

Mercury Control Ordinance (Cap. 640)

Guidelines on Application for Import/Export Permit

Introduction

1. The Minamata Convention on Mercury (“the Convention”) entered into force on 16 August 2017. The Convention controls the import and export of all forms of mercury, by establishing a prior written consent mechanism between Parties to the Convention, as well as between Parties and non-Parties. The People’s Republic of China is one of the Parties to the Convention, and the Convention is also applicable to the Hong Kong Special Administrative Region (“HKSAR”).

2. According to the Mercury Control Ordinance (Cap. 640) (“MCO”), with effect from 1 December 2021, any person who imports chemicals specified in Part 1 of Schedule 1 (“Part 1 Chemicals”) to the MCO, including mercury¹ and mercury mixture², or exports Part 1 Chemicals of the MCO to all places outside the HKSAR shall obtain an import or export permit issued under the MCO. The requirements of such import or export permit are also applicable to Part 1 Chemicals in transshipment (but excluding air transshipment cargo). The permits are to be issued by the Director of Environmental Protection (“DEP”) under the MCO.

3. This document provides information on matters requiring attention when applying for import/export permits for Part 1 Chemicals. For more information on the legal requirements for permit application, please refer to the MCO.

Import Permit for Part 1 Chemicals

4. In order to comply with the requirements of the Convention, the DEP will consider the following conditions before issuing an import permit under the MCO:

(1) The batch of Part 1 Chemical to be imported to the HKSAR shall be used for the purposes allowed under the Convention:

¹ “Mercury” (汞) means elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6).

² “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).

- i. If such batch of Part 1 Chemical is intended to be used for laboratory-scale research or as a reference standard, the applicant shall provide descriptions of the use; or
- ii. If such batch of Part 1 Chemical is intended to be used for other uses allowed under the Convention other than those mentioned in (i), the applicant shall provide descriptions of the use. Besides, the said import shall be agreeable to the Central People's Government ("CPG"), including but not limited to the fact that the Ministry of Ecology and Environment of the CPG has provided the exporting Party with its prior written consent regarding the import in accordance with Article 3(6) of the Convention.

If such batch of Part 1 Chemical to be imported is solely for re-export, the DEP will refuse to issue an import permit in accordance with section 21 of the MCO.

- (2) Such batch of Part 1 Chemical shall be stored in an environmentally sound manner in accordance with Article 10 of the Convention. The applicant shall provide details for the following items:
 - i. particulars of the importer;
 - ii. the address of the location in Hong Kong where such batch of Part 1 Chemical will be stored; and
 - iii. storage method.

If such batch of Part 1 Chemical to be imported has been granted a possession permit under section 22 of the MCO for keeping and using within Hong Kong, please provide the permit information for reference.

- (3) The source of such batch of Part 1 Chemical shall be allowed under the Convention, that is, such batch does not come from primary mercury mining conducted within the territory of a Party on or after the date of entry into force of the Convention, or from excess mercury from the decommissioning of chlor-alkali facilities. The applicant shall provide information on the source of such batch of Part 1 Chemical and the particulars of the exporter. In addition, for the import of a Part 1 Chemical from a non-Party to the Convention, the applicant shall provide certification issued by the non-Party in accordance with Article 3(8) of the Convention showing that the Part 1 Chemical is not from the above two sources (i.e. in accordance with Articles 3(3) and 3(5)(b) of the Convention).

5. Under normal circumstances, the DEP will, based on the information provided by the applicant, consider whether the relevant import activity meets the above requirements and whether it is reasonably necessary (such as whether the importer's business nature, the quantity of the Part 1 Chemicals to be imported and its use are consistent, etc.), and will issue the relevant permit on the condition that the import is in compliance with the Convention.

6. Any person who plans to apply for an import permit shall submit the information listed in paragraph 4 above to the Environmental Protection Department ("EPD") not less than 30 working days in advance of the anticipated date of import. The EPD will provide assistance when the circumstances of a particular case require and give advice on compliance with the import and export requirements of the Convention. Each permit is normally valid for 12 months. The DEP will also evaluate the information provided by the applicant and the nature of the import activity when determining the validity period of the permit in each and every case.

