity that does not contribute to a collective scheme but benefits from its existence and action; it includes producers who fail to manage own products at the post-consumer stage; producers who under declare their volumes, or fails to demonstrate fulfilment of individual extended producer responsibility obligations, producer in a pooled scheme who fails to pay their subscriptions, submit accurate information or fulfil their membership requirements.

“Importer” refers to an entity that introduces a product into the market from a jurisdiction outside Kenya boundaries.

“Manufacturer” refers to an entity that transforms raw material into finished good for sale or other use including intermediate processes that involve production or finishing or semi-manufactured goods

“Packer” refers a person or entity who uses or modifies packaging materials in the production or formation of packaging.

“Packaging,” refers to material in which a product is wrapped or covered with in order to protect it or prevent it from being contaminated, sold or transported. in this regulations, packaging shall also be considered as a product.

“Producer” - refers to an entity that introduces goods, products and packaging into the market by authorised means including transformation of raw material and into finished goods or product for sale, or other use including intermediate processes that involve production, finishing or semi-manufactured goods, seller of already manufactured, or importers, manufacturers, fillers and converters, distributors of material, products and packaging., expected to assume extended producer responsibility obligations for products that they put to the market.

“Post-consumer”- means environmental responsibility for a product when it is discarded by a consumer or when it becomes waste.

“Product” – refers a good or packaging introduced in the Kenyan market by any entity or persons through production, importation, franchising, marketing, and distribution outlets and channels for consumption by the consumer.

“Producer responsibility organization”- refers to a membership organization set up to assume legal obligation to implement extended producer responsibility on behalf of its members in a pooled compliance scheme.

“Product Lifecycle,” refers to environmental sustainability of a product in all its stages from raw material extraction, design, production, transportation, distribution, consumption/use, repair and maintenance, recycling and end of life disposal.

“Individual compliance scheme”- refers to an enterprise based execution of extended producer responsibility obligations assumed by an individual producer.

“Pooled compliance scheme”- refers to a collective scheme to fulfil extended producer responsibility obligations by more than one producer through a producer responsibility organisation.

“Mandatory initiatives” means refers to initiatives initiated or implemented through government regulation.

“National Environmental Tribunal” means the Tribunal established under section 125 the Environmental Management and Coordination Act, 1999;

Recovery- means retrieval of materials from waste it includes repair, refurbishment, recycling, remanufacturing, composting, power generation, or any other initiative aimed at extracting value from material that would otherwise have been discarded as waste.

“Take back”- refers to collection and transportation systems put in place for consumers to return their post-consumer products.

“Waste Stream”- means flow of a waste type from domestic or industrial area through the final disposal

“Waste Treatment” - means the physical, mechanical biological, thermal, chemical processing of waste with a view of reducing its impact to the environment.

“Waste Management,”- refers to control and monitoring of production to minimise waste, handling of post-consumer

products including segregation at source, collection and take back schemes, transportation, processing of material recovered from waste, treatment and safe disposal of unrecoverable materials.

Object and purpose.

3. (1) The object and purpose of these Regulations is to provide for **mandatory** extended producer responsibility schemes for all products and packaging in all phases of their life cycle to enhance environmental sustainability through—
 - (a) Reduction of pollution and environmental degradation
 - (b) Sustainable use of natural resources
 - (c) Promotion of circular economy
 - (d) Reduction of waste at source;
 - (e) Promotion of environmental friendly products' designs and packaging; and cleaner production processes.
 - (f) Promotion of a culture of environmental consciousness and responsibility from production to final safe disposal; and
 - (g) Inclusion of the environmental costs of end-of-life management of a product in the sale price of a product so as to promote adoption of designs that reduce environmental impacts of products.

Application of the regulations

4. These Regulations shall apply to all extended producer responsibility compliance schemes both individual and collective as well as producer responsibility organisations for the products that have been identified by the Authority.

Extended producer responsibility obligations.

