

LEGISLATIVE COUNCIL BRIEF

MERCURY CONTROL BILL

INTRODUCTION

A At the meeting of the Executive Council on 13 April 2021, the Council **ADVISED** and the Chief Executive **ORDERED** that the Mercury Control Bill (“the Bill”), at **Annex A**, should be introduced into the Legislative Council. The Bill provides for the effective implementation of the Minamata Convention on Mercury (“the Convention”) in the Hong Kong Special Administrative Region (“the HKSAR”).

JUSTIFICATIONS

The Convention

2. Mercury is a naturally occurring heavy metal which is highly toxic. Owing to its unique physical and chemical properties, mercury has been used in various products and processes for a very long time. Once released, mercury stays in the environment in various forms and can be transported in the atmosphere to places at a distance. It can be bioaccumulated in the ecosystems and pose a serious threat to human health and the environment. Recognising its harmful effects, the United Nations Environment Programme developed the Convention which is an international treaty with the objective to control anthropogenic releases of mercury. The People’s Republic of China became one of the Parties to the Convention when the Convention entered into force on 16 August 2017. Pursuant to Article 153 of the Basic Law, the Central People’s Government (“CPG”) sought the views of the Government of the HKSAR and decided that the Convention would apply to the HKSAR¹.

3. The Convention² contains provisions imposing restrictions and control on a

¹ Article 153 of the Basic Law stipulates that the application to the HKSAR of international agreements to which the People’s Republic of China is or becomes a party shall be decided by the CPG, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the Government of the HKSAR.

² The text of the Convention can be downloaded from the website of the Minamata Convention on Mercury at the following link: <http://www.mercuryconvention.org/Portals/11/documents/Booklets/COP1%20version/Minamata->

range of activities, processes, industries and products where mercury is sourced, used, released or emitted. It addresses direct mining of mercury and its export and import; use of mercury in mercury-added products and manufacturing processes; emissions to the atmosphere; releases to land and water; safe storage of mercury as well as disposal of mercury waste.

HKSAR's Compliance with the Convention

4. Some obligations under the Convention are enforceable under the existing regulatory or administrative frameworks, or there is de facto compliance by the Government of the HKSAR. These obligations are summarised at **Annex B**. However, there are four obligations of the Convention that are not yet covered by the existing regulatory or administrative frameworks of the HKSAR:-

- (1) to restrict import and export of mercury mixtures and mercury alloys;
- (2) to phase out or restrict certain manufacturing processes in which mercury or mercury compounds are used;
- (3) to prohibit the manufacture, import and export of mercury-added products listed by the Convention and prevent the incorporation into assembled products of the said mercury-added products; and
- (4) to store mercury, mercury mixtures, mercury alloys and certain mercury compounds in an environmentally sound manner.

5. To ensure HKSAR's full compliance with the Convention, it is necessary to enact a piece of new legislation to fulfil the obligations set out in paragraph 4 above and to allow implementation of the Convention in a holistic manner.

THE PROPOSAL

Control on the Import/ Export of Mercury

6. The Convention controls the import and export of all forms of mercury, including elemental mercury, mixtures of mercury and mercury alloys with a mercury

concentration of at least 95% by weight, by establishing a prior written consent mechanism between Parties to the Convention, as well as between Parties and non-Parties. Trading of all forms of mercury is prohibited unless the mercury is for a use allowed under the Convention; or for environmentally sound storage for a subsequent use allowed under the Convention. In addition, import of all forms of mercury is prohibited if the mercury comes from a source that is not allowed.

7. The Bill will introduce a permit system under which the import and export of all forms of mercury will require the issue of a permit by the Director of Environmental Protection (“DEP”) who will consider the following factors before issuing a permit:

- (a) Import permit: whether the source of the mercury is allowed under the Convention (i.e. the mercury should not come from primary mercury mining conducted on or after the date of entry into force of the Convention on 16 August 2017, or excess mercury from the decommissioning of chlor-alkali facilities); whether the use of the mercury is allowed under the Convention (e.g. whether the mercury is used for laboratory-scale research or as a reference standard, or for manufacture of mercury-added products not disallowed under the Convention); whether the import of mercury is agreeable to the CPG; and whether the imported mercury will be stored in an environmentally sound manner; and
- (b) Export permit: whether the use of the mercury is allowed under the Convention (e.g. whether the mercury is used for laboratory-scale research or as a reference standard, or for manufacture of mercury-added products not disallowed under the Convention); whether the export of the mercury involved is agreeable to the importing side; and whether the exported mercury will be stored in an environmentally sound manner.

8. In view of the urgent need to control the trading of elemental mercury which had been taking place in the HKSAR, the Import and Export (General) Regulations (Amendment of Schedules 1 and 2) Order 2020 (“the Order”) was made in June 2020 as an interim stopgap measure to bring elemental mercury trading under the control of the Import and Export (General) Regulations (Cap. 60 sub. Leg. A) (the “Regulations”). The Order came into operation on 1 November 2020. The interim control introduced by the Order will become obsolete when the Mercury Control Ordinance controlling the trading of all forms of mercury comes into effect. We will therefore include in the Bill a consequential amendment to repeal the relevant amendments to Part 1 of Schedule 1

and Part 1 of Schedule 2 to the Regulations that have been made under the Order.

Phase out Mercury-Added Products Listed in the Convention

9. The Convention requires all Parties to the Convention to ban the manufacture, import and export of mercury-added products listed in the Convention. Pursuant to this requirement, the Bill will strictly prohibit the manufacture, import and export of certain Convention-listed mercury-added products at **Annex C**, as well as the incorporation of these mercury-added products into assembled products (e.g. incorporation of mercury-containing batteries into electrical devices). The Bill will further prohibit the supply of the Convention-listed mercury-added products three years after the Bill has come into effect, in order to allow the trade to exhaust the existing stock of mercury-added products within a reasonable period of time. To avoid double regulation, the Bill does not apply to certain mercury-added products, including pesticides which are regulated by the Pesticides Ordinance (Cap. 133) or Chinese herbal medicines which are regulated by the Chinese Medicine Ordinance (Cap. 549).

Control the Use of Mercury and Mercury Compounds in Manufacturing Processes

10. The Convention prohibits or restricts the use of mercury and mercury compounds in the manufacturing processes listed in the Convention. According to the result of a survey, there is no manufacturing process using mercury or mercury compounds in Hong Kong. Nevertheless, in order to fully implement the Convention, the Bill will prohibit the carrying out of the manufacturing processes at **Annex D**.

Control the Storage of Mercury and Mercury Compounds

11. The Convention requires that the storage of all forms of mercury, including elemental mercury, mixtures of mercury and mercury alloys with a mercury concentration of at least 95% by weight, and six mercury compounds³ intended for a use allowed under the Convention, shall be undertaken in an environmentally sound manner. The Bill will introduce a permit system to implement this obligation. It will be an offence if any person stores any form of mercury or the relevant mercury compounds without a valid permit, or without complying with the condition(s) of the permit. The Environmental Protection Department (“EPD”) will issue guidelines on the proper storage and use of all forms of mercury and the relevant mercury compounds.

³ For the purpose of the permit for storage of mercury and mercury compounds, mercury compounds include mercury (I) chloride, mercury (II) oxide, mercury (II) sulphate, mercury (II) nitrate, cinnabar and mercury sulphide.

Possible Expansion of the List of Regulated Products and Processes

12. The Conference of the Parties to the Convention may bring new mercury compounds, mercury-added products and manufacturing processes using mercury or mercury compounds under the control of the Convention as and when necessary. To allow Hong Kong to make timely response to such changes, we propose empowering the Secretary for the Environment (“SEN”) to update the lists of regulated mercury compounds, mercury-added products and manufacturing processes by amending the relevant Schedules to the Bill. Such amendments to the relevant Schedules to the Bill will be subsidiary legislation subject to negative vetting by the Legislative Council.

Enforcement Plan

13. The EPD will be responsible for implementing and enforcing the provisions of the Bill, including the administration of the permit systems for regulating the import/export of mercury and the storage and use of mercury and mercury compounds. The Customs and Excise Department (“C&ED”) will conduct import and export inspections of the articles set out in the relevant Schedules to the Bill, including mercury and restricted mercury-added products, at entry/exit points. Cases that require follow-up actions, including those detected by C&ED, will be handled by EPD which will be responsible for investigation, prosecution and disposal actions for any seized mercury and mercury-added products.

THE BILL

14. The main provisions of the Bill are set out below –

- (1) Part 1 contains preliminary provisions. In particular, it provides for the definitions of mercury, mercury mixture, mercury-added product, regulated mercury-added product and regulated manufacturing process, etc. It provides that the Bill is to apply to the Government of the HKSAR. It also provides that the Bill does not apply to certain mercury, mercury mixtures, mercury compounds or mercury-added products, for example, pesticides which are already under the control regime of the Pesticides Ordinance (Cap. 133) and Chinese herbal medicines which are already under the control regime of the

Chinese Medicine Ordinance (Cap. 549) ;

- (2) Part 2 provides for prohibitions on certain activities relating to Part 1 chemicals, Part 2 chemicals, regulated mercury-added products and regulated manufacturing processes. Division 1 deals with the prohibitions on export and import of the chemicals specified in Part 1 of Schedule 1 to the Bill (i.e. mercury and mercury mixtures) except under and in accordance with an export or import permit. It also provides for the prohibitions on keeping and use of the chemicals specified in Part 2 of Schedule 1 to the Bill (i.e. mercury, mercury mixtures and six mercury compounds) except under and in accordance with a possession permit. It further provides that the prohibitions do not apply to export, import, keeping or use of these concerned chemicals for laboratory-scale research or as a reference standard below specified quantities. Division 2 deals with prohibitions on export and import of regulated mercury-added products that are specified in Part 1 of Schedule 3 to the Bill, subject to specified exemptions in Part 2 of Schedule 3 to the Bill. It also provides for the prohibitions on manufacture and supply of these regulated mercury-added products. Furthermore, it provides for the prohibitions on incorporation into assembled products of these regulated mercury-added products. Besides, Division 3 deals with the prohibitions on carrying out of regulated manufacturing processes that are specified in Schedule 2 to the Bill, in which mercury or mercury compounds are used;
- (3) Part 3 deals with matters relating to permits, which include export and import permit of mercury and possession permit of mercury and mercury compounds. This Part also provides for the issue and renewal of permits. It also empowers DEP to impose conditions on a permit issued under the Bill and to vary such conditions;
- (4) Part 4 provides for the enforcement powers of authorized officers and the forfeiture and disposal of things seized by authorized officers;
- (5) Part 5 deals with miscellaneous offences such as provision of false information and obstruction of public officers, etc.;
- (6) Part 6 contains miscellaneous provisions. In particular, it empowers SEN and DEP to delegate some of the functions under the Bill, and empowers SEN to amend Schedules 1, 2, 3 and 4 to the Bill and to make regulations for the better

carrying out of the Bill, including making regulations to prescribe fees payable under the Bill; and

- (7) Part 7 provides for related and consequential amendments. In particular, it amends the Regulations to repeal the interim control on import and export of elemental mercury, and amends the Administrative Appeals Board Ordinance (Cap. 442) to allow for appeals to the Administrative Appeals Board against the decisions of DEP made under the Bill.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be –

Publication in the Gazette	23 April 2021
First Reading and commencement of Second Reading debate	5 May 2021
Resumption of Second Reading debate, Committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

16. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has some degrees of financial, civil service, economic, sustainability and environmental implications as set out at **Annex E**. The proposal has no gender, family and productivity implications.

