

**Permit Requirement under
the Chemical Weapons (Convention) Ordinance**

A. When is a Permit Required

In accordance with Section 8 of the Chemical Weapons (Convention) Ordinance ("the Ordinance"), an operator of a facility requires a permit granted by the Director-General of Trade and Industry ("the Director") in order to operate the facility during a particular calendar year if -

- a. **Schedule 1** chemicals (other than excluded chemicals) are likely to be produced, acquired, retained or used at, or transferred from, the facility during the year. Schedule 1 chemicals are **excluded chemicals** in relation to a facility and to a year if -
 - i. the total amount of those chemicals likely to be acquired, retained or used at, or transferred from, the facility during the year does not exceed 100 grams; and
 - ii. those chemicals will not be produced at the facility during that year; and
 - iii. those chemicals are intended only to be put to research, medical or pharmaceutical purposes; OR
- b. an amount of a **Schedule 2** chemical exceeding, in the aggregate, the Schedule 2 permit threshold for that chemical is likely to be produced, processed or consumed at a plant comprising, or comprising part of, the facility during the year. The **threshold** is -
 - i. 1 kg for a chemical listed in Part A of Schedule 2 and designated with an "*" ; or
 - ii. 100 kg for a chemical listed in Part A of Schedule 2 but is not designated with an "*" ; or
 - iii. 1 tonne for a chemical listed in Part B of Schedule 2; OR
- c. an amount of a **Schedule 3** chemical exceeding, in the aggregate, 30 tonnes of that chemical is likely to be produced at a plant comprising, or comprising part of, the facility during the year.

Schedule 1, 2 and 3 chemicals are listed at [Appendix](#) (pdf format) for reference.

2. To determine whether a permit is required, operators of facilities should ascertain whether their facilities handle any chemicals listed in any of the three Schedules to the Ordinance. If scheduled chemicals are involved, they should ascertain -

- a. which Schedule(s) the chemicals fall under;

- b. whether the activities they are engaged in would subject them to the permit requirement ; and/or
- c. if the quantity they handle exceeds the level for which a permit is required.

In case of doubt, operators may contact the Trade and Industry Department for advice.

B. Conditions for Granting a Permit

- 3. The Director would grant a permit to a facility provided that :
 - a. if Schedule 1 chemicals are involved - the facility produces Schedule 1 chemicals only for research, medical, or pharmaceutical purposes; **or** acquires, retains, transfers or uses Schedule 1 chemicals for research, medical, pharmaceutical or protective purposes¹;
 - b. if Schedule 2 chemicals are involved - the facility produces, processes and consumes Schedule 2 chemicals for purposes not prohibited by the Convention²; and
 - c. if Schedule 3 chemicals are involved - the facility produces Schedule 3 chemicals for purposes not prohibited under the Convention.
- 4. Operators of facilities which have been involved in or are likely to be involved in activities mentioned in paragraph 1 above are required to apply for permits from the Director in order to operate or continue to operate their facilities. A separate circular on the detailed procedures for permit applications will be issued shortly.

C. Obligations of a Permit Holder

- 5. An operator, once granted a permit by the Director under the Ordinance, i.e. a permit holder, is required under the Ordinance to observe all conditions which apply to a permit. The major obligations of a permit holder are summarized as follows -
 - a. **Report changes** - a permit holder should only be involved in activities regarding the chemicals for purposes approved by the Director in the permit. Prior written approval from the Director must be obtained if the permit holder plans to handle new chemicals or engage in new activities in his facility for purposes not included in the permit granted by the Director. Any other changes on information previously provided to the Director for the purpose of obtaining a permit must also be reported;
 - b. **Provision of Annual Reports** - a permit holder should notify the Director on or before specified dates and in specified formats the activities of his facility during the previous calendar year and anticipated for the coming calendar year. The timetable for providing these annual reports will be announced separately;
 - c. **Provision of Information and Documents** - a permit holder should provide to the Director information or documents requested within the time specified if the Director has reasonable grounds to believe that the permit holder is capable of giving information or documents relevant to a declaration required to be given to the

Organization for the Prohibition of Chemical Weapons (OPCW); and

- d. **Record Keeping** - a permit holder should keep and maintain specified records in accordance with the Ordinance for a period of not less than 3 years.

