

立法會 CB(1)59/02-03(05)號文件

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12 October 2002

Ms Anita Ho  
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Legislative Council Secretariat  
8 Jackson Road  
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Dear Ms Ho,

**Chemical Weapons (Convention) Bill**

Please find enclosed a note (in both Chinese and English) that set out the Administration's replies to your questions raised in your letter dated 24 April 2002.

Yours sincerely,

(Ellen Choy)  
for Secretary for Commerce, Industry and Technology

**《化學武器(公約)條例草案》－  
政府回應立法會助理法律顧問  
在二零零二年四月二十四日來函的提問**

**在何種情況下，管有《化學武器公約》附表所列的有毒化學品屬於《條例草案》第5條所定的罪行**

於2002年5月17日致立法會秘書處的文件中，政府闡述了其對詮釋《化學武器(公約)條例草案》（《條例草案》）第5條的意見。扼要來說，在《條例草案》下，列於《公約》三個附表的有毒化學品（“附表化學品”），如屬預定用於工業、農業、研究、醫療、藥物或其他和平目的，只要種類和數量符合此種目的，該等化學品不會視作化學武器。換言之，為和平目的管有該等化學品不屬犯罪，但有關人士或須符合《條例草案》內某些許可證及文件資料規定。

**化學品的管制**

2. 所有“附表化學品”以及某些符合《條例草案》內“未列於附表的特定有機化學品”<sup>1</sup>定義的有機化學品，均載列於《進出口(戰略物品)規例》的附表內，根據《進出口條例》，進出口上述物品須領有許可證。工業貿易署負責執行該許可證制度，因此該署存有該等化學品進出香港的紀錄。

3. 助理法律顧問詢問有關在香港生產“未列於附表的特定有機化學品”，並須根據《條例草案》第11條向工業貿易署署長作出呈報的例子。正如我們以前曾解釋，設施營運人如果在上一年度生產“未列於附表的特定有機化學品”超過200噸或30噸（視乎有關化學品的種類），始須作出呈報。1998年及2000年的調查顯示，有三間工廠在前一年曾生產“未列於附表的特定有機化學品”，其中一間表示曾生產超過200噸的紡織輔助品（例如聚乙二醇脂肪酸酯）。另外兩間分別生產用以製造肥皂的游離脂肪酸和藥物中間體，但兩者的生產量均不超過200噸的呈報起始量。

4. 《大規模毀滅武器（提供服務的管制）條例》禁止任何人向將會或可能協助發展、生產、取得或貯存化學、生物及核子武器、或將會或可能協助運送該等武器的人士提供服務。該條例並不管制使用、生產或管有“附表化學品”及“未列於附表的特定有機化學品”。

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<sup>1</sup> 例如潤滑物料、推進添加劑和輔助劑。

5. 助理法律顧問在 2002 年 4 月 24 日的來信中提及與化學品管制有關的數條條例，有關條例的管制範圍詳列於附件 A。

### **管有或使用化學武器**

6. 助理法律顧問詢問，根據數條現行條例，管有或使用化學武器是否刑事罪行。

7. 《條例草案》第 5 條訂明，任何人均不得使用、發展、生產、管有和參與轉讓化學武器，或為使用該等物品而進行軍事準備。該條文禁止在所有情況下使用、管有化學武器等。另一方面，任何人如在《侵害人身罪條例》第 13 條<sup>2</sup>、《火器及彈藥條例》第 16 條<sup>3</sup>、《刑事罪行條例》第 53 條<sup>4</sup>及《公安條例》第 33 條<sup>5</sup>適用範圍內的特定情況下使用化學武器，當局可援引上述條例內有關罪行的條文提出檢控。因此，《條例草案》第 5 條較廣泛涵蓋與化學武器有關的情況。另一點值得注意的是，上述其他條例旨在禁止某些刑事作為，不論該等作為有否涉及化學武器。

8. 助理法律顧問特別問及有關《條例草案》第 5(f)條及《大規模毀滅武器（提供服務的管制）條例》的關係。前者訂明任何人以任何方式協助、鼓勵或誘使任何人從事《公約》禁止的活動，即屬犯罪；而後者則禁止提供某些特定服務的行為。因此，前者所涵蓋的範圍較後者為廣。

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<sup>2</sup> 《侵害人身罪條例》第 13 條訂明“任何人意圖謀殺而—

(a) 企圖向任何人或企圖導致向任何人施用毒藥或其他殘害性物品，或企圖導致任何人服用毒藥或其他殘害性物品；或

(b) 向任何人射擊；或

(c) 拉動扳機或以任何其他方式，企圖用上膛槍械向任何人發射；或

(d) 企圖將任何人淹溺、使其窒息或將其咽喉扼勒，則不論是否對任何人身體造成損傷，均屬犯罪。”

<sup>3</sup> 《火器及彈藥條例》第 16 條訂明“任何人管有槍械或彈藥，意圖用以危害生命，或意圖使他人能用以危害生命，即屬犯罪。”