E

PUBLIC CONSULTATION

17. To prepare for the implementation of the Convention in Hong Kong, EPD published the consultation document and conducted a series of consultations with members of the public and relevant trades and stakeholders in 2018. We consulted more than 500 stakeholders, including major trade associations, relevant trade sectors, foreign

chambers of commerce in Hong Kong, relevant professional institutions, academia and religious institutions, etc., through questionnaires. We also held a number of consultation fora for the public and major trade associations. Respondents generally supported the Government's proposal to introduce a new piece of legislation to align with the international practices.

18. We consulted the Advisory Council on the Environment in July 2019. The Council supported the Government's proposal to introduce new legislation to ensure Hong Kong's compliance with the obligations under the Convention.

19. The Legislative Council Panel on Environmental Affairs was consulted in January 2021, and supported the legislative proposal.

PUBLICITY

20. We will issue a press release for the Bill on 23 April 2021. A spokesperson will be available to handle enquiries.

ENQUIRIES

21. For enquiries about this brief, please contact Mrs Dorothy MA, Assistant Director of Environmental Protection (Cross-Boundary & International) at 3509 8615.

Environment Bureau / Environmental Protection Department
April 2021

Mercury Control Bill

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A BILL

To

Implement the Minamata Convention on Mercury; to regulate the export, import, keeping and use of mercury, mercury mixtures and mercury compounds; to control the export, import, manufacture and supply of certain mercury-added products; to control certain manufacturing processes in which mercury or mercury compounds are used; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Mercury Control Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Interpretation

In this Ordinance—

- air transshipment cargo* (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);
- article in transit* (過境物品) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

authorized officer (獲授權人員) means a public officer authorized under section 72;

Convention (《公約》) means the Minamata Convention on Mercury adopted by the Conference of Plenipotentiaries on 10 October 2013 in Japan, as amended from time to time and as applied to Hong Kong;

Director (署長) means the Director of Environmental Protection;

export permit (出口許可證) means a permit issued under section 18, or such a permit issued on renewal under section 27, and that is in force;

function (職能) includes a power and a duty;

import permit (進口許可證) means a permit issued under section 20, or such a permit issued on renewal under section 27, and that is in force;

mercury (汞) means elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6);

mercury compound (汞化合物) means a substance—

- (a) that can be separated into different components only by chemical reactions; and
- (b) that consists of—
 - (i) atoms of mercury; and
 - (ii) one or more atoms of other chemical elements;

mercury mixture (汞混合物) means a mixture, having a mercury concentration of at least 95% by weight, of mercury and other substances (including alloys of mercury);

mercury-added product (添汞產品)—see section 3(1);

Part 1 chemical (第 1 部化學品) means a chemical specified in Part 1 of Schedule 1, other than that contained in a mercury-added product;

Part 2 chemical (第 2 部化學品) means a chemical specified in Part 2 of Schedule 1, other than that contained in a mercury-added product;

possession permit (管有許可證) means a permit issued under section 22, or such a permit issued on renewal under section 27, and that is in force;

prescribed fee (訂明費用), in relation to a matter specified in column 2 of Schedule 4, means the fee specified in column 3 of that Schedule opposite the matter;

regulated manufacturing process (受規管製造工序) means a process falling within a description in column 2 of Schedule 2;

regulated mercury-added product (受規管添汞產品)—see section 3(2);

regulatory requirement (規管性規定) means a requirement under—

- (a) this Ordinance;
- (b) a condition imposed under this Ordinance; or
- (c) a direction given under section 39;

Secretary (局長) means the Secretary for the Environment;

supply (供應) means to supply (whether through the Internet or a similar electronic network or otherwise) with or without payment, and includes offering or exhibiting (whether through the Internet or a similar electronic network or otherwise) for the purpose of such supplying;

transport (交通工具) means a vehicle, train, vessel, aircraft or any other means of transport;

type (類別)—

- (a) in relation to Part 1 chemicals—means a type of Part 1 chemical specified in column 2 of Part 1 of Schedule 1; and

- (b) in relation to Part 2 chemicals—means a type of Part 2 chemical specified in column 2 of Part 2 of Schedule 1.

3. Meaning of *mercury-added product* and *regulated mercury-added product*

- (1) In this Ordinance, a mercury-added product is a thing that contains intentionally added mercury or mercury compounds, irrespective of whether the thing is to be further incorporated into another thing as a component.
- (2) In this Ordinance, a regulated mercury-added product is a mercury-added product falling within a description in column 2 of Part 1 of Schedule 3.
- (3) For the purposes of this Ordinance, as long as a regulated mercury-added product (*component part*) is incorporated into another thing (*main body*) that is not by itself a regulated mercury-added product as a component—
- the component part is regarded as not being a regulated mercury-added product;
 - the main body does not become a regulated mercury-added product merely because it has a component part incorporated into it; and
 - the component part and the main body as a whole are regarded as a mercury-added product.

4. Presumptions concerning Part 1 chemical, Part 2 chemical and regulated mercury-added product

- (1) For the purposes of this Ordinance, if any of the relevant materials of a thing shows that the thing falls within a description in column 2 of Part 1 of Schedule 1, the thing is, in the absence of evidence to the contrary, presumed to be a Part 1 chemical.

- (2) For the purposes of this Ordinance, if any of the relevant materials of a thing shows that the thing falls within a description in column 2 of Part 2 of Schedule 1, the thing is, in the absence of evidence to the contrary, presumed to be a Part 2 chemical.
- (3) For the purposes of this Ordinance and subject to section 3(3), if any of the relevant materials of a thing shows that the thing falls within a description in column 2 of Part 1 of Schedule 3, the thing is, in the absence of evidence to the contrary, presumed to be a regulated mercury-added product.
- (4) In this section—
- relevant materials* (相關材料), in relation to a thing, means—
- labels or packaging of the thing; or
 - other documents, provided by the manufacturer, importer, exporter or supplier of the thing, containing information, descriptions or statements about the thing.

5. Ordinance applies to Government

- (1) This Ordinance applies to the Government.
- (2) The Government is not liable to be prosecuted for an offence under this Ordinance.
- (3) An act done, or omitted to be done, by a public officer in good faith in performing or purportedly performing a function under this Ordinance does not constitute an offence under this Ordinance.
- (4) No prescribed fee is payable by the Government.

6. Ordinance does not apply to certain mercury etc.

This Ordinance does not apply in relation to mercury, mercury mixtures, mercury compounds or mercury-added products falling within any of the following descriptions—

- (a) pesticide as defined by section 2 of the Pesticides Ordinance (Cap. 133);
- (b) waste as defined by section 2 of the Waste Disposal Ordinance (Cap. 354);
- (c) Chinese herbal medicine as defined by section 2 of the Chinese Medicine Ordinance (Cap. 549);
- (d) article in transit;
- (e) thing that is, or is a part of, an air transshipment cargo;
- (f) thing that is brought into Hong Kong by a person who—
 - (i) arrives at the Hong Kong International Airport from a place outside Hong Kong solely for the purpose of leaving Hong Kong; and
 - (ii) does not pass through immigration control while in Hong Kong.

7. Ordinance does not apply to mercury etc. of trace quantity

This Ordinance does not apply in relation to mercury, mercury mixtures or mercury compounds falling within any of the following descriptions—

- (a) naturally occurring trace quantities of mercury or mercury compound present in any of the following or in the products derived from any of the following—
 - (i) non-mercury metals;
 - (ii) non-mercury ores;
 - (iii) non-mercury mineral products (such as coal);
- (b) unintentional trace quantities of mercury or mercury compound present in a chemical product.

Part 2

Prohibitions relating to Part 1 Chemical, Part 2 Chemical, Regulated Mercury-added Product and Regulated Manufacturing Process

Division 1—Part 1 Chemical and Part 2 Chemical

8. Interpretation of Division 1 of Part 2

In this Division—

medical establishment (醫療機構) means—

- (a) a private healthcare facility within the meaning of the Private Healthcare Facilities Ordinance (Cap. 633) for which a licence under that Ordinance is in force;
- (b) a scheduled nursing home within the meaning of the Private Healthcare Facilities Ordinance (Cap. 633) for which an exemption granted under section 128 of that Ordinance is in force;
- (c) a nursing home within the meaning of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);
- (d) a hospital, maternity home or clinic managed or controlled by the Hospital Authority established under the Hospital Authority Ordinance (Cap. 113);
- (e) a mental hospital within the meaning of the Mental Health Ordinance (Cap. 136); or
- (f) premises used exclusively by any of the following persons in the course of the person's practice on the person's own account—
 - (i) a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161);

- (ii) a registered dentist within the meaning of the Dentists Registration Ordinance (Cap. 156);
- (iii) a registered veterinary surgeon within the meaning of the Veterinary Surgeons Registration Ordinance (Cap. 529);

specified laboratory (指明實驗室) means—

- (a) a laboratory maintained by a medical establishment;
- (b) a laboratory maintained by a specified institution as defined by the Second Schedule to the Education Regulations (Cap. 279 sub. leg. A);
- (c) a science laboratory as defined by regulation 2 of the Education Regulations (Cap. 279 sub. leg. A);
- (d) a medical laboratory supervised by a registered medical laboratory technologist (within the meaning of the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359 sub. leg. A)); or
- (e) a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme managed by the Commissioner for Innovation and Technology on behalf of the Government.

9. Prohibition on export of Part 1 chemical

- (1) A person must not export Part 1 chemicals except under an export permit.
- (2) Subsection (1) does not apply if—
 - (a) the Part 1 chemical is exported for use for laboratory-scale research or as a reference standard;
 - (b) the chemical, while being exported, is contained in packages or containers, and the total quantity of mercury in the type of chemical to which the chemical belongs in each package or container does not exceed 250 g; and

- (c) the total quantity of mercury in that type of chemical to be exported in the shipment by the person does not exceed 5 kg.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

10. Prohibition on import of Part 1 chemical

- (1) A person must not import Part 1 chemicals except under an import permit.
- (2) Subsection (1) does not apply if—
 - (a) the Part 1 chemical is imported for use for laboratory-scale research or as a reference standard;
 - (b) the chemical, while being imported, is contained in packages or containers, and the total quantity of mercury in the type of chemical to which the chemical belongs in each package or container does not exceed 250 g; and
 - (c) the total quantity of mercury in that type of chemical to be imported in the shipment by the person does not exceed 5 kg.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

11. Prohibition on keeping of Part 2 chemical

- (1) A person must not keep Part 2 chemicals except under a possession permit.
- (2) Subsection (1) does not apply if—
 - (a) the Part 2 chemical is kept in a specified laboratory for use for laboratory-scale research or as a reference standard; and

- (b) the total quantity of mercury in the type of chemical to which the chemical belongs being kept in the laboratory does not exceed 500 g.
- (3) For the purposes of subsection (2), if—
 - (a) 2 or more separate specified laboratories are situated on the same floor of a building; and
 - (b) the operation of those laboratories is supervised by the same person (whether alone or jointly with another person),
 those laboratories are regarded as a single laboratory.
- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

12. Prohibition on use of Part 2 chemical

- (1) A person must not use Part 2 chemicals except under a possession permit.
- (2) Subsection (1) does not apply if—
 - (a) section 11(1) does not apply to the keeping of the Part 2 chemical because of the operation of section 11(2); and
 - (b) the chemical is used in a specified laboratory for laboratory-scale research or as a reference standard.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

Division 2—Regulated Mercury-added Product**13. Prohibition on export of regulated mercury-added product**

- (1) A person must not export regulated mercury-added products.