D. Information Required for Annual Reports

6. As mentioned in paragraph 5(b) above, a permit holder is required to provide annual reports to the Director before specified dates on activities carried out at the facility in the previous calendar year and activities anticipated to be carried out at the facility in the next calendar year. The information for inclusion in the reports depends on which schedule(s) the chemical(s) falls/fall under, the activities (e.g. production, processing, consumption, local transfer, import and/or export) and the amount of the scheduled chemical(s) involved. The following gives an overview of the types of reports required from permit holders.

Schedule 1 Chemicals

7. A permit holder who has been granted a permit by the Director to produce, acquire, retain, use at or transfer from a facility a Schedule 1 chemical is required to provide annual reports at different times of the year on the following :

- a. the amount of each Schedule 1 chemical produced, acquired, retained or used at, or transferred from the facility in the previous calendar year; and
- b. the anticipated amount of each Schedule 1 chemical to be produced, acquired, retained or used at, or transferred from in the facility in the next calendar year.

Changes to the information provided under paragraph 7(b) above are also required to be reported.

Schedule 2 Chemicals

8. A permit holder who has been granted a permit by the Director to produce, process or consume Schedule 2 chemicals in a facility with one or more plants is required to provide separate annual reports at different times of the year on the following :

- a. the amount of each Schedule 2 chemical produced, processed, consumed, transferred, imported and/or exported by each of the plant of the facility in the previous calendar year ; and
- b. the anticipated amount of each Schedule 2 chemical to be produced, processed, consumed, transferred, imported and/or exported by each of the plant of the facilities in the next calendar year.

Changes to the information provided under paragraph 8(b) above are also required to be reported.

Schedule 3 Chemicals

9. A permit holder who has been granted a permit by the Director to produce Schedule 3 chemicals at a facility with one or more plants is required to provide separate annual reports at different times of the year on the following :

- a. the amount of each Schedule 3 chemical produced by each of the plant of the facility in the previous calendar year; and
- b. the anticipated production activities of each Schedule 3 chemical to be produced by each of the plant of the facility in the next calendar year.

Changes to the information provided under paragraph 9(b) above are also required to be reported.

E. Record Keeping Requirement

10. As mentioned in paragraph 5(d) above, the Ordinance requires operators of facilities who have been granted with permits to keep records for not less than 3 years after the year to which the records relate. Such records may include those related to the facility, including each of the plant of the facility, the chemicals dealt with by the facility, the purposes to which the chemicals are put and other information relevant to declarations to be made to the OPCW. More details about the record keeping requirement will be announced in due course.

F. Consequences for Failure to Comply with the Permit Requirement

11. The Ordinance specifies acts which contravene the Ordinance and the penalties for such offences. It is an offence under the Ordinance if a person who is required to have a permit to operate his facility operates it without such a permit. The maximum penalty, on conviction, is a fine of \$500,000 and imprisonment for 5 years. A permit holder who, without reasonable excuse, contravenes a condition to which a permit is subject commits an offence and is liable on conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for 1 year. Any person who forges a permit, makes any alteration to a permit without the authority of the Director, or knowingly utters or makes use of a permit that has been forged or altered without the authority of the Director, commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years. Any person who fails to comply with a notice issued by the Director for giving information of relevance to a declaration required to be given to the OPCW also commits an offence and is liable on conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for 1 year.

12. In addition to the penalties mentioned above, the Trade and Industry Department may take other administrative actions against parties committing the above offences. Such administrative actions may involve, but shall not necessarily be confined to, any or all of the following: suspension or cancellation of permits, and refusal to issue licences for imports/exports of chemicals.

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1. "Protective purposes" is defined as purposes directly related to protection against toxic chemicals and to protection against chemical weapons.

2. "Purposes not prohibited under the Convention" means -
 - a. industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
 - b. protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
 - c. military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;
 - d. law enforcement including domestic riot control purposes.