<sup>4</sup> 《刑事罪行條例》第 53 條訂明“任何人非法及惡意藉任何爆炸品導致爆炸，而該爆炸的性質相當可能會危害生命或對財產造成嚴重損害，則不論是否已對人身或財產實際造成損害，均屬犯罪。”

<sup>5</sup> 《公安條例》第 33 條訂明“任何人如無合法權限或合理辯解而在任何公眾地方攜有任何攻擊性武器，即屬犯罪。”

## 附表 1

9. 要完全理解《條例草案》的內容，讀者必須參考《化學武器公約》，我們因此認為把《公約》全文載列於《條例草案》附表 1 會利便讀者，他們將無需另行翻閱《公約》。澳洲的《Chemical Weapon (Prohibition) Act 1994》亦同樣在附表內載列《公約》全文。

10. 雖然中央人民政府已根據《基本法》第 153 條把《公約》適用於香港特別行政區，《公約》在香港不會自動享有法律效力和作用，《公約》的規定必須通過《條例草案》的條文才具法律效力。雖然《條例草案》通過後，載列於《條例草案》附表 1 的《公約》將會成為香港法例的一部份，但《公約》本身的條文不會自動在香港實施，除非透過《條例草案》內的條文獲得法律效力。

11. 《禁止生物武器與毒素發展、製造、儲存與銷毀公約》（見英文本附件 B）與《化學武器公約》相比，前者較為簡單，亦沒詳列實施細則。兩條公約的情況不同，我們認為在處理公約文本方面，沒有必要採取相同的做法。

## 中文文本

12. 助理法律顧問認為。《條例草案》第 10(3)、13(2)、15(2)、21(7)、(13)(b)、24(2)、38(1)及 43 條的中文文本似乎與英文文本並不脛合。我們與律政司審視上述條文後，並未發現中英文文本在內容上有差異。

工商及科技局  
二零零二年十月

## 規管化學品的法例

管制範圍	“附表化學品”是否受《條例》的管制？	“未列於附表的特定有機化學品” <sup>1</sup> 是否受《條例》的管制？
<b>1. 《化學品管制條例》(第145章)</b>		
<p>概括來說，《化學品管制條例》對輸入或輸出以及製造某些可用於生產麻醉品或精神藥物的指明化學品，實施牌照管制。受管制的化學品列於《化學品管制條例》的三個附表內。</p>	<p>《化學品管制條例》的所有附表均無載列任何“附表化學品”。</p>	<p>《化學品管制條例》附表列出的化學品，包括部份符合《化學武器(公約)條例草案》內“未列於附表的特定有機化學品”定義的有機化學品。</p> <p>由於在《化學武器(公約)條例草案》須就生產“未列於附表的特定有機化學品”作呈報的起始量相當高（視乎化學品種類，分別為200噸或30噸），已根據《化學品管制條例》申領牌照以生產某些有機化學品的設施營運人，同時需要在《化學武器(公約)條例草案》下作出呈報的機會很微。</p>

<sup>1</sup> 特定有機化學品是指除氧化物、硫化物、及金屬碳化物外的各類碳化物。有關設施營運人如在上一年度內曾生產超過200噸“未列於附表的特定有機化學品”，或者超過30噸含有磷、硫或氟的該類化學品，必須作出呈報。

管制範圍	“附表化學品”是否受《條例》的管制？	“未列於附表的特定有機化學品” <sup>1</sup> 是否受《條例》的管制？
2. 《危險藥物條例》(第134章)		
<p>《危險藥物條例》規定任何人如涉及製造、販運、管有及使用危險藥物，均須向衛生署署長申領許可證。危險藥物乃指在《危險藥物條例》附表 1 第 1 部所指明的藥物或物質。</p>	<p>《危險藥物條例》附表 1 第 1 部列出的化學品，並無包括任何“附表化學品”。</p>	<p>《危險藥物條例》附表 1 第 1 部列出的化學品，包括部份符合《化學武器(公約)條例草案》內“未列於附表的特定有機化學品”定義的有機化學品。</p> <p>由於在《化學武器 (公約)條例草案》須就生產“未列於附表的特定有機化學品”作呈報的起始量相當高（視乎化學品種類，分別為 200 噸或 30 噸），已根據《危險藥物條例》申領許可證以生產某些有機化學品的設施營運人，同時需要在《化學武器(公約)條例草案》下作出呈報的機會很微。</p>