- (2) Subsection (1) does not apply if the regulated mercury-added product falls within a description in column 2 of Part 2 of Schedule 3.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

14. Prohibition on import of regulated mercury-added product

- (1) A person must not import regulated mercury-added products.
- (2) Subsection (1) does not apply if the regulated mercury-added product falls within a description in column 2 of Part 2 of Schedule 3.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

15. Prohibition on manufacture of regulated mercury-added product etc.

- (1) A person must not manufacture regulated mercury-added products.
- (2) Subsection (1) does not apply if the regulated mercury-added product under manufacture falls within a description in column 2 of Part 2 of Schedule 3.
- (3) A person must not incorporate a regulated mercury-added product into another thing as a component.
- (4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

16. Prohibition on supply of regulated mercury-added product

- (1) A person must not supply regulated mercury-added products on or after the third anniversary of the commencement date of this Ordinance.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

Division 3—Regulated Manufacturing Process**17. Prohibition on carrying out regulated manufacturing process**

- (1) A person must not carry out regulated manufacturing processes.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

Part 3**Export Permit, Import Permit and Possession Permit****Division 1—Issue and Renewal of Permit****18. Export permit**

- (1) A person may apply to the Director for an export permit in relation to the export of a batch of Part 1 chemicals.
- (2) The Director may, on the application—
 - (a) issue an export permit to the applicant; or
 - (b) refuse to issue an export permit on a ground specified in section 19.
- (3) On issuing an export permit, the Director may impose conditions the Director considers appropriate, including conditions regulating matters concerning the carrying out of the export such as—
 - (a) the date on which, or the period within which, the export may be carried out;
 - (b) the manner in which the export is to be carried out; and
 - (c) the place at which the batch of chemicals is to be loaded onto any transport for export.
- (4) The following are to be specified in an export permit—
 - (a) the date on which the permit takes effect;
 - (b) the validity period of the permit;
 - (c) if conditions are imposed in respect of the permit under subsection (3)—the conditions.

19. Grounds for refusing to issue export permit

The following grounds are specified for the purposes of section 18(2)(b) in relation to an application for an export permit to export a batch of Part 1 chemicals—

- (a) the Director is not satisfied that the relevant government authority of the place to which the batch of chemicals is proposed to be exported would allow the batch of chemicals to be imported;
- (b) the Director is satisfied that refusing the application is necessary for protecting the public health or environment.

20. Import permit

- (1) A person may apply to the Director for an import permit in relation to the import of a batch of Part 1 chemicals.
- (2) The Director may, on the application—
 - (a) issue an import permit to the applicant; or
 - (b) refuse to issue an import permit on a ground specified in section 21.
- (3) On issuing an import permit, the Director may impose conditions the Director considers appropriate, including conditions regulating matters concerning the carrying out of the import such as—
 - (a) the date on which, or the period within which, the import may be carried out;
 - (b) the manner in which the import is to be carried out; and
 - (c) the place at which the batch of chemicals is to be unloaded from any transport.
- (4) The following are to be specified in an import permit—
 - (a) the date on which the permit takes effect;
 - (b) the validity period of the permit;

- (c) if conditions are imposed in respect of the permit under subsection (3)—the conditions.

21. Grounds for refusing to issue import permit

The following grounds are specified for the purposes of section 20(2)(b) in relation to an application for an import permit to import a batch of Part 1 chemicals—

- (a) the Director is satisfied that the batch of chemicals is to be imported solely for re-export;
- (b) the Director is not satisfied that the batch of chemicals, if imported, would be kept in an environmentally sound manner as required by the Convention;
- (c) the Director is not satisfied that the batch of chemicals, if imported, would be used for a purpose permitted under the Convention;
- (d) the Director is satisfied that refusing the application is necessary for protecting the public health or environment.

22. Possession permit

- (1) A person may apply to the Director for a possession permit in relation to the keeping and use of a batch of Part 2 chemicals.
- (2) The Director may, on the application—
 - (a) issue a possession permit to the applicant; or
 - (b) refuse to issue a possession permit on a ground specified in section 23.
- (3) On issuing a possession permit, the Director may impose conditions the Director considers appropriate, including—
 - (a) conditions regulating matters concerning the keeping of the batch of chemicals such as—

- (i) the place or premises at or on which the batch of chemicals is to be kept; and
- (ii) the manner in which the batch of chemicals is to be kept; and
- (b) conditions regulating matters concerning the use of the batch of chemicals such as—
 - (i) the purpose for which the batch of chemicals may be used; and
 - (ii) the manner in which the batch of chemicals is to be used.
- (4) The following are to be specified in a possession permit—
 - (a) the date on which the permit takes effect;
 - (b) the validity period of the permit;
 - (c) if conditions are imposed in respect of the permit under subsection (3)—the conditions.

23. Grounds for refusing to issue possession permit

The following grounds are specified for the purposes of section 22(2)(b) in relation to an application for a possession permit to keep and use a batch of Part 2 chemicals—

- (a) the Director is not satisfied that the applicant has the ability to keep the batch of chemicals in an environmentally sound manner as required by the Convention;
- (b) the Director is not satisfied that the batch of chemicals would be used for a purpose permitted under the Convention;
- (c) the Director is satisfied that refusing the application is necessary for protecting the public health or environment.

24. Validity period of permit—export permit and import permit

Unless suspended or cancelled under Division 3, an export permit or import permit is in force until—

- (a) if the date on which, or the period within which, the export or import may be carried out under the permit is specified as a condition imposed under this Part in respect of the permit—the earliest of the following—
 - (i) the export or import is carried out under the permit;
 - (ii) the expiry of the specified date;
 - (iii) the expiry of the specified period; or
- (b) in any other case—the earlier of the following—
 - (i) the export or import is carried out under the permit;
 - (ii) the expiry of 12 months (or if the Director specifies in the permit a shorter validity period, the shorter period) beginning on the date on which the permit takes effect.

25. Validity period of permit—possession permit

Unless suspended or cancelled under Division 3, a possession permit is in force until the expiry of 12 months (or if the Director specifies in the permit a shorter validity period, the shorter period) beginning on the date on which the permit takes effect.

26. Permit holder to comply with permit condition

- (1) The holder of an export permit, import permit or possession permit must comply with the conditions imposed under this Part in respect of the permit.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

27. Renewal of permit

- (1) The holder of an export permit, import permit or possession permit may apply to the Director for renewal of the permit.
- (2) The application may only be made while the permit concerned is in force.
- (3) If an export is carried out under an export permit while an application for renewing the permit is pending, the permit holder must, as soon as reasonably practicable after the export, by written notice—
 - (a) notify the Director of the export; and
 - (b) withdraw the application.
- (4) If an import is carried out under an import permit while an application for renewing the permit is pending, the permit holder must, as soon as reasonably practicable after the import, by written notice—
 - (a) notify the Director of the import; and
 - (b) withdraw the application.
- (5) The Director may, on the application—
 - (a) renew the permit concerned; or
 - (b) refuse to renew the permit if satisfied that—
 - (i) for an application for renewal of an export permit—
an export has been carried out under the permit;
 - (ii) for an application for renewal of an import permit—
an import has been carried out under the permit; or
 - (iii) the refusal is necessary for protecting the public health or environment.
- (6) On renewing a permit, the Director—
 - (a) may impose conditions the Director considers appropriate, including conditions mentioned in—

- (i) for an export permit—section 18(3);
- (ii) for an import permit—section 20(3); or
- (iii) for a possession permit—section 22(3); and
- (b) must issue a new permit to the applicant.
- (7) The following are to be specified in a new permit—
 - (a) the date on which the permit takes effect;
 - (b) the validity period of the permit;
 - (c) if conditions are imposed in respect of the permit under subsection (6)(a)—the conditions.

28. Duplicate of permit

- (1) This section applies in relation to an export permit, import permit or possession permit that is lost, destroyed, defaced or damaged.
- (2) The holder of a permit (*original permit*) may apply to the Director for the issue of a duplicate of the original permit.
- (3) Without limiting Division 4, the application must be accompanied by the original permit unless the permit is lost.
- (4) If an application is made in relation to a lost original permit, and the holder of the permit finds the lost permit while the application is pending, the holder must, as soon as reasonably practicable, by written notice—
 - (a) notify the Director of this fact; and
 - (b) withdraw the application.
- (5) The Director may, on the application—
 - (a) approve the application; or
 - (b) refuse the application.
- (6) On issuing a duplicate of an original permit, the original permit ceases to have effect.

- (7) A duplicate of an original permit—
- (a) has the same effect as the original permit for the remainder of the period for which the original permit would have remained in force but for subsection (6); and
 - (b) is to be regarded as having been issued under the same provision under which the original permit was issued or is regarded as having been issued.

Division 2—Variation of Permit Condition

29. Interpretation of Division 2 of Part 3

In this Division—

permit (許可證) means an export permit, import permit or possession permit.

30. Variation of permit condition on Director's own initiative

- (1) The Director may, on the Director's own initiative, at any time vary a condition (*permit condition*) imposed under this Part in respect of a permit if satisfied that the variation is necessary for protecting the public health or environment.
- (2) If the Director intends to vary a permit condition, the Director must, by written notice, notify the permit holder of—
 - (a) the intention;
 - (b) the grounds for the proposed variation; and
 - (c) the holder's right to make representations under subsection (3).
- (3) The permit holder may, within 28 days after the date of the written notice (or a longer period the Director allows), make representations in writing to the Director objecting to the proposed variation.

- (4) If representations are made under subsection (3), the Director may vary a permit condition only after considering those representations.
- (5) The Director, once having decided to vary a permit condition, must, by written notice, notify the permit holder of—
 - (a) how the permit condition is to be varied;
 - (b) the grounds for the variation; and
 - (c) the date on which the variation takes effect.

31. Variation of permit condition on application

- (1) The holder of a permit may apply to the Director for variation of a condition imposed under this Part in respect of the permit.
- (2) The Director may, on the application—
 - (a) approve the application; or
 - (b) refuse the application.

