

**立法會**  
***Legislative Council***

LC Paper No. LS70/20-21

**Paper for the House Committee Meeting  
on 7 May 2021**

**Legal Service Division Report on  
Mercury Control Bill**

**I. SUMMARY**

**1. The Bill**

The Bill seeks to:

- (a) implement the Minamata Convention on Mercury ("Convention");
- (b) regulate the export, import, keeping and use of mercury, mercury mixtures and mercury compounds;
- (c) control the export, import, manufacture and supply of certain mercury-added products; and
- (d) control certain manufacturing processes in which mercury or mercury compounds are used.

- 2. Public consultation** The Administration has consulted the public and relevant trades and stakeholders. Respondents generally supported the Administration's proposal to introduce a new piece of legislation to align with the international practices.

- 3. Consultation with LegCo Panel** The Panel on Environmental Affairs was consulted on 25 January 2021. Members generally had no objection to the introduction of the Bill into the Legislative Council but urged the Administration to maintain communication with the trades on the implementation of the Convention and step up public education on recycling of mercury-added products.

- 4. Conclusion** The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new regulatory framework for mercury in Hong Kong, Members may consider forming a Bills Committee to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 5 May 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: EP CR 90/C1/05 Pt.2) issued by the Environment Bureau and the Environmental Protection Department in April 2021 for further details.

### **Object of the Bill**

2. The Bill seeks to:
- (a) implement the Minamata Convention on Mercury ("Convention");
  - (b) regulate the export, import, keeping and use of mercury, mercury mixtures and mercury compounds;
  - (c) control the export, import, manufacture and supply of certain mercury-added products;
  - (d) control certain manufacturing processes in which mercury or mercury compounds are used; and
  - (e) provide for related matters.

### **Background**

3. The Convention was developed by the United Nations Environment Programme to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.<sup>1</sup> According to the Administration, the People's Republic of China signed and ratified the Convention on 10 October 2013 and 31 August 2016 respectively and became a party 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 decided that the Convention would apply to the Hong Kong Special Administrative Region ("HKSAR") from 16 August 2017.

4. According to paragraph 4 of the LegCo Brief, 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.<sup>2</sup> The Bill seeks to implement the obligations under the Convention that are not yet covered by the existing regulatory or administrative frameworks of the HKSAR.

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<sup>1</sup> Article 1 of the Convention.

<sup>2</sup> Members may refer to Annex B to the LegCo Brief for details on obligations under the Convention which are enforceable under the existing regulatory or administrative frameworks of the HKSAR.

## Provisions of the Bill

5. The Bill contains seven Parts and four Schedules. The major provisions of the Bills are summarized below.

### Application and scope of the Bill

6. Clause 5 of the Bill seeks to make the Bill applicable to the Government. Clause 6 of the Bill seeks to exempt from the application of the Bill certain mercury, mercury mixtures, mercury compounds and mercury-added products (e.g. pesticides, Chinese herbal medicines and articles in transit) which are already under the control regime of existing Ordinances.

### Control of mercury, mercury mixtures, mercury compounds and mercury-added products

7. To implement the Convention, Part 2 (clauses 8 to 17) of the Bill seeks to provide for the following prohibitions:

- (a) import and export of mercury and mercury mixture, i.e. chemicals specified in Part 1 of Schedule 1 to the Bill ("Part 1 chemicals"), would be prohibited except with an import or export permit or unless certain conditions in relation to the purpose of import or export and its total quantity in the shipment concerned are met (clauses 9 and 10);<sup>3</sup>
- (b) keeping and using mercury, mercury mixture and mercury compounds listed in Part 2 of Schedule 1 to the Bill ("Part 2 chemicals") would be prohibited except under a possession permit or unless they are kept in a specified laboratory (e.g. laboratories maintained by medical establishments and educational institutions) for use for laboratory-scale research or as a reference standard, and the total quantity of mercury in the chemical does not exceed certain limit (clauses 11 and 12);<sup>4</sup>
- (c) import, export and manufacture of mercury-added products listed in Part 1 of Schedule 3 to the Bill ("regulated mercury-added products") would be prohibited unless the product falls within a description in Part 2 of that Schedule (e.g. mercury-added product that is a vaccine and contains thiomersal as preservative) (clauses 13, 14 and 15);<sup>5</sup>

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<sup>3</sup> Article 3 of the Convention provides that a party to the Convention should control the import and export of mercury and mercury mixtures.

<sup>4</sup> Article 10 of the Convention provides that a party to the Convention should take measures to ensure that the storage of mercury, mercury mixture and certain mercury compounds is undertaken in an environmentally sound manner.

<sup>5</sup> Article 4 of the Convention provides that a party to the Convention should prohibit the manufacture, import and export of mercury-added products.