5. (1) Every producer shall bear extended producer responsibility obligation to reduce pollution and environmental impacts of the product that they introduce in the market.
 - (2) A producer shall design products and packaging materials that minimize waste, facilitate reuse, recycling, recovery and are environmentally friendly at their end of life.
 - (3) Every producer shall establish post-consumer collection and take back schemes system which may include a deposit refund system.
 - (4) Every producer, shall take financial and or physical responsibility for the management, treatment and disposal of their post-consumer products and end of life treatment for the waste generated by their products;
 - (5) A producer who markets a product assumes responsibility for taking back, collecting and treating the waste resulting from the products that they introduce in the market.
 - (6) Every producer shall provide updated information on quantities of products they introduce into the market, recyclability and reusability, interpretation of packaging labels, market traceability mechanism and any other prescribed information through reporting system established by the Authority.

(7) A producer shall provide consumer with information on their role on reuse, return, take back points, meaning of recycling and recovery labels and symbols on the products, recyclability and shall raise awareness on management of post-consumer products that they introduce in the market.

(8) Every producer shall register and provide reports of the status of their implementation of their extended producer responsibility obligations through the reporting system established by the Authority.

(9) Producer may carry out product life cycle assessment in relation to their products for enhancing environmental sustainability.

(10) A producer shall put in place circular economy initiatives and any other measures to reduce impacts of their product on health and environment.

Execution of
EPR
obligations

6. (1) The producers shall fulfil their obligations by setting up individual enterprise-based extended producer responsibility compliance scheme; or collectively through a pooled compliance scheme.
- (2) Individual enterprise based scheme shall be responsible for collection, transportation, recovery, disposal and reporting systems for waste generated by their products.
- (3) The individual compliance scheme operator or the producer shall be responsible for the organisation, management, operational and reporting aspects of the execution of their obligations.
- (4) A Producer can transfer part or their full obligations subject to membership agreement to a collective compliance scheme through a producer responsibility organisation, in which they take membership.
- (5) The collective extended producer compliance scheme obligation shall include but not limited to payment of membership fees to a registered and licensed producer responsibility organization which shall execute the obligations on behalf of its members.
- (6) An individual producer who markets a product shall assume responsibility for collecting and treating the waste resulting from the products it has brought to market.
- (7) Lack of an established producer responsibility organisation mechanism shall not exempt any producer from individual responsibility.

Products
covered under

7. (1) The products covered under extended producer responsibility obligations shall primarily be products that negatively impact the

extended
producer
responsibility

environment and health, pose a challenge in recycling or recovery operations and which generate high management costs due to—

- (a) quantities involved;
- (b) hazards they represent;
- (c) health risks they pose; and
- (d) Costly recovery operations.

(2) The Authority shall, in addition to the products listed in the First Schedule, provide a list of products which from time to time may be subjected to extended producer responsibility.

Registration of
compliance
schemes

- 8.**
- (1) No person or entity shall produce, import, market or distribute a product unless they have obtained producer responsibility registration from the Authority.
 - (2) The Registration granted under this regulation shall be valid for a maximum period of four years; unless revoked, suspended or cancelled by the Authority.
 - (3) The Authority shall issue certificate of registration for extended producer responsibility for individual producers and producer responsibility organisations.
 - (4) An individual producer shall obtain a producer responsibility number (IPRN) and members of a PRO shall obtain a Producer Extended Responsibility Number (PERN) from the Authority.
 - (5) For subsequent years of operation, an annual operating license shall be issued for individual producers' compliance scheme and producer responsibility organisations' that fulfil their performance standards as set out in the work plan, fulfil reporting obligations and assessed to be of good standing by the Authority.
 - (6) The operational license can be revoked, suspended or cancelled if the individual producer compliance scheme or the producer responsibility organisation does not comply with statutory requirements, meet performance standards set out in the work plan or honour extended producer responsibility agreements entered into by the actors in the pooled scheme.
 - (7) Application for registration and renewal for the individual producer responsibility compliance scheme and Collective Producer Responsibility Organisation shall be done in standard forms and submitted to the Authority as prescribed under Schedule Two.
 - (8) The Authority shall maintain an updated register of all registered producer responsibility organizations which are in good standing which shall be made available to the public.