32. Supplementary provisions as to variation of permit condition

- (1) This section applies in relation to a permit (*existing permit*) any condition of which is varied under section 30 or 31.
- (2) The holder of an existing permit must return the permit to the Director within 10 days after the later of the following—
 - (a) the date of the holder's receiving the written notice of the variation given under section 30(5) from the Director;
 - (b) the date on which the variation takes effect.
- (3) On receiving an existing permit returned under subsection (2), the Director must—
 - (a) issue a new permit to replace the existing permit; and

- (b) specify in the new permit the conditions of the permit as varied.
- (4) A new permit issued under subsection (3)—
 - (a) subject to the conditions of the permit as varied, has the same effect as the existing permit for the remainder of the period for which the existing permit would have remained in force but for the replacement; and
 - (b) is to be regarded as having been issued under the same provision under which the existing permit was issued or is regarded as having been issued.
- (5) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 1 and to imprisonment for 6 months.

Division 3—Suspension and Cancellation of Permit

33. Interpretation of Division 3 of Part 3

In this Division—

former permit holder (前許可證持有人), in relation to a permit cancelled under section 35, means the person who held the permit immediately before the cancellation;

permit (許可證) means an export permit, import permit or possession permit.

34. Suspension of permit

The Director may, on a ground specified in section 36, by order suspend a permit for the period specified by the Director in the order.

35. Cancellation of permit

The Director may, on a ground specified in section 36, by order cancel a permit.

36. Grounds for suspending or cancelling permit

The following grounds are specified for the purposes of sections 34 and 35 in relation to a permit—

- (a) the Director is satisfied that the permit holder has contravened—
 - (i) this Ordinance; or
 - (ii) a condition imposed under this Part in respect of the permit;
- (b) the Director is satisfied that the permit was obtained by fraud or misrepresentation;
- (c) the permit holder falls within any of the following descriptions—
 - (i) for a permit holder that is a company—winding up proceedings have been commenced in relation to the permit holder or the permit holder has been dissolved;
 - (ii) for a permit holder that is a partnership—the permit holder has been dissolved;
 - (iii) for a permit holder that is an individual—the permit holder has died, has become bankrupt, or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the holder's creditors;
 - (iv) in any other case—the permit holder has ceased to exist;
- (d) the Director is satisfied that exercising the power under section 34 or 35 (as the case requires) is necessary for protecting the public health or environment.

37. Notice of intention to suspend or cancel permit etc.

- (1) If the Director intends to suspend or cancel a permit under section 34 or 35, the Director must, by written notice, notify the permit holder of—
 - (a) the intention;
 - (b) the grounds for the proposed suspension or cancellation;
 - (c) the date on which the suspension or cancellation is proposed to take effect;
 - (d) for a suspension—the proposed period of suspension; and
 - (e) the holder's right to make representations under subsection (2).
- (2) The permit holder may, within 28 days after the date of the written notice (or a longer period the Director allows), make representations in writing to the Director objecting to the proposed suspension or cancellation.
- (3) If representations are made under subsection (2), the Director may suspend or cancel a permit only after considering those representations.
- (4) The Director, once having decided to suspend or cancel a permit, must, by written notice, notify the permit holder of—
 - (a) the decision;
 - (b) the grounds for the suspension or cancellation;
 - (c) the date on which the suspension or cancellation takes effect; and
 - (d) for a suspension—the period of suspension.

38. Return of permit on its cancellation

- (1) If a permit is cancelled under section 35, the former permit holder must return the permit to the Director within 10 days after the date on which the cancellation takes effect.

- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1 and to imprisonment for 6 months.

39. Director may give disposal direction on cancellation

- (1) If a permit is cancelled under section 35, the Director may, by written notice, give a direction to the former permit holder as to the disposal of the following things that are in Hong Kong and in the holder's control or possession—
 - (a) any chemicals that might be exported, imported, kept or used but for the cancellation of the permit; and
 - (b) any thing that contains the chemicals.
- (2) If the Director intends to give a direction under subsection (1), the Director must, by written notice, notify the former permit holder of—
 - (a) the intention;
 - (b) the proposed direction;
 - (c) the grounds for giving the direction;
 - (d) the proposed period within which the direction is to be complied with; and
 - (e) the holder's right to make representations under subsection (3).
- (3) The former permit holder may, within 28 days after the date of the written notice given under subsection (2) (or a longer period the Director allows), make representations in writing to the Director objecting to the proposed direction.
- (4) If representations are made under subsection (3), the Director may give a direction under subsection (1) only after considering those representations.

- (5) The Director, once having decided to give a direction under subsection (1), must—
- (a) by written notice notify the former permit holder of the direction; and
 - (b) specify in the notice—
 - (i) the grounds for giving the direction; and
 - (ii) the period within which the direction is to be complied with.
- (6) A person who, without reasonable excuse, fails to comply with a direction given under subsection (1) within the period specified under subsection (5) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

40. Variation of disposal direction on application

- (1) A former permit holder may apply to the Director for variation of a direction given to the holder under section 39.
- (2) The application may only be made within 10 days after the date of the holder's receiving the written notice given under section 39(5) from the Director.
- (3) The Director may, on the application—
 - (a) approve the application; or
 - (b) refuse the application.

Division 4—General Provisions about Applications under this Part

41. Application of Division 4 of Part 3

This Division applies in relation to an application made under this Part.

42. How to make application

- (1) An application—
 - (a) must be in the specified form;
 - (b) must be accompanied by the information, documents and particulars specified in the specified form; and
 - (c) if not made by the Government—must be accompanied by the prescribed fee.
- (2) For an application under section 31 to vary a condition imposed under this Part in respect of a permit, the applicant must state in the application—
 - (a) how the applicant would like the condition to be varied; and
 - (b) the grounds for the proposed variation.
- (3) For an application under section 40 to vary a direction, the applicant must state in the application—
 - (a) how the applicant would like the direction to be varied; and
 - (b) the grounds for the proposed variation.

43. Director may require information etc. for determining application

- (1) For determining an application, the Director may require the applicant to provide further information, documents and particulars that are reasonably necessary to enable the Director to determine the application.
- (2) If the applicant fails to comply with a requirement made under subsection (1), the Director—
 - (a) may refuse to process the application further; or
 - (b) may refuse the application.

44. Notice of intention to refuse application

- (1) If the Director intends to refuse an application, the Director must, by written notice, notify the applicant of—
 - (a) the intention;
 - (b) the grounds for the proposed refusal; and
 - (c) the applicant's right to make representations under subsection (2).
- (2) The applicant may, within 28 days after the date of the written notice (or a longer period the Director allows), make representations in writing to the Director objecting to the proposed refusal.
- (3) If representations are made under subsection (2), the Director may refuse the application only after considering those representations.

45. Notice of decision

The Director must, by written notice, notify the applicant of—

- (a) the Director's decision on the application;
- (b) if the Director approves an application under section 31 to vary a condition imposed under this Part in respect of a permit—
 - (i) how the condition is to be varied; and
 - (ii) the date on which the variation takes effect;
- (c) if the Director approves an application under section 40 to vary a direction—
 - (i) how the direction is to be varied; and
 - (ii) the date on which the variation takes effect; and

- (d) if the Director refuses the application—the grounds for the refusal.

Part 4**Enforcement****Division 1—Interpretation etc.****46. Interpretation of Part 4**

In this Part—

premises (處所) includes any transport.

47. Limitation on exercise of power under Divisions 2 and 3

Divisions 2 and 3 do not empower an authorized officer to exercise any of the powers under those Divisions in relation to—

- (a) an article in transit;
- (b) an air transshipment cargo; or
- (c) a thing falling within the description of section 6(f).

Division 2—Inspection**48. Power to inspect document and record kept under regulatory requirement etc.**

- (1) For ascertaining whether a regulatory requirement has been or is being complied with, an authorized officer may by written notice—
 - (a) require the holder of an export permit, import permit or possession permit, or a former permit holder (within the meaning of section 33), to provide for inspection a document or record that relates to the compliance with the regulatory requirement;

- (b) require a person to provide for inspection a document or record that is required to be kept by the person under a regulatory requirement; and
 - (c) require a person mentioned in paragraph (a) or (b) to provide further particulars or explanations in respect of a document or record provided by the person.
- (2) An authorized officer—
 - (a) may make copies, or otherwise record the details, of a document or record provided in compliance with a requirement made under subsection (1); and
 - (b) may retain the document or record for a period that is reasonably necessary for further examination or copying or otherwise recording.
 - (3) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- 49. Power to enter non-dwelling premises for ascertaining compliance with regulatory requirement**
- (1) For ascertaining whether a regulatory requirement has been or is being complied with (*purpose of entry*), an authorized officer who has reasonable grounds to believe that—
 - (a) activities for the purpose of exporting or importing Part 1 chemicals or regulated mercury-added products are carried out on any premises; or
 - (b) Part 2 chemicals are kept or used on any premises,
 may, without warrant, during reasonable hours enter the premises to exercise any or all of the powers set out in subsection (3).
 - (2) Subsection (1) does not empower an authorized officer to—

- (a) enter any premises that are used wholly or principally for dwelling purposes; or
 - (b) enter any part of any premises that is a part used wholly or principally for dwelling purposes.
- (3) The powers are—
- (a) to observe and inspect any activity carried out on the premises that the authorized officer has reasonable grounds to believe to relate to Part 1 chemicals, Part 2 chemicals or regulated mercury-added products;
 - (b) to require the person in charge of the premises to, so far as reasonably practicable, provide for inspection any or all of the following documents or records that are kept on the premises—
 - (i) a document or record prepared under this Ordinance;
 - (ii) a document or record required to be kept under a regulatory requirement;
 - (iii) a document or record containing information about Part 1 chemicals, Part 2 chemicals or regulated mercury-added products;
 - (iv) any other document or record that the authorized officer has reasonable grounds to believe to be relevant to the purpose of entry;
 - (c) to make copies, or otherwise record the details, of a document or record referred to in paragraph (b);
 - (d) to remove and retain a document or record referred to in paragraph (b) for a period that is reasonably necessary for further examination or copying or otherwise recording;

- (e) to require the person in charge of the premises to, so far as reasonably practicable, provide for inspection any or all of the following things that are kept on the premises—
 - (i) any thing that the authorized officer has reasonable grounds to believe to be a Part 1 chemical, Part 2 chemical or regulated mercury-added product (collectively *relevant article*);
 - (ii) any thing that the authorized officer has reasonable grounds to believe to contain a relevant article;
 - (iii) any other thing that the authorized officer has reasonable grounds to believe to be relevant to the purpose of entry;
- (f) to remove and retain a thing referred to in paragraph (e) for a period that is reasonably necessary for further examination or testing;
- (g) to take, free of charge, a sample of a thing referred to in paragraph (e) for examination or testing;
- (h) to take photographs, or make video recordings, of or inside the premises;
- (i) to require the person in charge of the premises to provide further particulars or explanations in respect of—
 - (i) the activities referred to in paragraph (a);
 - (ii) the documents or records referred to in paragraph (b); or
 - (iii) the things referred to in paragraph (e); and
- (j) to require the person in charge of the premises to give any other assistance—
 - (i) that is reasonably necessary to facilitate the authorized officer's performance of functions under this section; and

- (ii) that the person is reasonably able to give.
- (4) On taking a sample by exercising the power set out in subsection (3)(g), the authorized officer must issue a receipt for the sample to the person in charge of the premises concerned.
- (5) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (3) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

Division 3—Investigation

Subdivision 1—Investigation Power

50. Power to stop and detain

- (1) If an authorized officer has reasonable grounds to believe that a person has contravened, is contravening or is about to contravene this Ordinance or a regulatory requirement (*contravention*), the officer may, without warrant—
 - (a) stop the person (or if the person is in or on any transport, stop and board the transport to stop the person); and
 - (b) detain the person for a period that is reasonably necessary for an authorized officer to investigate the contravention.
- (2) An authorized officer may require a person stopped under subsection (1) to—
 - (a) state the person's name, contact telephone number and address; and
 - (b) produce the person's proof of identity for inspection.
- (3) An authorized officer—
 - (a) may search a person stopped under subsection (1); and
 - (b) may search the belongings of the person.

