

# Philippines: The Extended Producer Responsibility Act of 2022 and its implementing rules and regulations

## In brief

Republic Act No. 11898, or the Extended Producer Responsibility Act of 2022 ("**EPR Act**"), amended Republic Act No. 9003, or the Ecological Solid Waste Management Act of 2000. It aims to, among other things, institutionalize the extended producer responsibility mechanism as a practical approach to efficient waste management.

Under the EPR Act and its implementing rules and regulations (EPR IRR), extended producer responsibility (EPR) refers to the environmental policy approach and practice that requires producers to be environmentally responsible throughout the life cycle of a product, especially its post-consumer or end-of-life stage.

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### 1. Who is covered by the EPR Act?

The EPR Act generally covers enterprises that generate plastic packaging waste. Under the EPR IRR, the following enterprises are considered obliged enterprises (Obliged Enterprises) or product producers that are obliged to implement EPR programs:

- A large enterprise (i.e., an enterprise whose total assets exceed PHP 100 million) that is one of the following:
  - a. A brand owner that sells or supplies any commodity under a brand, label or identity using a product it produced or a material supplied to it by another manufacturer or supplier; or
  - b. A product manufacturer or importer that supplies its commodities for the use of the general consumer, or distributes the same as a material product of a brand owner, provided that, in case the commodities are manufactured, assembled, or processed by a product manufacturer for another Obliged Enterprise which affixes its own brand name, the latter shall be deemed as the manufacturer
- Micro, small and medium-scale enterprises when the total value of assets of all enterprises carrying the same brand, label or trademark exceeds PHP 100 million
- Such other persons and entities as may be determined by the secretary of the Department of Environment and Natural Resources (DENR)

### 2. Which types of plastic packaging are covered by the EPR Act?

Under the EPR Act, plastic packaging refers to the polymer material designed to protect a product from environmental factors, or carry goods for transportation, distribution and sale, including service necessities. In particular, plastic packing includes the following:

- Sachets, labels, laminates and other flexible plastic packaging products, whether single-layer or multilayered with plastics or other materials
- Rigid plastic packaging products, whether layered with any other materials, which include containers for beverages, food, home, personal care and cosmetic products, including their coverings, caps or lids, and other necessities or promotional items, such as cutlery, plates, drinking straws, or sticks, tarps, signage or labels

- Plastic bags, which include single-use plastic bags, for carrying or transporting goods and provided or utilized at the point of sale
- Polystyrene

### 3. What is the EPR mandate and the obligations of Obligated Enterprises?

Under the EPR Act and EPR IRR, Obligated Enterprises are required to do the following:

- a. Establish and phase in an EPR program within six months from the effectivity of the EPR Act
- b. Register its EPR program with the National Ecology Center (NEC) within the same period
- c. Ensure its EPR program has the minimum components required by the EPR Act

The EPR IRR also requires Obligated Enterprises, or the Collectives or producer responsibility organizations (PROs) to which they belong, to do the following:

- Maintain updated statistics of the amount of products that they or their respective members released to the market and the amount of plastic packaging waste recovered from the environment, by type of product and year
- Develop various data management tools to ensure the veracity of the data and information generated or reported during the implementation of their respective EPR programs, thereby enabling a proper and credible audit of this and certified reporting on this for the compliance period by an independent third-party auditor in accordance with the EPR Act
- Establish cooperation mechanisms with other Obligated Enterprises, Collectives and PROs dealing with the same category of plastic products and waste, or even different categories of products, to achieve the shared objective of plastic neutrality

### 4. What are the components of an EPR program?

Under the EPR Act and EPR IRR, an EPR program must have the following components:

- a. A specific type of packaging materials and the product brands for which they are used
- b. Verifiable weight, expressed in kilograms, of the plastic packaging per type, material form or general form brought into the market within a specified period (This parameter shall also be known as the "**plastic packaging footprint.**")
- c. Target weight of plastic packaging footprint to be recovered and diverted for reuse, recycling, treatment or proper disposal to prevent them from leaking into the environment (This parameter shall also be known as the "**plastic waste diversion target.**")
- d. Other EPR programs for plastic packaging waste avoidance, reduction, or redesign of plastic packaging to improve its reusability or recyclability
- e. Labeling of packaging materials to facilitate the recovery, reuse, recycling or proper disposal of packaging materials
- f. Status of implementation
- g. Status of compliance

With regard to item d above, under the EPR Act and EPR IRR, Obligated Enterprises, Collectives, and PROs may include the following activities and strategies in their respective EPR programs to achieve plastic neutrality:

- i. Reducing non-environmentally friendly products, which may include the following activities and strategies:
  - Adopting reusable products, or redesign of the products to improve their reusability, recyclability or retrievability
  - Including recycled content or recycled materials in a product
  - Adopting appropriate product refilling systems for retailers
  - Establishing a viable reduction rates plan
  - Implementing information and education campaign schemes
  - Appropriately labeling products, including information on how to properly dispose of the waste product

- ii. Implementing product waste recovery programs aimed at effectively preventing waste from leaking into the environment, which may include the following activities:
  - Implementing waste recovery schemes through redemption, buyback, offsetting, or any method or strategy that will efficiently result in the high retrievability, high recyclability and resource recovery of waste products
  - Diverting recovered waste into value chains and value-adding useful products through recycling and other sustainable methods
  - Transporting recovered waste to the appropriate composting, recycling, or other diversion or disposal site in the country
  - Cleaning up waste that has leaked into coastal areas, public roads and other sites
  - Establishing commercial or industrial scale recycling, composting, thermal treatment, and other waste diversion or disposal facilities for waste products, when investment in this is viable
  - Partnering with LGUs, communities and the informal waste sectors

#### **5. Can an EPR program be amended?**

An Obligated Enterprise, Collective or PRO may introduce amendments to its NEC-registered EPR program by submitting a written request for the said purpose with the NEC, clearly indicating its EPR program registry number and information on the proposed amendments using a three-column matrix format provided under the EPR IRR.