- (9) Requirements for registration or renewal of a producer responsibility organization shall be –
 - (i) Proof of registration as a company limited by guarantee;
 - (ii) Provide a list of membership and proposed fee structure of the membership;
 - (iii) Provide a two-year work plan and budget; the work plan and budget shall be reviewed every two years.
 - (iv) Provide an updated list of membership forming or renewing membership to the producer responsibility organization;
 - (v) Provide operations and management plan of the scheme including details of directors, physical address and lease agreement of the facility;
 - (vi) Provide a sample copy of contracts when registering or actual copies of contracts entered into during, renewal with all the waste management service providers including collectors, transporters' and recyclers;
 - (vii) Payment of the prescribed fees;
 - (viii) Provide signed minutes of engagement with proposed actors of the extended producer responsibility scheme;
 - (ix) Provide a dispute resolution mechanism for the actors in the scheme.
- (10) The Authority shall issue an interim permit for a period of ninety days for registration to enable the producer responsibility organization undertake stakeholder engagement.

Approval of
EPR
Compliance
Scheme by
Authority

9.

- (1) The individual producer responsibility compliance scheme systems shall be approved by Authority for a maximum period of four years (renewable) on condition that the producer demonstrates proof of operational, technical, management and financial capacity to meet their EPR obligations and terms of reference established by government.
- (2) The Producer Responsibility Organisation shall be approved by the Authority for a maximum period of 4 years (renewed) subject to fulfilment of conditions set by the Authority and that the PRO demonstrates technical, managerial, financial and staffing and operational capacity to fulfil the requirements set out in the articles of association and agreements set by the members and stakeholders' in the value chain.
- (3) A producer may contract service providers or an entity not controlled by the producer to organize a system for collecting and treating its end-of- life products. These parties however, shall not be certified, however, the producers shall remain individually responsible.
- (4) Each entity that markets products remains responsible for the proper management of waste from the products it has brought to market.
- (5) The producers shall also be shareholders of the producer responsibility organization to which they belong.

- (6) PROs established as organisers, may contract distributors to act as collection and take back points for their discarded products.

EPR Plan

- 10.** (11) Every individual and collective extended producer responsibility compliance schemes shall submit a two-year work plan to the authority outlining the following—
- (a) Baseline for the products and packaging handled;
 - (b) Minimum targets for reuse, recycling or recovery operations;
 - (c) Collection, logistics, recycling and composting system and end of life disposal;
 - (d) Modulation of EPR membership fees and parameters based on environmental sustainability criteria as stipulated under regulation 12;
 - (e) Public awareness and consumer education and information program on waste segregation and proper handling of post-consumer products;
 - (f) Verifiable of paid up membership;
 - (g) List of service providers and actors in the scheme;
 - (h) Eco-design guidelines for the products handled by the scheme;
 - (i) A mechanism of controlling banned or dangerous substances' in products;
 - (j) An annual reporting mechanism;
 - (k) Training and capacity building of members and actors in the scheme;
 - (l) Organised monitoring of members, product traceability system, inspections with a view of applying sanctions on producers who fail to meet expected requirements;
 - (m) Model of financing the scheme and itemized budget based on actual cost;
 - (n) Any other actions necessary for execution of responsibility or items prescribed by the Authority.

Producer Responsibility Organisations obligations.

- 11.** (1) The Producer Responsibility Organisation shall be responsible for executing extended producer responsibility obligations on behalf of its members.
- (2) The producer responsibility organization shall take the organisational and management responsibility, in whole or in part, for collection, sorting, material recovery, recycling, treatment and end of life management of its member's products.