- (4) Subsection (1) does not empower an authorized officer to—
 - (a) board any transport that is used wholly or principally for dwelling purposes; or
 - (b) enter any part of any transport that is a part used wholly or principally for dwelling purposes.
- (5) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (2) commits an offence and is liable on conviction to a fine at level 3.
- (6) In this section—

proof of identity (身分證明文件) has the meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115).

51. Power to obtain document and record etc. for investigation

- (1) This section applies if an authorized officer has reasonable grounds to believe that—
 - (a) this Ordinance or a regulatory requirement has been, is being or is about to be contravened (*contravention*); and
 - (b) a person has in the person's control or possession any document, record or information relating to the contravention (*evidence*).
- (2) For investigating the contravention, the authorized officer may require the person to—
 - (a) provide the evidence to the officer; and
 - (b) provide further particulars or explanations in respect of the evidence.
- (3) The authorized officer—
 - (a) may make copies, or otherwise record the details, of the evidence provided in compliance with a requirement made under subsection (2); and

- (b) may retain the evidence for a period that is reasonably necessary for further examination or testing or copying or otherwise recording.
- (4) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (2) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (5) A person is not excused from complying with a requirement made under subsection (2) on the ground that to do so might tend to incriminate the person.

52. Power to retain and seize things etc.

- (1) An authorized officer may retain, seize and remove—
 - (a) any thing in respect of which the officer has reasonable grounds to believe that this Ordinance or a regulatory requirement has been, is being or is about to be contravened (*contravention*); or
 - (b) any thing that the officer has reasonable grounds to believe to constitute, or to be likely to constitute, evidence of a contravention.
- (2) A thing seized or removed under subsection (1) may be retained by an authorized officer for examination or testing.

53. Power to enter and search premises for investigation

- (1) A magistrate may issue a warrant if satisfied by information on oath laid by an authorized officer that there are reasonable grounds to believe that—
 - (a) this Ordinance or a regulatory requirement has been, is being or is about to be contravened (*contravention*) on any premises; or

- (b) there is, or is likely to be, on any premises any thing that constitutes evidence of a contravention.
- (2) A warrant authorizes an authorized officer to enter the premises (and in the case of any transport, stop and board the transport) and exercise any or all of the powers set out in subsection (3) to investigate the contravention.
- (3) The powers are—
 - (a) to observe and inspect any activity carried out on the premises that the authorized officer has reasonable grounds to believe to relate to Part 1 chemicals, Part 2 chemicals or regulated mercury-added products;
 - (b) to observe and inspect any process carried out on the premises that the authorized officer has reasonable grounds to believe to be a regulated manufacturing process or a process of incorporation referred to in section 15(3);
 - (c) to—
 - (i) inspect the premises and search the premises for any document, record, information or any other thing that the authorized officer has reasonable grounds to believe to constitute, or to be likely to constitute, evidence of the contravention;
 - (ii) make copies, or otherwise record the details, of the document, record or information;
 - (iii) seize the document, record or thing; and
 - (iv) remove and retain the document, record or thing for—
 - (A) a period that is reasonably necessary for further examination or testing or copying or otherwise recording; or

- (B) a longer period that is necessary for proceedings under this Ordinance;
- (d) to take photographs, or make video recordings, of or inside the premises;
- (e) to require the person in charge of the premises to provide further particulars or explanations in respect of—
- (i) the premises;
 - (ii) the activities or processes referred to in paragraph (a) or (b); or
 - (iii) the documents, records, information or things referred to in paragraph (c);
- (f) to require the person in charge of the premises to give any other assistance—
- (i) that is reasonably necessary to facilitate the authorized officer's performance of functions under this section; and
 - (ii) that the person is reasonably able to give; and
- (g) to stop and search a person found on the premises whom the authorized officer has reasonable grounds to believe to have committed, is committing or is about to commit the contravention.
- (4) An authorized officer—
- (a) may use reasonably necessary force for gaining entry into the premises; and
 - (b) may be accompanied and assisted by any person the officer reasonably requires to perform the function concerned.
- (5) A person executing a warrant must, if requested, produce for inspection—
- (a) proof of the person's identity; and

- (b) the warrant.

54. Offence relating to section 53

- (1) A person who, without reasonable excuse, fails to comply with a requirement made under section 53 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (2) A person is not excused from complying with a requirement made under section 53 on the ground that to do so might tend to incriminate the person.

55. Use of incriminating evidence in proceedings

- (1) On or before requiring a person to provide any information under section 51 or 53, an authorized officer must ensure that the person is informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the information.
- (2) Despite any other provision of this Ordinance, if—
 - (a) the authorized officer requires a person to provide any information under section 51 or 53;
 - (b) the required information might tend to incriminate the person; and
 - (c) the person claims, before providing the information, that it might so tend,
 the requirement and the information are not admissible in evidence against the person in criminal proceedings in a court of law other than the criminal proceedings specified in subsection (3).
- (3) The criminal proceedings are those in which the person is prosecuted for—

- (a) an offence under section 51(4), 54(1) or 63(1) in respect of the information; or
 - (b) an offence under Part V of the Crimes Ordinance (Cap. 200) in respect of the information.
- (4) In this section—
information (資料) includes particulars and explanation.

Subdivision 2—Disposal and Forfeiture of Item Seized under Subdivision 1

56. Interpretation of Subdivision 2 of Division 3 of Part 4

In this Subdivision—

seized item (檢取物品) means a document, record or thing seized under section 52(1) or 53(3)(c)(iii).

57. Authorized officer may dispose of certain seized item

An authorized officer may, in the manner (other than by sale) the officer considers appropriate, dispose of a seized item that is impracticable for the officer to keep.

58. Disposal of seized item when no offence is prosecuted

- (1) This section applies if no offence is prosecuted under this Ordinance in respect of a seized item.
- (2) An authorized officer may—
 - (a) return the seized item to—
 - (i) if the item was seized from a person—the person or the owner of the item; or
 - (ii) in any other case—the owner of the item; or
 - (b) forfeit the seized item to the Government if the officer considers it appropriate to do so.

- (3) Subject to subsection (4), if the Director intends to forfeit a seized item under subsection (2)(b), the Director must, by written notice, notify the person from whom the item was seized or the owner of the item (collectively *interested person*) (as the case requires) of—
 - (a) the intention;
 - (b) the grounds for the proposed forfeiture; and
 - (c) the right of the interested person to give a notice of claim under subsection (6) and the period within which such a notice must be given.
- (4) The Director is not required to give a notice under subsection (3) in respect of a seized item if the interested person of the item is unknown or cannot be contacted.
- (5) If subsection (4) applies, a seized item is to be forfeited to the Government on the expiry of 28 days after the date on which the item is seized.
- (6) If the interested person of a seized item objects to the proposed forfeiture of the item to the Government, the person may, within 28 days after the date of the written notice given under subsection (3), give a notice of claim to the Director.
- (7) A notice of claim—
 - (a) is to be in writing;
 - (b) is to contain—
 - (i) the interested person's name; and
 - (ii) the interested person's address for service in Hong Kong; and
 - (c) is to state the grounds for objecting to the proposed forfeiture.

- (8) If no notice of claim is given in respect of a seized item within the period specified in subsection (6), the item is to be forfeited to the Government on the expiry of the period.

59. Application for forfeiture

- (1) After receiving a notice of claim given within the period specified in section 58(6), the Director must, as soon as reasonably practicable, apply to the court or magistrate (*court*) for an order that the seized item concerned be forfeited to the Government.
- (2) The court may, on the application, order that the seized item—
- (a) be returned to—
 - (i) if the item was seized from a person—the person or the owner of the item; or
 - (ii) in any other case—the owner of the item;
 - (b) be forfeited to the Government; or
 - (c) be disposed of in another manner it considers appropriate.

60. Disposal of seized item when offence is prosecuted

- (1) This section applies if an offence is prosecuted under this Ordinance in respect of a seized item (irrespective of whether the person prosecuted for the offence is convicted of the offence).
- (2) The court or magistrate may, on their own initiative or on application, order that the seized item—
- (a) be returned to—
 - (i) if the item was seized from a person—the person or the owner of the item; or
 - (ii) in any other case—the owner of the item;
 - (b) be forfeited to the Government; or

- (c) be disposed of in another manner it considers appropriate.
- (3) An application under subsection (2) may only be made by—
- (a) an authorized officer;
 - (b) the person from whom the item was seized; or
 - (c) the owner of the item.

61. Disposal of item forfeited to Government

- (1) An authorized officer may dispose of an item forfeited under section 58(5) or (8) or by an order under section 59(2)(b) or 60(2)(b) in the manner the officer considers appropriate.
- (2) The cost incurred in disposing of an item forfeited by an order under section 59(2)(b) or 60(2)(b) is recoverable as a civil debt due to the Government from—
- (a) for an item forfeited by an order under section 59(2)(b)—the person from whom the item was seized or the owner of the item (as the case requires); or
 - (b) for an item forfeited by an order under section 60(2)(b)—the person prosecuted for an offence in respect of the item under this Ordinance.
- (3) Without limiting subsection (1), an authorized officer may, by written notice, require a person who is convicted of an offence under this Ordinance in respect of an item forfeited by an order under section 60(2)(b) to dispose of the item in the manner specified by the officer at the person's cost.
- (4) A person who fails to comply with a requirement made under subsection (3) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

62. Compensation for seizure etc.

- (1) The Government is liable to compensate the owner of a seized item for any loss suffered by the owner—

- (a) because of the seizure; or
 - (b) because of the loss of, or damage to, the item during the seizure or retention.
- (2) However, for an item forfeited by an order under section 59(2)(b) or 60(2)(b), the owner of the item is entitled to compensation under subsection (1) only if the order was made because the owner was unknown, or could not be contacted, at the time the order was made.
- (3) In any proceedings against the Government in respect of a claim for compensation under subsection (1), the amount of compensation recoverable is an amount that is just and equitable in all the circumstances of the case.
- (4) The circumstances referred to in subsection (3) include the conduct and comparative blameworthiness of—
- (a) the owner of the seized item;
 - (b) the person from whom the item was seized;
 - (c) the employees or agents, if any, of a person referred to in paragraph (a) or (b); and
 - (d) the Director and other persons concerned.
- (5) Proceedings in respect of a claim for compensation may be commenced—
- (a) for a claim on the ground specified in subsection (1)(a)—within 6 months after the date on which the item concerned is seized; or
 - (b) for a claim on the ground specified in subsection (1)(b)—within 6 months after the earlier of the following—
 - (i) the date on which the owner of the seized item discovered the loss or damage;
 - (ii) the date on which the owner could, with reasonable diligence, have discovered the loss or damage.