管制範圍	“附表化學品”是否受《條例》的管制？	“未列於附表的特定有機化學品” <sup>1</sup> 是否受《條例》的管制？
3. 《危險品條例》(第295章)		
<p>《危險品條例》規定任何人製造、貯存、運送或使用任何危險品，均須申領牌照。受管制的危險品包括所有爆炸品、壓縮氣體、石油及其他發出易着火蒸氣的物質、發出有毒氣體或蒸氣的物質、腐蝕性物質、與水或空氣相互影響時會變為危險的物質、可自燃或隨時可能燃燒的物質，以及放射性物料。</p>	<p>受《危險品條例》管制的危險品，包括 15 種“附表化學品”，其中兩種為“附表 2 化學品”，13 種為“附表 3 化學品”。</p> <p>在 1998 年及 2000 年的調查中，只有一間研究機構表示曾使用兩種“附表 2 化學品”作研究用途；另有一間工廠表示曾生產一種“附表 3 化學品”。在這三種化學品中，只有一種作研究用途的“附表 2 化學品”受到《危險品條例》的管制。但在《化學武器(公約)條例草案》內，生產或使用該種化學品須申領許可證的起始量為一噸，該研究機構因使用該化學品作研究用途而需要根據《化學武器(公約)條例草案》申領許可證的機會很微。</p>	<p>部份符合《化學武器(公約)條例草案》內“未列於附表的特定有機化學品”定義的有機化學品，受到《危險品條例》的管制。</p> <p>由於在《化學武器(公約)條例草案》須就生產“未列於附表的特定有機化學品”作呈報的起始量相當高（視乎化學品種類，分別為 200 噸或 30 噸），已根據《危險品條例》申領牌照以生產某些有機化學品的設施營運人，同時需要在《化學武器(公約)條例草案》下作出呈報的機會很微。</p>

管制範圍	“附表化學品”是否受《條例》的管制？	“未列於附表的特定有機化學品” <sup>1</sup> 是否受《條例》的管制？
<b>4. 《藥劑業及毒藥條例》(第138章)</b>		
為保障公眾衛生及安全，《藥劑業及毒藥條例》規定藥劑師及以藥劑製品進口商或出口商身分經營業務的人士必須註冊。《藥劑業及毒藥條例》亦規定製造藥劑製品及銷售毒藥的人士必須向藥劑業及毒藥管理局申領牌照。	“附表化學品”不受《藥劑業及毒藥條例》的管制。	部份符合《化學武器(公約)條例草案》內“未列於附表的特定有機化學品定義”的有機化學品，受到《藥劑業及毒藥條例》的管制。  由於在《化學武器(公約)條例草案》須就生產“未列於附表的特定有機化學品”作呈報的起始量相當高(視乎化學品種類，分別為200噸或30噸)，已根據《藥劑業及毒藥條例》申領牌照以生產某些有機化學品的設施營運人，同時需要在《化學武器(公約)條例草案》下作出呈報的機會很微。
<b>5. 《廢物處置條例》(第354章)</b>		
為保障公眾安全及保護環境，《廢物處置條例》規定與廢物(包括化學廢物 <sup>2</sup> )的產生、貯存、收集及處置有關的地方和人士，均須申領牌照及向環境保護署署長登記。	設施營運人如在生產、使用或加工“附表化學品”的過程中，產生《廢物處置條例》所指的化學廢物，該設施營運人可能須要根據《廢物處置條例》的規定，向環境保護署署長登記為廢物產生者。	設施營運人如在生產“未列於附表的特定有機化學品”的過程中，產生《廢物處置條例》所指的化學廢物，該設施營運人可能須要根據《廢物處置條例》的規定，向環境保護署署長登記為廢物產生者。

<sup>2</sup> 在《廢物處置條例》下，化學廢物是指任何碎料、污水、以及任何工序或行業活動進行期間所產生的無用物質或副產品，而該等物質可導致污染或危害健康或可能對環境造成污染。



# **Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction**

*Signed at Washington, London, and Moscow April 10, 1972*

*Ratification advised by U.S. Senate December 16, 1974*

*Ratified by U.S. President January 22, 1975*

*U.S. ratification deposited at Washington, London, and Moscow March 26, 1975*

*Proclaimed by U.S. President March 26, 1975*

*Entered into force March 26, 1975*

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

Recognizing the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

Reaffirming their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of June 17, 1925,

Desiring to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere,

Desiring also to contribute to the realization of the purposes and principles of the Charter of the United Nations,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Recognizing that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end,

Determined, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk,

Have agreed as follows:

## Article I

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

- (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
- (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

## Article II

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after the entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.

## Article III

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of the Convention.

## Article IV

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

## Article V

The States Parties to this Convention undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. Consultation and cooperation pursuant to this article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

## Article VI

(1) Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

(2) Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

## Article VII

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

## Article VIII

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925.

## Article IX

Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes.

## Article X

(1) The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organizations to the further development and application of scientific discoveries in the field of bacteriology (biology) for prevention of disease, or for other peaceful purposes.

(2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international cooperation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

## Article XI

Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

## Article XII

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.

## Article XIII

(1) This Convention shall be of unlimited duration.

(2) Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

## Article XIV

(1) This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph (3) of this Article may accede to it at any time.

(2) This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

(3) This Convention shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositaries of the Convention.

(4) For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

(5) The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession and the date of the entry into force of this Convention, and of the receipt of other notices.

(6) This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter

of the United Nations.

#### Article XV

This Convention, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of the Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding states.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Convention.

DONE in triplicate, at the cities of Washington, London and Moscow, this tenth day of April, one thousand nine hundred and seventy-two.