

Hazardous Chemicals Control Bill**The Administration's Responses to Comments from
Assistant Legal Adviser in her Letter of
7 March 2007****Section 6(1), 7(1), 8(1), 9(1), 10(4), 11(3), 13(3), 22(3), 23(3) and 47(4)**

The expression "may not" in sections 11(3), 13(3), 22(3), 23(3) and 47(4) will be deleted as part of the proposed amendments to delete references to the requirements under the Rotterdam Convention and the Stockholm Convention in these provisions. As previously explained, the expression "may not" in section 10(4) should be rendered as "不得". It is also proper and appropriate to render "shall not" as "不得" in clauses 6(1), 7(1), 8(1) and 9(1) to achieve the same legal effect as that of the corresponding English provisions, i.e., denote the prohibition of manufacture, export, import or use of any hazardous chemical.

2. There are many precedents in which the expression "may not" is rendered as "不得". For example, s. 44(4) of Cap. 541D, s. 8 of Cap. 290D, and s. 11(3) and 8(3) of Cap. 589. In Cap. 589, "shall not" is also rendered as "不得" in s. 61(1), s. 34(2) and s. 18(2). The use of the expression "不得" in the relevant provisions does not give rise to any interpretation problem and it is not necessary to amend the Chinese text.

Sections 10(3) and (4), 11(2) and (3), 13(2) and (3), 19(1)(d), 22(2) and (3), 23(2) and (3) and 27(1)

3. As explained at the meeting on 29 January 2007, the Convention requirements are many and detailed. Not all requirements are set out in the Bill, but the Bill provides a framework enabling the Convention requirements to be implemented (through the establishment of a permit system to be administered by the Director). The Bill gives the Director power, inter alia, to issue, renew, suspend and cancel activity-based permits for the scheduled chemicals, and to impose or vary the permit conditions. The Director is entitled to take into account such factors as he considers relevant in deciding whether and how to exercise his discretion. Even if reference is not made to the Convention requirements in the Bill, the Director is not prevented from having regard to the relevant requirements of the Stockholm and Rotterdam

Conventions and performing his statutory functions in a manner consistent with the Convention requirements, so long as this is not contrary to the express provisions of the Bill. This position was noted by Members at the meeting.

4. The Administration's earlier paper on the draft implementation plan of the Hong Kong Special Administration Region under the Stockholm Convention does not mention that "the Stockholm Convention requirements will be met by various proposed legislative action items undertaken by various departments". As far as the Bill is concerned, the Administration considers that the Bill provides a statutory framework which would enable the Convention requirements to be implemented in relation to non-pesticide hazardous chemicals.

Environmental Protection Department
March 2007