- (6) A claim for compensation under subsection (1) is to be made—
- (a) for a claim within the jurisdiction of the Small Claims Tribunal—in the Small Claims Tribunal or District Court; or
 - (b) otherwise—in the District Court.

Part 5**Miscellaneous Offences and Other Matters relating to Offences****Division 1—Miscellaneous Offences****63. Provision of false or misleading information etc.**

- (1) A person commits an offence if—
- (a) the person provides any information to a public officer—
 - (i) for the purpose of an application under this Ordinance; or
 - (ii) in purported compliance with a regulatory requirement;
 - (b) the information is false or misleading in a material particular; and
 - (c) the person knows that, or is reckless as to whether, the information is false or misleading in that material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (3) In this section—
information (資料) includes document, record, particulars and explanation.

64. Obstruction of public officer etc.

- (1) A person must not wilfully obstruct a public officer who is performing a function under this Ordinance.

- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

Division 2—Other Matters relating to Offences**65. Prosecution deadline for offence under section 63(1)**

A prosecution for an offence under section 63(1) may only be started before the earlier of—

- (a) the end of 2 years beginning on the date on which the offence is committed; and
- (b) the end of 6 months beginning on the date on which the offence is discovered by, or comes to the notice of, the Director.

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

66. Liability of officer of body corporate, partner and member of unincorporated body

- (1) If a body corporate commits an offence under this Ordinance, and it is proved that the offence—
- (a) was committed with the consent or connivance of a person specified in subsection (2); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (2) The person referred to in subsection (1) is—
- (a) a director, manager, secretary or other similar officer of the body corporate; or
 - (b) a person purporting to act in the capacity of a person referred to in paragraph (a).

- (3) If a partner in a partnership commits an offence under this Ordinance, and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (4); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (4) The person referred to in subsection (3) is—
 - (a) a partner, or an office holder, in the partnership;
 - (b) a person concerned in the management of the partnership; or
 - (c) a person purporting to act in the capacity of a person referred to in paragraph (a) or (b).
- (5) If a member of an unincorporated body of persons (other than a partnership) commits an offence under this Ordinance, and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (6); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (6) The person referred to in subsection (5) is—
 - (a) a member, or a manager, secretary or other similar officer, of the unincorporated body;
 - (b) a person concerned in the management of the unincorporated body; or
 - (c) a person purporting to act in the capacity of a person referred to in paragraph (a) or (b).

67. Employer's liability for employee's act

- (1) An act done or omission made by an employee in the course of employment is to be regarded for the purposes of this Ordinance as done or made by the employer, as well as by the employee.
- (2) In any proceedings for an offence under this Ordinance brought against an employer in respect of an act or omission alleged to have been done or made by an employee, it is a defence for the employer to establish that—
 - (a) the act was done or the omission was made without the employer's knowledge and consent; and
 - (b) the employer had taken all reasonable steps to prevent the employee from—
 - (i) doing the act or making the omission; or
 - (ii) doing an act or making an omission of that description in the course of the employee's employment.

68. Taking reasonable steps etc. is defence

- (1) It is a defence for a person (*defendant*) prosecuted for an offence under this Ordinance to establish—
 - (a) that the act or omission in respect of which the offence is prosecuted was done or made by the defendant—
 - (i) under the instruction of the defendant's employer;
 - (ii) because of the defendant's reliance on the information given by a third person, and at the time of the alleged offence the defendant did not know, and had no reason to believe, that the information was false or misleading; or
 - (iii) because of another act or omission of a third person; and

- (b) that the defendant had taken all reasonable steps, and had exercised all due diligence, to prevent the commission of the offence.
- (2) If a defendant intends to establish a defence on the ground referred to in subsection (1)(a)(ii) or (iii), the defendant must—
 - (a) obtain the leave of the court or magistrate; or
 - (b) give a notice in accordance with subsection (3) to the person bringing the proceedings for the offence concerned.
- (3) A notice—
 - (a) is to be in writing;
 - (b) is to contain the information—
 - (i) that is about the identity of the third person concerned; and
 - (ii) that is in the defendant's control or possession; and
 - (c) is to be given at least 7 days before the commencement of the hearing of the proceedings.
- (4) In this section—

third person (第三者), in relation to a defendant, means a person other than—

 - (a) the defendant's employer;
 - (b) the defendant's employee; or
 - (c) any other employee of the defendant's employer.

69. Reasonable excuse

If a provision of this Ordinance that creates an offence refers to a reasonable excuse for a contravention of the provision, the reference is to be construed as providing a defence for a person prosecuted for the offence.

70. How to establish defence

- (1) This section applies if a provision of this Ordinance provides a defence for a person prosecuted for an offence under this Ordinance.
- (2) A person prosecuted for an offence under this Ordinance is to be regarded as having established a matter that needs to be established for the defence if—
 - (a) there is sufficient evidence to raise an issue with respect to the matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

Part 6**Miscellaneous Provisions****71. Secretary and Director may delegate function**

- (1) The Secretary may delegate the function conferred on the Secretary under section 76 to—
 - (a) a public officer; or
 - (b) a member of a class of public officers.
- (2) The Director may delegate any function conferred on the Director under this Ordinance (other than this section or section 72) to—
 - (a) a public officer; or
 - (b) a member of a class of public officers.
- (3) A delegation—
 - (a) is to be in writing; and
 - (b) may be made in relation to—
 - (i) specified provisions of this Ordinance; or
 - (ii) this Ordinance generally.

72. Director may authorize public officer etc.

- (1) The Director may authorize a public officer, or a member of a class of public officers, to be an authorized officer for the purposes of this Ordinance.
- (2) An authorization—
 - (a) is to be in writing; and
 - (b) may be given in relation to—
 - (i) specified provisions of this Ordinance; or

(ii) this Ordinance generally.

- (3) The Director may perform any function of an authorized officer under this Ordinance.

73. Proof of identity etc.

When performing a function under this Ordinance, a public officer must produce proof of the officer's identity for inspection by a person who is affected by the performance of the function and requests to see it.

74. Requirement made under this Ordinance

If a requirement is made by a public officer under this Ordinance, the officer must, in the requirement, specify the manner in which, and the period within which, the requirement is to be complied with.

75. Director may specify form

- (1) The Director may specify the form of a document required for the purposes of this Ordinance.
- (2) In specifying the form of a document, the Director may specify more than one form of the document, whether as alternatives or for use in different circumstances.
- (3) A form specified under this section is to be completed in accordance with the directions specified in the form.

76. Secretary may exempt public officer

- (1) The Secretary may, either generally or in a particular case, exempt a public officer (or a member of a class of public officers) from a provision of this Ordinance.
- (2) An exemption is to be in writing.
- (3) An exemption—
 - (a) is in force for the period specified by the Secretary; and

- (b) is subject to the conditions the Secretary considers appropriate.

77. Secretary may amend Schedule

The Secretary may, by notice published in the Gazette, amend Schedule 1, 2, 3 or 4.

78. Secretary may make regulation

- (1) The Secretary may make regulations for one or more of the following purposes—
- (a) to implement (whether in whole or in part) a provision of the Convention;
 - (b) to require fees to be paid in relation to any matter provided for under this Ordinance;
 - (c) to provide for incidental, supplemental, evidential, consequential, savings and transitional provisions that are necessary and expedient in consequence of a regulation made under this section;
 - (d) to provide generally for the better carrying out of the purposes of this Ordinance.
- (2) A regulation made under this section that implements a provision of the Convention may—
- (a) set out or refer directly to the provision; and
 - (b) specify the amendments, modifications or adaptations subject to which the provision is to have effect.
- (3) A regulation made under this section—
- (a) may prescribe offences for contravention of a regulation, punishable by a fine, imprisonment or both; and
 - (b) may provide for defences to such offences.

- (4) The maximum penalty that may be prescribed by a regulation made under this section for an offence is a fine at level 3 and imprisonment for 1 year.

79. Prescribed fee

To avoid doubt, different fees may be specified in respect of the same matter for—

- (a) different circumstances, purposes or cases; or
- (b) mercury, mercury compounds, mercury-added products or manufacturing processes of different types or descriptions.

80. Paid fee not refundable

A fee paid under this Ordinance is not refundable.

81. Immunity from civil liability

- (1) A public officer is not civilly liable for an act done, or omitted to be done, by the public officer in good faith in performing or purportedly performing a function under this Ordinance.
- (2) Subsection (1) does not affect any liability of the Government for the act or omission.

82. Admissibility of notice etc.

- (1) This section applies to a notice or other document (however described)—
 - (a) purporting to be a notice or document given or issued (however described) (collectively *given*) by the Secretary or Director in performing a function under this Ordinance; and

- (b) purporting to have been signed by the Secretary or Director (or a public officer authorized by the Secretary or Director to sign on their behalf).
- (2) In any legal proceedings, the notice or document—
 - (a) is admissible in evidence on production without further proof; and
 - (b) in the absence of evidence to the contrary—
 - (i) is to be regarded as a notice or document given by the Secretary or Director (as the case requires) and as so signed; and
 - (ii) is evidence of the facts stated in it.

83. Service of notice etc.

A notice or other document (however described) required to be given or sent (however described) (collectively *served*) under or for the purposes of this Ordinance is, in the absence of evidence to the contrary, served if—

- (a) for service on the Director—
 - (i) it is addressed to the Director and delivered to the Director's principal office; or
 - (ii) it is sent to the Director by registered post addressed to the Director at that office;
- (b) for service on an individual—
 - (i) it is addressed to the individual and delivered personally to the individual; or
 - (ii) it is sent to the individual by registered post addressed to the individual at the individual's last known address;
- (c) for service on a company—

- (i) it is addressed to the company and delivered by hand to an officer of the company; or
- (ii) it is sent to the company by registered post addressed to the company at the company's registered office within the meaning of the Companies Ordinance (Cap. 622);
- (d) for service on a partnership—
 - (i) it is addressed to the partnership and delivered by hand to a place in Hong Kong at which the partnership carries on business, and given to a person apparently concerned in the management of, or apparently employed by, the partnership; or
 - (ii) it is sent to the partnership by registered post addressed to the partnership at the partnership's last known address; or
- (e) for service on a statutory body, a body corporate (other than a company), or an unincorporated body of persons (other than a partnership)—
 - (i) it is addressed to the body and delivered by hand to a place in Hong Kong at which the body carries on business, and given to a person apparently concerned in the management of, or apparently employed by, the body; or
 - (ii) it is sent to the body by registered post addressed to the body at the body's last known address.