- (3) Individual members of a collective compliance scheme remain accountable for their extended producer responsibility obligations.
- (4) The amount, ceiling and collection methods for the financial contribution under sub regulation (1) shall be as set out in the terms of reference of the contract.
- (5) The members of the PRO shall provide financial contributions which shall be used in their entirety to accomplish the extended producer responsibility obligations as set out in sub regulation (10).
- (6) The Producer responsibility organisation shall be responsible for modulation of EPR fees according to established environmental criteria on product design, useful life, and end of life management as set out in the membership registration requirements and as reviewed during the annual members' general meeting.
- (7) A producer responsibility organization shall not engage in lucrative or profit-making ends in fulfilling the obligations set out in these Regulations.
- (8) Subject to conditions and limitations set out in the producer responsibility organization contract, a proportion of the waste recovered may be set aside for reuse or for recovery of usable parts.
- (9) The producer responsibility organisation shall be responsible for raising awareness on waste prevention, post-consumer product management, and payment of a contribution to finance cross-sectorial communication campaigns in their territory of operation.
- (10) Producer responsibility organisational shall undertake market development for the secondary raw materials market the products under their scope.
- (11) A Producer responsibility organisation shall restrict or ban all harmful and dangerous substances that undermine environmental sustainability in the products of its membership.
- (12) A Producer responsibility Organisation shall set minimum targets for reuse, recycling and recovery for its members and offer incentives for waste collectors and informal waste holders to encourage sorting of waste at source.
- (13) A producer responsibility organisation shall undertake organised monitoring of its membership activities to ascertain that objectives are being achieved and to trigger inspections in view of applying sanctions to members who fail to fulfil their membership obligations.
- (14) A producer responsibility organisation shall establish any other applicable mechanisms and systems for enforcing extended producer responsibility of its members.

- (15) The producer responsibility organization may be required to communicate to county governments the information they have on the quantities of waste collected and recovered through the extended producer responsibility mechanisms that have been declared in their territory of operation.
- (16) The producer responsibility organization shall comply with the sustainable waste management objectives set by the Authority.
- (17) All producer responsibility organisation shall ensure effective management and harmonious relations between the different actors involved in the scheme.
- (18) All producer responsibility organisation shall hold an annual members meeting to deliberate on the progress and performance of the PRO, governance, management and administrative systems.

Charging and
Modulation of
EPR fees

- 12. (1) Members to a pooled EPR compliance scheme shall pay fees to the producer responsibility organization, which shall then assume responsibility for the post-consumer and end of life management in lieu of the producers' products.
- (2) Producers will contribute an annual subscription fee towards a pooled extended producer responsibility compliance scheme.
- (3) The financial contributions are not a tax; but shall be collected on a contractual in exchange that the PRO assumes the extended producer responsibility partly or fully as per the agreement on behalf of the member.
- (4) The Extended producer responsibility fees shall be calculated using the same parameters for all the producers in a given chain, and shall not vary from one producer to another.
- (5) These annual subscription fees shall be adjusted to promote environmental sustainability by member producers.
- (6) The fees shall be modulated based on sustainability measures' including but not limited to:
 - (i) The quantity of products introduced into the market (minus any that is collected through their own take-back system) by the producer.
 - (ii) Existence of technology mechanism or accessibility of take back system to sort product at source: The easier it is to access collection points and to sort because of produce design, size and colour, the smaller the fee per unit.
 - (iii) Separability and recyclability, bio-degradability and compostability the product or its components: The easier it is to recycle, compost or biodegrade a specific type of product, the smaller the fee per- unit would be. The more composite or difficulty it is to recycle, compost or

biodegrade a specific type of product, the higher the fee per unit.

- (iv) Existence of markets for use of producers' secondary raw materials.
- (v) Absence of hazardous additives or non-hazardous but disruptive additives.
- (vi) If product environmental footprint has been determined by the producer.

(2) The annual subscription fee shall be endorsed by all members in good standing members during the annual members meeting.