#### **6. What are the modes of compliance with the EPR Act?**

Under the EPR Act, Obligated Enterprises shall institute an EPR program either individually or collectively, either with or without a PRO. As such, Obligated Enterprises may join a Collective or a PRO to establish, phase in, implement and register a single EPR program for and among its members.

The EPR IRR also provides for the relevant procedure should an Obligated Enterprise wish to change its mode of compliance with the EPR Act.

#### **7. What is the difference between a Collective and a PRO?**

A Collective refers to a group of Obligated Enterprises that have organized themselves, not as a PRO, to implement a common platform for the implementation of their EPR program.

On the other hand, a PRO refers to an organization, voluntarily formed or authorized by Obligated Enterprises, that shall serve as the viable platform to implement their EPR program.

#### **8. What is the audit requirement under the EPR Act and EPR IRR?**

Obligated enterprises, Collectives, or PROs shall engage an independent third-party auditor to conduct a compliance audit and certify the veracity of the reported plastic product footprint generation, recovery, and overall EPR program compliance using uniform standards established by the DENR.

Obligated Enterprises, Collectives and PROs are required to submit an EPR Act of 2022 Compliance Audit Report (ECAR) annually. The deadline to submit the ECAR, covering the plastic product footprint generated, recovered and properly diverted for the immediately preceding year, shall be on 30 June, or the first working day immediately after that, of the current year.

The DENR has issued DENR Administrative Order No. 2024-04, which prescribes the compliance reporting and audit guidelines under the EPR Act.

#### **9. What are the targets imposed by the EPR Act for the recovery of plastic packaging footprint?**

Obligated enterprises that generate either rigid or flexible plastic packaging shall recover or offset their respective plastic packaging footprint.

Under the EPR Act and EPR IRR, the following shall be the targets for the recovery of plastic packaging footprint generated during the immediately preceding year:

31 December 2023	20%
31 December 2024	40%
31 December 2025	50%
31 December 2026	60%
31 December 2027	70%
31 December 2028 and every year after that	80%

**10. What are the incentives and cost recovery mechanisms provided under the EPR Act?**

Under the EPR IRR, rewards and recognitions, monetary or otherwise, shall be provided to individuals, private organizations and entities, Obligated Enterprises, Collectives, and PROs, including non-government or civil society organizations, that have undertaken outstanding and innovative projects, technologies, processes and techniques or activities in reuse, recycling and reduction, including those that are engaged in the development and use of environmentally acceptable or preferable alternatives to plastics.

Moreover, the EPR IRR also lists the following fiscal incentives that may be granted under the EPR Act:

- Obligated Enterprises, PROs and other registered business enterprises may apply for incentives following the approval process provided under CREATE for eligible activities.
- The EPR expenses of Obligated Enterprises, PROs and private enterprises shall be considered as necessary expenses deductible from gross income, subject to the substantiation requirements for necessary business expenses deductible from gross annual income in accordance with Section 34 (A) (I) of the National Internal Revenue Code.
- All legacies, gifts and donations to LGUs, enterprises or private entities, including NGOs, for the support and maintenance of the program for socially acceptable, effective and efficient solid waste management shall be exempt from all internal revenue taxes and customs duties, and shall be deductible in full from the donor's gross income for income tax purposes.

**11. What are the penalties for violations of the EPR Act?**

Under the EPR Act and EPR IRR, an Obligated Enterprise that fails to register its EPR program with the NEC or fails to comply with the targets for the recovery of plastic packaging footprint under the EPR Act may be liable for the following fines:

<b>First offense</b>	A fine of no less than PHP 5 million but not exceeding PHP 10 million
<b>Second offense</b>	A fine of no less than PHP 10 million but not exceeding PHP 15 million
<b>Third offense</b>	A fine of no less than PHP 15 million but not exceeding PHP 20 million and automatic suspension of the business permit until the requirements under the EPR Act are complied with

If the obliged enterprise fails to meet the targets for the recovery of plastic packaging footprint, it shall pay the fines listed above, or a fine twice the cost of recovering or diverting the footprint or its shortfall, whichever is higher.

The EPR IRR further provides that the penalty shall be imposed whether or not the noncompliance is the result of the failure to register under the EPR Act, falsification of documents, misdeclaration of generated or recovered footprint, employment of any scheme to maliciously evade the responsibility of an enterprise under the EPR Act, or tamper its compliance with the provisions of the EPR Act with respect to targets for the recovery of plastic product footprint.

## Contact Us



**Ma. Luisa Fernandez-Guina**  
Partner  
luisa.fernandez-guina  
@quisumbingtorres.com



**Karl Raymond Cruz**  
Associate  
karlraymond.cruz  
@quisumbingtorres.com

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The law is stated as of 13 June 2024.

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