84. Right of appeal

- (1) A person aggrieved by a decision specified in subsection (2) may appeal to the Administrative Appeals Board against the decision.
- (2) The decisions are—

- (a) a decision to refuse to issue a permit under section 18, 20 or 22;
 - (b) a decision to impose conditions under section 18, 20, 22 or 27;
 - (c) a decision to refuse to renew a permit under section 27;
 - (d) a decision to refuse to issue a duplicate of a permit under section 28;
 - (e) a decision under section 30 to vary a condition imposed under Part 3 in respect of a permit;
 - (f) a decision under section 31 to refuse to vary a condition imposed under Part 3 in respect of a permit;
 - (g) a decision to suspend a permit under section 34;
 - (h) a decision to cancel a permit under section 35;
 - (i) a decision to give a disposal direction under section 39; and
 - (j) a decision to refuse to vary a disposal direction under section 40.
- (3) An aggrieved person may make an appeal within 21 days after the date on which the person is notified of the decision concerned.
- (4) An appeal under subsection (1) does not suspend the decision appealed against unless the Director decides otherwise.
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Part 7

Related and Consequential Amendments

Division 1—Enactments Amended

85. Enactments amended

The enactments specified in Divisions 2 and 3 are amended as set out in those Divisions.

Division 2—Amendments to Import and Export (General) Regulations (Cap. 60 sub. leg. A)

86. Schedule 1 amended

Schedule 1, Part 1—

Repeal item 11.

87. Schedule 2 amended

Schedule 2, Part 1—

Repeal item 10.

Division 3—Amendment to Administrative Appeals Board Ordinance (Cap. 442)

88. Schedule amended

The Schedule—

Add

- “78. Mercury Control Ordinance (of 2021)
- A decision of the Director of Environmental Protection—
- (a) to refuse to issue a permit under section 18, 20 or 22;
 - (b) to impose conditions under section 18, 20, 22 or 27;
 - (c) to refuse to renew a permit under section 27;
 - (d) to refuse to issue a duplicate of a permit under section 28;
 - (e) under section 30 to vary a condition imposed under Part 3 in respect of a permit;
 - (f) under section 31 to refuse to vary a condition imposed under Part 3 in respect of a permit;
 - (g) to suspend a permit under section 34;
 - (h) to cancel a permit under section 35;
 - (i) to give a disposal direction under section 39; or

- (j) to refuse to vary a disposal direction under section 40.”.

Schedule 1

[ss. 2, 4 & 77]

Part 1 Chemicals and Part 2 Chemicals**Part 1****Part 1 Chemicals**

Column 1 Item	Column 2 Type
1. Mercury	
2. Mercury mixture	

Part 2**Part 2 Chemicals**

Column 1 Item	Column 2 Type
1. Mercury	
2. Mercury mixture	
3. Mercury(I) chloride (Hg ₂ Cl ₂ , Chemical Abstracts Service registry number 10112-91-1)	

Column 1 Item	Column 2 Type
4. Mercury(II) oxide (HgO, Chemical Abstracts Service registry number 21908-53-2)	
5. Mercury(II) sulphate (HgSO ₄ , Chemical Abstracts Service registry number 7783-35-9)	
6. Mercury(II) nitrate (Hg(NO ₃) ₂ , Chemical Abstracts Service registry number 10045-94-0 or 7783-34-8)	
7. Mercury sulphide (HgS, Chemical Abstracts Service registry number 1344-48-5)	
8. Cinnabar	

Schedule 2

[ss. 2 & 77]

Regulated Manufacturing Processes

Column 1 Item	Column 2 Description of manufacturing process
1.	Acetaldehyde production in which mercury or mercury compounds are used as a catalyst.
2.	Polyurethane production in which catalysts that contain mercury are used.
3.	Sodium or potassium methylate or ethylate production in which mercury or mercury compounds are used.
4.	Vinyl chloride monomer production in which mercury or mercury compounds are used.
5.	Chlor-alkali production in which mercury or mercury compounds are used.

Schedule 3

[ss. 3, 4, 13, 14, 15 & 77]

Mercury-added Products**Part 1****Regulated Mercury-added Products**

Column 1 Item	Column 2 Description of mercury-added product
1.	Battery, other than— <ol style="list-style-type: none"> (a) button zinc silver oxide battery having a mercury content of less than 2% by weight; or (b) button zinc air battery having a mercury content of less than 2% by weight.
2.	Switch and relay, other than— <ol style="list-style-type: none"> (a) very high accuracy capacitance and loss measurement bridge having a mercury content not exceeding 20 mg per bridge; or (b) high frequency radio frequency switch and relay, having a mercury content not exceeding 20 mg per switch or relay, in a monitoring and control instrument.
3.	Compact fluorescent lamp for general lighting that— <ol style="list-style-type: none"> (a) has a power output not exceeding 30 W; and

Column 1 Item	Column 2 Description of mercury-added product
	(b) has a mercury content exceeding 5 mg per lamp.
4.	Linear fluorescent lamp for general lighting—
	(a) that—
	(i) is made of triband phosphor;
	(ii) has a power output of less than 60 W; and
	(iii) has a mercury content exceeding 5 mg per lamp; or
	(b) that—
	(i) is made of halophosphate phosphor;
	(ii) has a power output not exceeding 40 W; and
	(iii) has a mercury content exceeding 10 mg per lamp.
5.	High pressure mercury vapour lamp for general lighting.
6.	Cold cathode fluorescent lamp, and external electrode fluorescent lamp, for electronic display—
	(a) that—
	(i) has a length not exceeding 500 mm; and
	(ii) has a mercury content exceeding 3.5 mg per lamp;
	(b) that—
	(i) has a length exceeding 500 mm but not exceeding 1 500 mm; and
	(ii) has a mercury content exceeding 5 mg per lamp; or

Column 1 Item	Column 2 Description of mercury-added product
	(c) that—
	(i) has a length exceeding 1 500 mm; and
	(ii) has a mercury content exceeding 13 mg per lamp.
7.	Cosmetics having a mercury content exceeding 1 ppm—
	(a) including skin lightening soap and cream; and
	(b) excluding a cosmetic product that is intended by its manufacturer to be applied only in the vicinity of the eyes and—
	(i) that contains mercury as preservative;
	(ii) for which no effective and safe substitute for preservative is available; and
	(iii) that has a mercury content not exceeding 70 ppm.
8.	Biocide and topical antiseptic.
9.	The following non-electronic measuring devices—
	(a) barometer;
	(b) hygrometer;
	(c) manometer;
	(d) thermometer;
	(e) sphygmomanometer,
	other than one that is installed in large-scale equipment, or used for high precision measurement, and for which no suitable mercury-free alternative is available in the market.

Part 2
Exemptions

Column 1 Item	Column 2 Description of mercury-added product
1.	Mercury-added product that is essential for civil protection and military use.
2.	Mercury-added product that is intended by its manufacturer to be used— <ul style="list-style-type: none"> (a) for research; (b) for calibration of instrumentation; or (c) as a reference standard.
3.	Mercury-added product that is for use in traditional practices or religious practices.
4.	Mercury-added product— <ul style="list-style-type: none"> (a) that is a vaccine; and (b) that contains thiomersal as preservative.

Schedule 4

[ss. 2 & 77]

Prescribed Fees

Column 1 Item	Column 2 Matter	Column 3 Fee \$
1.	Application for issue of export permit	1,860
2.	Application for issue of import permit	1,860
3.	Application for issue of possession permit	1,860
4.	Application for renewal of export permit	910
5.	Application for renewal of import permit	910
6.	Application for renewal of possession permit	910
7.	Application for duplicate of permit	275
8.	Application for variation of condition of export permit	995
9.	Application for variation of condition of import permit	995
10.	Application for variation of condition of possession permit	995

Column 1 Item	Column 2 Matter	Column 3 Fee \$
11.	Application for variation of Director's disposal direction under section 40	995

Explanatory Memorandum

The main purposes of this Bill are—

- (a) to implement the Minamata Convention on Mercury (*Convention*) adopted by the Conference of Plenipotentiaries on 10 October 2013 in Japan, as amended from time to time and as applied to Hong Kong;
- (b) to regulate the export, import, keeping and use of mercury, mercury mixtures and mercury compounds;
- (c) to control the export, import, manufacture and supply of certain mercury-added products; and
- (d) to control certain manufacturing processes in which mercury or mercury compounds are used.

2. The Bill is divided into 7 Parts and contains 4 Schedules.

Part 1—Preliminary

- 3. Clause 1 sets out the short title and provides for commencement.
- 4. Clauses 2 and 3 contain the definitions, and meaning of words and expressions, for the interpretation of the Bill.
- 5. Clause 4 provides for the presumptions concerning Part 1 chemicals, Part 2 chemicals and regulated mercury-added products.
- 6. Clause 5 makes the Bill applicable to the Government.
- 7. Clause 6 provides that the Bill does not apply in relation to mercury, mercury mixtures, mercury compounds or mercury-added products that are, for example, pesticides or articles in transit. Clause 7 further states that the Bill does not apply in relation to naturally occurring trace quantities of mercury or mercury compounds present in things such as non-mercury metals.

Part 2—Prohibitions relating to Part 1 Chemical, Part 2 Chemical, Regulated Mercury-added Product and Regulated Manufacturing Process

8. Part 2 (clauses 8 to 17) provides for prohibitions on certain activities relating to Part 1 chemicals, Part 2 chemicals, regulated mercury-added products and regulated manufacturing processes.
9. Division 1 (clauses 8 to 12) deals with Part 1 chemicals and Part 2 chemicals. Clauses 9 and 10 prohibit the export and import of Part 1 chemicals. Export and import of Part 1 chemicals are prohibited except with an export permit or import permit or unless certain conditions are met. Clauses 11 and 12 contain the prohibitions on keeping and using Part 2 chemicals.
10. Division 2 (clauses 13 to 16) is about regulated mercury-added products. Clauses 13 and 14 prohibit the export and import of regulated mercury-added products. Export and import of regulated mercury-added products are prohibited unless the products fall within a description in column 2 of Part 2 of Schedule 3.
11. Clause 15 prohibits the manufacture of regulated mercury-added products (other than those falling within the descriptions in column 2 of Part 2 of Schedule 3). The clause also prohibits the incorporation of a regulated mercury-added product into another thing as a component.
12. Clause 16 prohibits the supply of regulated mercury-added products on or after the third anniversary of the commencement date of the Bill.
13. Division 3 (clause 17) prohibits the carrying out of regulated manufacturing processes.