Use of EPR
membership
fees and
revenue

13. (1) The extended producer responsibility fees paid into the PRO shall be used for—

- (a) Putting in place post-consumer products collection, logistics, recycling, recovery and safe disposal.
- (b) Engagement of downstream partners in the chain who take back, recycle and treat and end-of life product disposal.
- (c) Consumer education and public awareness on sustainable waste management practises;
- (d) Setting up joint venture material recovery facilities and sustainable waste management projects with counties;
- (e) Training and capacity building of actors in the scheme including but not limited to waste collectors, transporters and recyclers;
- (f) Management and administrative overheads of the extended producer responsibility system;
- (g) To find lasting markets and uses for the products they collect.
- (h) Fund research and development programs and on emerging technologies to improve material recovery removal of pollutants and effective systems' for handling post-consumer products;
- (i) Machinery and equipment to support collection and recovery; and
- (j) Guidance of members on eco-design standards their products and recycler-friendly packaging

(2) The fees recovered under sub regulation (1) shall not be used for profit making purposes. All proceeds shall be ploughed back to the scheme to enhance sustainable waste management initiatives.

Producer responsibility organization Agreements	14. (1) A producer responsibility organization shall enter into formal agreements with their members, waste service providers, recyclers' and other key actors as required by the compliance scheme. (2) The producer responsibility organization shall provide financial support for collection, sorting and/ or communication, as the case may be.
PRO Governance	15. The governance of producer responsibility organization must be ensured by its producer members who are good standing and its actors.
Exemption from PRO membership	16. (1) A producer that demonstrates effective execution of their individual extended producer responsibility obligations individually may not be required to be a member of a producer responsibility organization.
Number of PROs per Waste Stream	17. (1) There shall only be one producer responsibility organization per waste stream.
Registration certificate and operating license	18. The Authority shall issue the following documents to registered and licensed compliance schemes— (a) Individual producer responsibility organisation registration certificate for authorized duration; (b) Producer responsibility organisation registration certificate for the authorised duration. (c) Annual operating license after meeting performance and reporting requirements and payment of the prescribed fee. (d) Any person manufacturing, importing, trading or distributing products in Kenya, shall within six months of the commencement of this regulations apply for registration as specified under regulation (8) (e) Registration fee for individual compliance scheme will be Ksh 5000 and for Producer Responsibility Organisation shall be Ksh 10,000/=. (f) The Annual renewal fee shall be 10,000/= for both individual producer responsibility and producer responsibility organisations.
Renewal of Registration	19. (1) The renewal of the registration issued under regulation 18 shall be done at the end of the four-year period subject to annual review reports by the Authority. (2) Any deregistered producer responsibility organization may re-apply subject to fulfilling the conditions and set out requirements.

Records
keeping and
reporting

20.

- (3) The Authority shall establish a reporting mechanism for all the individual and collective extended producer responsibility schemes.
- (1) All individual compliance schemes shall maintain updated records of products managed, eco-design standards, contracts entered into by waste service providers and Recyclers, and level of performance as per the work plan.
- (2) All Producer Responsibility Organisations' shall maintain updated records of its members, portfolio of products managed on its members, eco-design requirements, contracts entered into by waste management collectors and recyclers' and level of performance as per the work plan.
- (3) The authority shall maintain an updated register of all registered and licensed individual compliance schemes and producer responsibility organisations.
- (4) All individual enterprise based schemes and collective producer responsibility Organizations shall publish their annual extended producer responsibility reports by 31st December of every year.
- (5) All extended producer responsibility schemes both individual and collective shall submit up-to date annual report of the preceding year to the Authority by January 31st of every year.

Role of the
Authority

21. (19) The Authority shall monitor the operation of extended producer responsibility chains and producer responsibility organization, by setting operational rules and targets including—

- (a) Registration of producers bearing extended producer responsibility obligations.
- (b) Authorisation of voluntary compliance schemes according to set out requirements.
- (c) Issue certificate of registration of extended producer responsibility for individual and collective schemes.
- (d) Registration, Certification of individual producer compliance schemes and collective producer responsibility organizations;
- (e) Renewal of registration and issuance of annual operational licenses.
- (f) Shall determine and review the terms of reference for registration and certifications from time to time.

