

《汞管制條例草案》

Mercury Control Bill

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 transhipment 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—
 - (a) the component part is regarded as not being a regulated mercury-added product;
 - (b) the main body does not become a regulated mercury-added product merely because it has a component part incorporated into it; and

- (c) 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—

- (a) labels or packaging of the thing; or
- (b) 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.
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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.
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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.
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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.
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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.

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_2Cl_2 , Chemical Abstracts Service registry number 10112-91-1)

Mercury Control Bill

Schedule 1—Part 2

C2751

Column 1	Column 2
Item	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 ($\text{Hg}(\text{NO}_3)_2$, 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	Column 2
Item	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	Column 2
Item	Description of mercury-added product
1.	Battery, other than— <ul 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— <ul 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— <ul style="list-style-type: none">(a) has a power output not exceeding 30 W; and

Column 1	Column 2
Item	Description of mercury-added product
	(b) has a mercury content exceeding 5 mg per lamp.
4.	Linear fluorescent lamp for general lighting— <ul style="list-style-type: none">(a) that—<ul style="list-style-type: none">(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—<ul style="list-style-type: none">(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— <ul style="list-style-type: none">(a) that—<ul style="list-style-type: none">(i) has a length not exceeding 500 mm; and(ii) has a mercury content exceeding 3.5 mg per lamp;(b) that—<ul style="list-style-type: none">(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	Column 2
Item	Description of mercury-added product
	(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.	Cosmetics having a mercury content exceeding 1 ppm— <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.	The following non-electronic measuring devices— <ul style="list-style-type: none">(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	Column 2
Item	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	Column 2	Column 3
Item	Matter	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

Mercury Control Bill

Schedule 4

C2765

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