Export Permit for Part 1 Chemicals

7. In order to comply with the requirements of the Convention, the DEP will consider the following conditions before issuing an export permit under the MCO:

- (1) The batch of Part 1 Chemical to be exported shall be agreeable to the importing Party:
 - i. If such batch of Part 1 Chemical is intended to be used for other uses allowed under the Convention other than laboratory-scale research or as a reference standard, the import shall be agreeable to the importing Party, including but not limited to the circumstance which the importing Party has provided the Ministry of Ecology and Environment of the CPG with its prior written consent regarding the import in accordance with Article 3(6) of the Convention.
 - ii. For (i) above, if the importing Party has issued a general notification to the Secretariat pursuant to Article 3(7) of the Convention, such general notification may be regarded as the written consent as required by Article 3(6) of the Convention as mentioned in (i) above. The applicant shall inform the DEP of such fact and demonstrate that the export complies with the terms

and conditions set out in the general notification issued by the importing Party.

- iii. If such batch of Part 1 Chemical is exported to a non-Party to the Convention, the applicant shall provide certification issued by the non-Party in accordance with Article 3(6)(b) of the Convention. The certification shall demonstrate that the non-Party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of Articles 10 and 11 of the Convention. In addition, the certification shall demonstrate that such batch of Part 1 Chemical will only be used for purposes allowed under the Convention or for environmentally sound interim storage as set out in Article 10 of the Convention.

If the applicant has documents other than those mentioned in (i), (ii) or (iii) above showing that the export is agreeable to the importing Party, such as an import permit issued by the importing Party, please provide them for reference.

- (2) The use of the Part 1 Chemical to be exported shall be used for the purposes allowed under the Convention (such as for laboratory-scale research or as a reference standard, etc.). The applicant shall provide descriptions of the use of the Part 1 Chemical to be exported and submit relevant supporting documents to substantiate the source of such batch of Part 1 Chemical.
- (3) The Part 1 Chemical to be exported shall be stored in an environmentally sound manner by the importing Party in accordance with Article 10 of the Convention. The applicant shall provide details for the following items:
 - i. particulars of the importer;
 - ii. the address of the location in the importing Party where such batch of Part 1 Chemical will be stored; and
 - iii. storage method.

If such batch of Part 1 Chemical to be exported has been granted a possession permit under section 22 of the MCO for keeping and using within Hong Kong, please provide the permit information for reference.

8. Under normal circumstances, the DEP will, based on the information provided by the applicant, consider whether the relevant export activity meets the above requirements and

whether it is reasonably necessary (such as whether the quantity of the Part 1 Chemical to be exported and its use are consistent, etc.), and will issue the relevant permit on the condition that the export is in compliance with the Convention.

9. Any person who plans to apply for an export permit shall submit the information listed in paragraph 7 above to the EPD not less than 30 working days in advance of the anticipated date of export. The EPD will provide assistance when the circumstances of a particular case require and give advice on compliance with the import and export requirements of the Convention. Each permit is normally valid for 12 months. The DEP will also evaluate the information provided by the applicant and the nature of the export activity when determining the validity period of the permit in each and every case.

Inapplicable Cases

10. Section 6 of the MCO states that the MCO does not apply in relation to mercury, mercury mixtures, mercury compounds or mercury-added products falling within any of the following descriptions:

- (1) pesticide as defined by section 2 of the Pesticides Ordinance (Cap. 133);
- (2) waste as defined by section 2 of the Waste Disposal Ordinance (Cap. 354);
- (3) Chinese herbal medicine as defined by section 2 of the Chinese Medicine Ordinance (Cap. 549);
- (4) article in transit³;
- (5) thing that is, or is a part of, an air transshipment cargo⁴;
- (6) 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.

11. Section 7 of the MCO states that the MCO does not apply in relation to mercury, mercury mixtures or mercury compounds falling within any of the following descriptions:

³ “Article in transit” (過境物品) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60), which means an article -

- (a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and
- (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong.

⁴ “Air transshipment cargo” (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60), which means transshipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of Hong Kong International Airport.

- (1) 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);
- (2) unintentional trace quantities of mercury or mercury compound present in a chemical product.

12. Under sections 9 and 10 of the MCO, any person shall not export or import Part 1 Chemicals except under an export or import permit. If the following conditions are met, the application for an import or export permit can be exempted:

- (1) the Part 1 Chemical is imported or exported for use for laboratory-scale research or as a reference standard;
- (2) the chemical, while being imported or 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
- (3) the total quantity of mercury in that type of chemical to be imported or exported in the shipment by the person does not exceed 5 kg.