Part 3—Export Permit, Import Permit and Possession Permit

14. Part 3 (clauses 18 to 45) is divided into 4 Divisions. Division 1 (clauses 18 to 28) provides for the issue and renewal of export

- permits, import permits and possession permits. Clause 26 requires the holder of an export permit, import permit or possession permit to comply with the conditions of the permit imposed by the Director of Environmental Protection (*Director*).
15. Division 2 (clauses 29 to 32) provides for the variation of permit conditions. Clause 30 empowers the Director to vary the conditions of an export permit, import permit or possession permit if satisfied that the variation is necessary for protecting the public health or environment. Under clause 31, the holder of a permit may apply to the Director for variation of permit conditions.
 16. Division 3 (clauses 33 to 40) is about the suspension and cancellation of export permits, import permits and possession permits. Clause 39 empowers the Director to, on the cancellation of an export permit, import permit or possession permit, give a direction to the former permit holder as to the disposal of, for example, chemicals that might be exported, imported, kept or used but for the cancellation of the permit. The former permit holder concerned may apply to the Director for variation of such a direction under clause 40.
 17. Division 4 (clauses 41 to 45) contains the general provisions about applications under Part 3.

Part 4—Enforcement

18. Part 4 (clauses 46 to 62) is divided into 3 Divisions. Division 1 (clauses 46 and 47) provides for the definition of a term used in Part 4 and limits the exercise of the inspection powers and investigation powers in relation to articles in transit and air transhipment cargo etc. Division 2 (clauses 48 and 49) empowers authorized officers to carry out inspection for ascertaining whether a requirement under the Bill or under a permit condition etc. (*regulatory requirement*) has been or is being complied with. Such inspection powers include the power to inspect documents and records kept under a regulatory

requirement and the power to enter non-dwelling premises or transport.

19. Division 3 (clauses 50 to 62) is divided into 2 Subdivisions. Subdivision 1 (clauses 50 to 55) provides for investigation powers. An authorized officer is empowered under clause 50 to stop and detain a person if the officer has reasonable grounds to believe that the person has contravened, is contravening or is about to contravene the Bill etc. An authorized officer may search the person and the person's belongings and may require the person to produce the person's proof of identity for inspection. Clause 51 empowers an authorized officer to obtain documents and records etc. for investigation. Clause 52 empowers an authorized officer to retain, seize and remove things that the officer has reasonable grounds to believe to constitute, or to be likely to constitute, evidence of a contravention of the Bill. Under clause 53, an authorized officer may, with warrant, enter and search premises for investigation.
20. Subdivision 2 (clauses 56 to 62) deals with the disposal and forfeiture of items seized under Subdivision 1. Clauses 61 and 62 provide for the disposal of items forfeited to the Government and the compensation for seizure.

Part 5—Miscellaneous Offences and Other Matters relating to Offences

21. Part 5 (clauses 63 to 70) is divided into 2 Divisions. Division 1 (clauses 63 and 64) provides for the offences of providing false or misleading information and obstruction of public officers etc.
22. Division 2 (clauses 65 to 70) provides for other matters relating to offences, such as the prosecution deadline for the offence under clause 63(1) (clause 65), liability of directors or managers etc. of a body corporate or unincorporated body for an offence under the Bill committed by the body (clause 66), employers' liability for the act of an employee (clause 67), defence for a defendant prosecuted for an offence under the Bill (clause 68), references to reasonable excuse

in an offence provision to be construed as providing a defence for the defendant (clause 69) and how to establish a defence for the purposes of an offence under the Bill (clause 70).

Part 6—Miscellaneous Provisions

23. Part 6 (clauses 71 to 84) contains miscellaneous provisions such as the delegation of functions by the Secretary for the Environment (*Secretary*) and the Director (clause 71), authorization of public officers to be authorized officers (clause 72), Secretary's power to exempt public officers from a provision of the Bill (clause 76), Secretary's power to amend the Schedules to the Bill (clause 77), Secretary's power to make regulations (clause 78), and public officers' immunity from civil liability for act done or omitted to be done in good faith in performing or purportedly performing a function under the Bill (clause 81).
24. Clause 84 provides for the right of a person aggrieved by a decision specified in clause 84(2) to appeal to the Administrative Appeals Board against the decision.

Part 7—Related and Consequential Amendments

25. Part 7 (clauses 85 to 88) amends the Import and Export (General) Regulations (Cap. 60 sub. leg. A) and the Administrative Appeals Board Ordinance (Cap. 442).

Schedule 1—Part 1 Chemicals and Part 2 Chemicals

26. Schedule 1 is divided into 2 Parts. Part 1 specifies the Part 1 Chemicals and Part 2 specifies the Part 2 Chemicals.

Schedule 2—Regulated Manufacturing Processes

27. Schedule 2 contains descriptions of regulated manufacturing processes.

Schedule 3—Mercury-added Products

28. Schedule 3 is divided into 2 Parts. Part 1 specifies the regulated mercury-added products and Part 2 lists regulated mercury-added products that are exempt from clauses 13, 14 and 15.

Schedule 4—Prescribed Fees

29. Schedule 4 specifies the fees for various matters provided for in the Bill.

List of Obligations under
the Minamata Convention on Mercury
Enforceable under the Existing Regulatory or Administrative Frameworks

Obligations	Existing Regulatory and Administrative Frameworks
(a) restrict mercury mining; and (b) control use of mercury in artisanal and small-scale gold mining	<ul style="list-style-type: none"> ● All mines in Hong Kong are property of the Government. ● The Mining Ordinance (Cap. 285) effectively controls all prospecting and mining activities in Hong Kong. ● Based on mineral resources record, mercury has not been identified in Hong Kong, nor is there any reasonable prospect for gold mining.
(c) phase down the use of dental amalgam	<ul style="list-style-type: none"> ● The dental profession, the academia and the Government have agreed to take on board the recommended measures in the Convention to phase down the use of dental amalgam^{Note}.
(d) control emissions of mercury and mercury compounds to the atmosphere	<ul style="list-style-type: none"> ● The Air Pollution Control Ordinance (Cap. 311), coupled with the use of best environmental practices by relevant sources, can effectively control mercury emissions from existing sources and new sources which fall within the source categories as listed in the Convention.
(e) control releases of mercury and mercury compounds to land and water	<ul style="list-style-type: none"> ● The Water Pollution Control Ordinance (Cap. 358), which sets out the effluent standards for discharges to all types of environmental waters, effectively controls releases of mercury and mercury compounds to water. The Waste Disposal Ordinance (Cap. 354) effectively controls the releases of mercury and mercury

^{Note} The Convention requires the Parties to the Convention to take measures to phase down the use of dental amalgam, which shall include two or more of the measures listed by the Convention. A “Consensus Statement on the Minamata Convention on Mercury and Phase Down of Dental Amalgam in Hong Kong” was jointly promulgated by the Department of Health, the Dental Council of Hong Kong, the Faculty of Dentistry of the University of Hong Kong, the College of Dental Surgeons of Hong Kong and the Hong Kong Dental Association, which can be downloaded from the following link:- https://www.dh.gov.hk/english/main/main_ds/files/consensus_statement.pdf. The recommendations made under the Statement include three of the measures listed by the Convention.

Obligations	Existing Regulatory and Administrative Frameworks
	compounds on land, which are regarded as chemical wastes.
(f) manage mercury wastes in an environmentally sound manner	<ul style="list-style-type: none"> ● Mercury waste is categorised as chemical waste under the Waste Disposal Ordinance (Cap. 354) which effectively controls its import, export, transboundary movement and disposal.

Regulated Mercury-added Products in Schedule 3 to the Bill

1.	Battery, other than— (a) button zinc silver oxide battery having a mercury content of less than 2% by weight; or (b) button zinc air battery having a mercury content of less than 2% by weight.
2.	Switch and relay, other than— (a) very high accuracy capacitance and loss measurement bridge having a mercury content not exceeding 20 mg per bridge; or (b) high frequency radio frequency switch and relay, having a mercury content not exceeding 20 mg per switch or relay, in a monitoring and control instrument.
3.	Compact fluorescent lamp for general lighting that— (a) has a power output not exceeding 30 W; and (b) has a mercury content exceeding 5 mg per lamp.
4.	Linear fluorescent lamp for general lighting— (a) that— (i) is made of triband phosphor; (ii) has a power output of less than 60 W; and (iii) has a mercury content exceeding 5 mg per lamp; or (b) that— (i) is made of halophosphate phosphor; (ii) has a power output not exceeding 40 W; and (iii) has a mercury content exceeding 10 mg per lamp.
5.	High pressure mercury vapour lamp for general lighting.
6.	Cold cathode fluorescent lamp, and external electrode fluorescent lamp, for electronic display— (a) that— (i) has a length not exceeding 500 mm; and (ii) has a mercury content exceeding 3.5 mg per lamp; (b) that— (i) has a length exceeding 500 mm but not exceeding 1 500 mm; and (ii) has a mercury content exceeding 5 mg per lamp; or (c) that—

	<ul style="list-style-type: none"> (i) has a length exceeding 1 500 mm; and (ii) has a mercury content exceeding 13 mg per lamp.
7.	<p>Cosmetics having a mercury content exceeding 1 ppm—</p> <ul style="list-style-type: none"> (a) including skin lightening soap and cream; and (b) excluding a cosmetic product that is intended by its manufacturer to be applied only in the vicinity of the eyes and— <ul style="list-style-type: none"> (i) that contains mercury as preservative; (ii) for which no effective and safe substitute for preservative is available; and (iii) that has a mercury content not exceeding 70 ppm.
8.	Biocide and topical antiseptic.
9.	<p>The following non-electronic measuring devices—</p> <ul style="list-style-type: none"> (a) barometer; (b) hygrometer; (c) manometer; (d) thermometer; (e) sphygmomanometer, <p>other than one that is installed in large-scale equipment, or used for high precision measurement, and for which no suitable mercury-free alternative is available in the market.</p>

Regulated Manufacturing Processes in Schedule 2 to the Bill

1.	Acetaldehyde production in which mercury or mercury compounds are used as a catalyst.
2.	Polyurethane production in which catalysts that contain mercury are used.
3.	Sodium or potassium methylate or ethylate production in which mercury or mercury compounds are used.
4.	Vinyl chloride monomer production in which mercury or mercury compounds are used.
5.	Chlor-alkali production in which mercury or mercury compounds are used.

IMPLICATIONS OF THE PROPOSAL

Financial and Civil Service Implications

The EPD will be responsible for implementing and enforcing the provisions of the Bill, including the administration of the permit systems for regulating the import/export of mercury and the storage and use of mercury and mercury compounds. The C&ED will conduct import and export inspections of the articles set out in the relevant Schedules to the Bill, including mercury and regulated mercury-added products, at entry/exit points. The two Departments will seek additional resources, if required, with justifications in accordance with the established mechanism. With the proposed fee levels and the estimated number of applications received, the new permit systems under the Bill will give rise to revenue of about \$55,000 per year.

Economic Implications

2. According to the survey conducted by EPD, there is no business or manufacturing industry in Hong Kong that relies heavily on the use of mercury or mercury compounds, and that mercury-free alternatives for most of the mercury-added products are already widely available in the market. The proposed regulatory regime is thus unlikely to have any significant implication on the trade concerned, as the additional costs arising from permit applications and other compliance procedures should not pose significant burden on their operations. The proposal should have minimal economic implications for the economy as a whole.

Sustainability and Environmental Implications

3. The legislative proposal will help ensure Hong Kong's full compliance with the obligations under the Convention. It will help protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds, which is conducive to sustainable development.