- (g) Undertake Periodic review of extended producer responsibly targets.
- (h) Shall maintain registration of all licensed producer responsibility both individual and collective which shall be made available to the public.
- (i) Updating the list of covered products within the extended producer responsibility;
- (j) Maintain and update periodic data transmitted by producer responsibility organization;
- (k) Publishing annual status reports of compliance schemes;
- (l) Evaluating the operations of extended producer responsibility chains;
- (m) Enforcement of EPR obligations
- (n) Ensuring proper implementation of EPR chains, including assessment of product and waste chains (quantities marketed, waste collected and treated, etc.)
- (o) Verity that producer responsibility organizations comply with the terms of their authorisation, and take measures to sanction those that do not comply.

Voluntary and mandatory compliance Initiatives

- 22.** (1) The regulation recognises two main phases of establishing an extended producer responsibility compliance scheme —
- (a) Voluntary initiatives- typically undertaken by industry, and aimed at piloting an EPR compliance scheme;
 - (b) A voluntary scheme can operate for a period of two years thereafter transition to a mandatory scheme.
 - (c) A Mandatory scheme is a regulated scheme, registered, licensed and operated in compliance with these regulations.

EPR and Counties

- 23.** (1) In order to meet recycling and recovery work-plan objectives, producer responsibility organization may sign agreements with Counties by which the Counties pledge to implement separate collection and sorting of end-of-life products according to technical instructions that are communicated to residents under their jurisdiction.
- (2) The producer responsibility organization shall comply with objectives of waste prevention, and waste management plans and targets set out by the jurisdiction of county or counties within their area of operation.
- (3) A Producer Responsibility Organisation may be required to communicate with County Governments to submit county specific

information on quantities of waste covered and that have been collected and managed and declared in their territory. A PRO shall comply with this request.

- (4) A Producer responsibility organisation shall undertake to collect products at no cost, regardless of market conditions for raw materials on behalf of the county.
- (5) Producer responsibility organisation may enter into public private partnership projects with counties to establish material recovery facilities and other recovery initiatives in its operational area of jurisdiction

EPRs Schemes
and Waste
management.

- 24.** (1) Waste treatment service vendors shall provide partial or complete waste management services, including collection, transport, reconditioning and preparation for reuse, recovery of valuable materials, and final disposal. They will operate under written agreement and contract, in compliance with the terms governing EPR chains.
- (2) A producer, importer or distributor that has set up an approved individual collection and treatment system or joined an authorized producer responsibility organization to manage waste is the waste holder for the purposes of this section;
 - (3) Private entities and business may have their end-of-life products collected, or bring them to a joint collection point set up by a producer responsibility organisation.
 - (4) A person may discard used products free of charge, by turning them over to county waste management channels, product and packaging distributors or operators.

Audit,
Oversight and
coordination

- 25.** (1) All registered and licensed producer responsibility organizations and individual producer schemes shall be subject to oversight by the Authority.
- (2) Each producer responsibility organization shall be monitored and audited annually by the Authority to ascertain whether it has attained its objectives, as well as to determine Kenya's position in relation to the objectives set for waste management.
 - (3) The data gathered will be used to improve the performance and regulatory process and to sanction actors who are not in compliance, if necessary.
 - (4) The Ministry responsible for environmental matters shall set collective national EPR objectives and frameworks for grant authorisations to extended producer responsibility compliance schemes.

Appeal.

- 26.** (1) All appeals shall be addressed by the National Environment Tribunal.

(2) Any person who is aggrieved by—

- (a) The grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or regulations made thereunder.
- (b) the imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder;
- (c) the revocation, suspension or variation of his licence under this Act or regulations made thereunder;
- (e) the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
- (f) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he is dissatisfied make an appeal to the NET.

Penalties and
offences

- 27.** (1) It shall be an offence for an individual compliance scheme or a producer responsibility organization not to demonstrate progress towards achieving set targets. ‘
- (2) Where a producer responsibility organization is found guilty of the offence under sub regulation (1) the government may declare a ban on the product to prevent further environmental degradation.
- (3) It shall be an offence for a producer or producer responsibility organisation to under- declare or give false information on quantities held or managed under the EPR scheme.
- (4) A producer who is not a member of a related producer responsibility organization and does not fulfil their individual obligations commits an offence.
- (5) Offences shall be liable upon conviction to a fine not exceeding Kshs two million or to imprisonment for a term not exceeding two years or to both.