Who Should Apply

13. Any person who imports Part 1 Chemicals into Hong Kong, in particular local chemical traders, academic institutions, testing and laboratory institutions, carriers who assume the capacity of an importer and exporter, as well as manufacturers using mercury as raw material, should apply for an import permit under section 20 of MCO.

14. Any person who exports Part 1 Chemicals from Hong Kong to all places outside Hong Kong, in particular local chemical traders, academic institutions, testing and laboratory institutions, as well as carriers who assume the capacity of an importer and exporter, should apply for an export permit under section 18 of MCO.

Procedure for Import / Export Permit Application

15. Applicants are required to complete an Import Permit Application Form (Form No. EPD MCO1) or an Export Permit Application Form (Form No. EPD MCO2) according to

the proposed relevant activity. The application forms can be obtained from the EPD office as mentioned in paragraph 17 below or downloaded from the EPD's website at:http://www.epd.gov.hk/epd/english/application_for_licences/applic_frogs/forms.html

16. Every section of the application form must be completed. The completed form should be submitted by hand or by post together with the following documents:

- (1) a copy of the Business Registration Certificate if the application is made by a limited company;
- (2) a copy of the Business Registration Certificate, a copy of the business owner's Hong Kong Identity Card or Passport if the application is made by an unlimited company;
- (3) a copy of the applicant's Hong Kong Identity Card or passport if the application is made by a person.
- (4) the information listed in paragraph 4 (for import) or paragraph 7 (for export) above.

17. Permit applications should be sent to the following address:

Territorial Control Office (Hazardous Chemicals Control Section)
Environmental Protection Department
Room 3404, 34/F, Hopewell Centre
183 Queen's Road East
Wan Chai, Hong Kong

18. The actual processing time of an application will depend on the complexity and availability of all necessary information of the application. Applicants are required to submit the completed application form and all relevant information not less than 30 working days before the commencement of the proposed activity.

Application Fee

19. Upon receipt of the application, a demand note for the application fee, specifying the date by which it should be paid, will be sent to the applicant by post. A permit application will not be processed unless the fee is settled by the due date. Please note that the application fee is not refundable regardless of the result of the application pursuant to section 80 of the MCO.

Renewal of Permit

20. The validity period of a permit is generally 12 months. The permit holder may apply to the EPD for renewal one calendar month before the expiry date and pay the prescribed renewal fee.

21. No application for renewal will be accepted after the expiry date. Application made after the expiry date will be treated as a fresh application.

Enquiries

22. For enquiries, please contact the EPD at 2838 3111 or email to enquiry@epd.gov.hk.

Remarks

- Under sections 9 and 10 of MCO, any person who imports or exports Part 1 Chemicals without an import or export permit (except for use for laboratory-scale research or as a reference standard) shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and to imprisonment for 1 year.
- Under section 63 of MCO, any person who (a) provides any information to a public officer for the purpose of an application under this Ordinance; or 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, commits an offence. That person shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months unless he/ she has taken all reasonable steps to establish a defence under sections 67 or 68 of the MCO.
- The possession of a permit issued under the MCO does not in any way exempt the permit holder from compliance with the provisions of other legislations.

Environmental Protection Department

December 2021

Personal Information Collection Statement

Purpose of Collection

1. The personal data provided by means of this form will be used by the Environmental Protection Department for one or more of the following purposes:
 - a. activities relating to the processing of your submission in this form;
 - b. administration and enforcement of the Mercury Control Ordinance;
 - c. pollution complaint investigations;
 - d. statistical and any other legitimate purposes; and
 - e. to facilitate communications between Government and yourself.

2. The provision of personal data by means of this form is voluntary. If you do not provide sufficient information, we may not be able to process your application.

Classes of Transferees

3. The personal data you provided by means of this form may be disclosed to:
 - a. other Bureaux and Departments of the Government of the HKSAR for the purposes mentioned in paragraph 1 above; and
 - b. other persons as permitted by the relevant legislation.

Access to Personal Data

4. You have a right of access and correction with respect to personal data as provided for in sections 18 and 22 and principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance. Your right of access includes the right to obtain a copy of your personal data provided by this form.

Enquiries

5. Enquiries concerning the personal data collected by means of this form, including the making of access and corrections, should be addressed to:

Senior Environmental Protection Officer (Knowledge Management)
Room 1201, Guardian House
32 Oi Kwan Road,
Wan Chai, Hong Kong
Tel: (852) 2838 3111
Fax: (852) 2838 3111