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Secretary for Commerce and Industry
(Attention: Ms Ellen Choy,
Principal Assistant Secretary)
Commerce and Industry Bureau
Level 29 One Pacific Place
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Hong Kong

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BY FAX

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Dear Ms Choy,

Chemical Weapons (Convention) Bill

I am scrutinizing the above Bill with a view to advising Members on its legal and drafting aspects. I would be grateful if you could comment on or clarify the following -

Clause 4 - Power of Director to appoint the Clerical Officer Grade to exercise any of the powers and perform any of the duties conferred on the Director by this Ordinance

3. Why is it necessary to have an express power of delegation to the Clerical Officer Grade? This express power rarely appears in the Laws of Hong Kong. What powers are intended to be delegated to the Clerical Officer Grade in the Trade and Industry Department? Would the power of granting or revoking a permit be exercised by the Clerical Officer Grade? Is it that such exercise of power be subject to appeal to the Chief Executive under Clause 38 ?

Clause 5 - Use of chemical weapons

4. According to this clause, no person shall use, produce, possess or participate in the transfer of (which will include the import or export of) a chemical weapon. I note that in the Convention, such act is permitted if it is for purposes not prohibited, such as for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes and if the act involves limited quantities of toxic chemicals listed in the Schedules to the Convention. In the U.K. Chemical Weapons Act 1996, there are exclusions or further explanations to that section (see section 2(2) to (5) of that Act). For example, section 2(2) provides that "an object is not a chemical weapon if the person uses the object only for permitted purposes; and in deciding whether permitted purposes are intended the types and quantities of objects shall be taken into account."

Should the permitted uses be specified in Clause 5 so that every element of the criminal offence, including its exceptions, be easily ascertained?

Clause 7 - notification of finding of article believed to be chemical weapon

5. Where a person finds an article that the person believes may be a chemical weapon, the person shall notify the Administration. If he fails to do so, he shall be liable for a fine at \$100,000 and imprisonment for 6 months. For a person to believe an article that may be a chemical weapon is a subjective test. How is the Administration going to prove this very subjective test? Should that person at least have "some reasons" to have such belief? Is this a requirement under the Convention? There is no such provision in the U.K. Act.

Clauses 9 and 10 - Application for and grant of a permit

6. Are there any fees prescribed for the application and granting of a permit? According to the estimate or survey of the Administration, how many operators will likely to be required to apply for a permit because of the enactment of this Bill?

Clause 11 - notification to Director

7. How many operators will likely to be affected by this provision according to your estimate or survey?

Clause 12 - Reports to be submitted by permit holders

8. What does "the Organization" stand for in Clause 12(2)(a)(v)? This seems to be the first time that the short term "the Organization" appears.

Clause 29 - Part 2 Offences

9. In subsection (4), any person who contravenes section 7(1), i.e. any person who finds an article that he believes may be a chemical weapon and fails to notify the administration, commits an offence. Should similar defence provision as in subsection (2) be provided?

Clause 38 - Appeals

10. Why is an appeal against a decision of the Director whether to grant a permit or not be made to the Chief Executive? Is it a very exceptional administrative decision that warrants an appeal to the Chief Executive (not to the Chief Executive in Council nor to the Administrative Appeals Board)?

Follow-up action by the Administration after Panel meeting on 9 July 2001

11. During the Panel meeting on this Bill, members have raised various concerns. Have members concerns been addressed in this Bill?

12. I would appreciate it if you would let me have your reply in both English and Chinese at your earliest convenience.

Yours sincerely,

Anita HO
Assistant Legal Adviser

c.c. DoJ (Attn: Mr Geoffrey FOX, SALD and Mr Vidy CHEUNG, SGC)
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