SCHEDULE 1

List of products and packaging subject to extended producer responsibility compliance scheme

- (a) Packaging materials
- (b) Composites (based on paper)
- (c) Agricultural film
- (d) Batteries
- (e) Oils
- (f) Metals
- (g) Plastic products
- (h) Glass
- (i) Electrical and Electronic Equipment (EEE)
- (j) Furniture
- (k) Graphic paper
- (l) Mercury Auto Switches and thermostats
- (m) Paints
- (n) Pharmaceuticals products including packaging
- (o) Textiles
- (p) Tyres
- (q) Vehicles

SCHEDULE 2



APPLICATION/RENEWAL FORM TO OPERATE INDIVIDUAL/COLLECTIVE PRODUCERS EXTENDED PRODUCER RESPONSIBILITY SCHEME

Your application shall be **accompanied** by:

The **documents** requested in *Section 2*.

A **work plan** of how you intend to fulfil your obligations, according to the Terms of References set by the Authority [*Refer to Section 3*].

Should you require assistance in completing your application please contact us on:

Phone:

Email:

1. Details of Applicant [*Please complete in BLOCK letters*]

**Name of Proposed /Extended Producer
Responsibility Scheme (individual or collective)**

--

**FULL Name of Applicant or Contact
Person**

--

I.D. Card or Passport No. of Applicant

--

**Name of Company on behalf of which
the Application is being made**
[if applicable]

--

Registered address of Applicant/Company

Address and Postcode

--

*Physical Locality: (Location, Building,
Door Number & Street):*

--	--

County:

--

Phone/Mobile number:

--

E-mail Address:

--

PIN Number:

--

Company Registration Number [*if applicable*]

--

2. LEGAL STATUS OF ORGANISATION2.1 Indicate the legal status of the organisation (**Tick relevant option**)

☐	Sole Proprietorship
☐	Partnership
☐	Public limited liability Company
☐	Private Limited liability Company
☐	Co-operative Society
☐	Others (please specify
☐	
☐	

2.2 Which category of Producer are you?(**tick relevant option**)

☐	Manufacturer
☐	Importer
☐	Filler
☐	Assembler
☐	Franchise
☐	Distributor
☐	Donor/charity Organisation

3. PRODUCTION AND PRODUCT LIFECYCLE MANAGEMENT

3.1 What kind of products or do you manufacture/Import/distribute?

3.2 What is the annual volume/quantity of product(s) produced, imported or distributed?

3.3 What environmental sustainability and waste prevention measures have you integrated in your product's lifecycle?

3.4 Do you have an environmental management plan (EMP) if yes, (Attach)

3.5 Who are the major distributors of your products?

3.6 What is amount of waste likely to be generated from your products /brands annually?

3.7 State techniques being used in identifying and tracking of waste product?

3.8 Describe any take back mechanism put in place for your reusable products

3.8 Are you a member of any PRO? if not a PRO member (proceed to fill section 3 of this application)

3.9 What are the modalities put in place to create consumer information on your products or packaging?

3.10 Do you have any corporate social responsibility program in place in relation to environmental sustainability and waste management?