- (d) supply of regulated mercury-added products on or after the third anniversary of the commencement date of the Bill (if passed) would be prohibited (clause 16); and
- (e) carrying out of manufacturing processes involving mercury listed in Schedule 2 to the Bill would be prohibited (clause 17).<sup>6</sup>

8. Under the Bill, a person who contravenes any prohibition stated above would commit an offence and be liable on conviction to a fine at level 5 (i.e. \$50,000) and to imprisonment for one year (clauses 9(3), 10(3), 11(4), 12(3), 13(3), 14(3), 15(4), 16(2) and 17(2)).

#### Proposed introduction of a permit system

9. Part 3 (clauses 18 to 45) of the Bill mainly seeks to provide for a permit system under which the Director of Environmental Protection ("Director") may issue, renew, suspend and cancel export or import permits for Part 1 chemicals and possession permits for Part 2 chemicals ("Permits"). The Director may also impose conditions which he considers appropriate on issuing the Permits and vary the conditions imposed in respect of the Permits either on the Director's own initiative or on application. Failure to comply with the conditions imposed would be an offence punishable by a fine at level 4 (i.e. \$25,000) and imprisonment for six months.

10. Part 3 of the Bill also seeks to provide for the procedure for applying for the Permits. The proposed fees for making such applications are prescribed in Schedule 4 to the Bill.

11. Under clause 84 of the Bill, a person aggrieved by a decision made by the Director under Part 3 of the Bill (which includes a decision to refuse to issue or refuse to renew a permit and a decision to suspend or cancel a permit) may appeal to the Administrative Appeals Board against the decision.

#### Enforcement powers

12. Part 4 (clauses 46 to 62) of the Bill mainly seeks to:

- (a) confer on authorized officers certain inspection powers (including the power to inspect document and record) (clause 48) and the power to enter non-dwelling premises (clause 49)) for ascertaining compliance with a requirement or condition imposed under the Bill ("regulatory requirement");

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<sup>6</sup> Article 5 of the Convention provides that a party to the Convention should phase out or restrict certain manufacturing processes in which mercury or mercury compounds are used.

- (b) confer on authorized officers certain investigation powers (e.g. the powers to stop and detain a person, require the person to provide information, enter and search premises with warrant etc.) if the authorized officer has reasonable grounds to believe that a person has contravened, is contravening or is about to contravene the Bill or a regulatory requirement (clauses 50 to 53); and
- (c) provide that failing to comply with an inspection or investigation requirement under Part 4 of the Bill would be an offence. The proposed maximum penalty for the offence of failing to provide personal information when required to do so is a fine at level 3 (i.e. \$10,000) (clause 50(5)). For the offence of non-compliance with other inspection or investigation requirements, the proposed maximum penalty is a fine at level 3 and imprisonment for six months (clauses 48(3), 49(5), 51(4) and 54(1)).

13. Part 5 (clauses 63 to 70) of the Bill seeks to provide for other offences for the purposes of the Bill, which include providing false or misleading information to a public officer (clause 63) and obstruction of public officers who are performing a function under the Bill (clause 64). These offences would be punishable by a fine at level 3 (i.e. \$10,000) and imprisonment for six months.

#### Miscellaneous provisions

14. Part 6 (clauses 71 to 84) of the Bill, among others, seeks to empower the Secretary for the Environment ("Secretary") to amend the Schedules to the Bill by notice published in the Gazette (clause 77) and make regulations for the purposes of, among other things, implementing provisions of the Convention and better carrying out of the Bill (clause 78). Such notices and regulations would be subsidiary legislation subject to negative vetting by LegCo.

15. Part 7 (clauses 85 to 88) of the Bill provides for related and consequential amendments to the Import and Export (General) Regulations (Cap. 60A) and the Administrative Appeals Board Ordinance (Cap. 442).

#### Commencement

16. The Bill, if passed, would come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

#### **Public consultation**

17. According to paragraphs 17 and 18 of the LegCo Brief, to prepare for the implementation of the Convention in Hong Kong, the Administration published the consultation document and conducted consultation with members

of the public and relevant trades and stakeholders in 2018. The Administration has 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) through questionnaires and consultation fora. Respondents generally supported the Administration's proposal to introduce a new piece of legislation to align with the international practices. In July 2019, the Administration has consulted the Advisory Council on the Environment which supported the Administration's legislative proposal.

### **Consultation with LegCo Panel**

18. As advised by the Clerk to the Panel on Environmental Affairs, the Administration consulted the Panel on 25 January 2021 on the Bill. Members supported the legislative proposal so as to ensure Hong Kong's compliance with its obligations under the Convention. Members discussed the regulatory scope of the Bill and its potential impact on the relevant trades in Hong Kong. They also urged the Administration to maintain communication with the trades on the implementation of the Convention and step up public education on recycling of mercury-added products.

### **Conclusion**

19. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new regulatory framework for mercury in Hong Kong, Members may consider forming a Bills Committee to study the Bill in detail.

Prepared by

Mark LAM  
Assistant Legal Adviser  
Legislative Council Secretariat  
6 May 2021

LS/B/27/20-21