3.11 If you are a donor or charity organisation, give details of your activities, products and services handled

Please Note:

If you are a member of a Collective Scheme--- Please attach the Producer Agreement with the Producer Responsibility Organisation (PRO) and proceed to section 7 and 8 of this form. If an individual Compliance Scheme, or a Producer Responsibility Organisation please proceed , with all the subsequent sections(4-8)

4. Attach the following documents together with the application form

A copy of the Certificate of Registration issued by the Registry of Companies

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Kenya Revenue Authority (KRA) Certificate

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A copy of lease agreement of the facility of operation

☐

2 years' work plan and budget /financial plan in relation to the proposed scheme
Product/Packaging (individual EPR)

☐

Copy of Environmental Sustainability Measures adopted by the entity

☐

One (1) hard copy & one (1) digital copy of the Work Plan according to the

☐

Signed minutes of the engagement with proposed actors of the scheme

5. Terms of Reference for the Work Plan to be submitted by an applicant (individual or PRO)to operate an EPR Compliance Scheme

General Requirements:-

- The Work Plan is considered as a '*living document*' since it may need to be reviewed and amended by the Scheme from time to time.
 - The information given in the Work Plan must be clear and unambiguous, providing quantifiable and enforceable instructions, procedures and standards for the Scheme to comply with and covering all aspect in **Sections A to D**.
 - Each page of the Work Plan must be numbered and uniquely identified by date and/or version number. Each section of the Work Plan should be arranged and numbered in sequence, according to **Section A to B** of these Terms of Reference.
 - Each document needs to be authenticated by an original signature in **BLUE**. The Work Plan must be duly signed by the Contact Person.
 - The Work Plan must abide by the existing waste management policy, laws and regulations
-

A. General Details & Information on Applicant (individual and PRO)

This section of the Work Plan should provide specific information on the person/company/institution applying to operate the Compliance Scheme, namely address, contact number, e-mail address as well as the details of the contact person of the entity to whom the Authority may address communications.

B. Details on Operations & Management of the Scheme (individual and PRO)

1. To indicate the projected date of commencement for the operations of the Scheme;
2. To include a list of all the waste management undertakings in compliance with waste management.
3. To provide a description of the type of waste stream to be handled and incorporated in the Scheme;
4. To provide an estimation of the projected quantities and weights of waste to be collected, treated and recovered by the Scheme;
5. To provide details of the reverse logistics and transportation arrangements for the scheme.
6. To provide information on the waste recovery and recycling targets to be achieved by the Scheme and a proposal on how the levels of recovery and recycling of the waste generated will be determined and verified, including estimations and assumptions to be made in this process;
7. To provide details of any system/take back scheme to be adopted in order to ensure the return of waste by end-users;
8. To provide details of the dispute resolution mechanisms for the actors in the scheme.
9. To describe the public awareness campaigns to be carried out by the proposed scheme;
10. To provide a description of the agreement between the Scheme and its members, including details of the responsibilities which the Scheme intends to respect on behalf of the producers;
11. To describe the administrative measures to be in place to ensure effective control of the process and the scheme;
12. To provide details on the qualifications, experience and technical competence of the staff to be employed by the Scheme as well as information on whether any professional or technical training is to be provided or undertaken by the operator of the Scheme.

6. Details on Record Keeping & Reporting (both individual and PRO)

- Provide a detailed description of the record keeping and reporting procedures to be adopted within the Scheme, particularly on how the information will be compiled and made available to the authority/ (if member of a PRO to the PRO and linkage to the Authority) .
- Describe the surveillance system that will be put in place for (a) monitoring (b) financial system for extended producer responsibility obligation.
- If applying for renewal, attach published annual reports of scheme the last 4 years.

7. Other Information

The Scheme and Work Plan may also contain any other information, which the applicant deems necessary to include and which is not listed above.

8. Declaration Statement

It is an offence if you deliberately give false or misleading information. You may be liable to prosecution. The application must be signed and submitted to the Authority by an Authorised Signatory or by an Authorised Representative.

I declare that the information in this application form and in the work plan is true to the best of my knowledge and belief.

I understand that application may be refused if I give false or incomplete information.

I agree to inform the Authority of any changes to the information given, in writing and duly signed, while my application is being considered.

Name & Surname

Signature of Applicant

Date (DD/MM/YYYY)

Complete forms are to be
handed in or sent by post
to:

The National Environment
Management Authority (NEMA)

For Office Use Only

Date Stamp

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Application Status:

Accepted

Declined

FOR OFFICIAL USE,

Remarks regarding the application status by the Authority

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