

For discussion
21 February 2012

**LEGISLATIVE COUNCIL
PANEL ON COMMERCE AND INDUSTRY**

International Organizations (Privileges and Immunities) (Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction) Order

PURPOSE

This paper seeks Members' views on the proposed subsidiary legislation to be made under the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) to give effect to the privileges and immunities (Ps & Is) accorded to inspection teams from the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons (OPCW) and observers for the conduct of inspection activities under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Convention).

BACKGROUND

The Convention

2. The Convention, which came into force on 29 April 1997, is an international treaty that aims at banning the development, production, use and retention of chemical weapons. The People's Republic of China (PRC) is a signatory to the Convention and the Central People's Government has extended the application of the Convention to the Hong Kong Special Administrative Region (HKSAR) under Article 153¹ of the

¹ Article 153 of the Basic Law states that "The application to the Hong Kong Special Administrative

Basic Law.

3. The main requirements under the Convention are:
 - (a) General obligations: Each State Party is required to ban the use and development of chemical weapons and to destroy any chemical weapons or related production facilities in its possession or located in any place under its jurisdiction or control;
 - (b) Declarations: Each State Party is required to make annual declarations on forecast and actual production, consumption, storage, transfer, facilities used in such processes and other related activities concerning the toxic chemicals and their precursors listed in the three Schedules to the Convention; and
 - (c) Inspections: A State Party must allow and facilitate inspections of relevant sites and activities within its territory by an inspection team sent by the Technical Secretariat of the OPCW established under the Convention.

Chemical Weapons (Convention) Ordinance (Cap. 578)

4. To implement the Convention in the HKSAR, we introduced the Chemical Weapons (Convention) Ordinance (Cap. 578) which came into effect in 2004. The Ordinance provides for legal authority to:
 - (a) ban the use, development, production, acquisition, stockpiling, retention and participation in the transfer of chemical weapons, and seize chemical weapons found in the HKSAR for disposal in accordance with the provisions in the Convention;
 - (b) control and monitor the production and related activities pertinent to chemicals specified in the three Schedules to the Convention;
 - (c) require the submission of information from chemical facilities for the purposes of compiling annual declarations to the OPCW; and

Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.”

- (d) enable the inspection teams sent by the Technical Secretariat to conduct inspections of facilities in the HKSAR by granting such teams access to the facilities.

Inspections by the Technical Secretariat

5. The range of Ps & Is accorded to inspection teams sent by the Technical Secretariat and observers under the Convention if an inspection is conducted in the HKSAR are set out in paragraphs 10 to 15 in Part II of the Annex on Implementation and Verification to the Convention. A copy of the relevant Ps & Is is at **Annex**.

The Chemical Industry in the HKSAR

6. The chemical production industry in the HKSAR engages mainly in the processing and mixing of imported chemicals for commercial applications (e.g. pharmaceutical products, plastic materials, pesticides, perfumery, cosmetic and toiletries). There is no local production or storage of chemical weapons or declarable chemical facilities under the scope of the Convention. The Technical Secretariat has never conducted any inspection in the HKSAR and we consider that the chance of it conducting an inspection in the HKSAR in the near future not imminent.

LEGISLATIVE PROPOSAL

7. We propose to enact an Order under the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) to give effect to the Ps & Is accorded to inspection teams from the Technical Secretariat and observers under the Convention for the conduct of inspection activities in the HKSAR.

8. In line with the common law practice, provisions of international agreements applicable to the HKSAR, which affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR, should be transformed onto the domestic legal plane. Having

regard to our common law tradition, the best means of underpinning the relevant Ps & Is as conferred by Part II of the Annex on Implementation and Verification to the Convention is to enact local legislation in the form of an Order under the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) which will set out expressly and specifically the relevant Ps & Is.

9. Among the list of Ps & Is at Annex, we consider that the provisions set out in paragraph 10 (related to the granting of multiple entry/exit and/or transit visas to the inspectors and inspection assistants) and the second sentence in paragraph 13 (related to the abuse of Ps & Is) can be dealt with by administrative measures. The rest of the Ps & Is at Annex will be covered by the proposed Order.

LEGISLATIVE TIMETABLE

10. We plan to introduce the proposed Order into the Legislative Council for negative vetting shortly with a view to completing the legislative process within this legislative session.

**Commerce and Economic Development Bureau
February 2012**

**Convention on the Prohibition of the Development, Production,
Stockpiling and Use of Chemical Weapons and on their Destruction**

Annex on Implementation and Verification

Part II. General Rules of Verification

B. Privileges and Immunities

10. Each State Party shall, not later than 30 days after acknowledgement of receipt of the list of inspectors and inspection assistants or of changes thereto, provide multiple entry/exit and/or transit visas and other such documents to enable each inspector or inspection assistant to enter and to remain on the territory of that State Party for the purpose of carrying out inspection activities. These documents shall be valid for at least two years after their provision to the Technical Secretariat.

11. To exercise their functions effectively, inspectors and inspection assistants shall be accorded privileges and immunities as set forth in subparagraphs (a) to (i). Privileges and immunities shall be granted to members of the inspection team for the sake of this Convention and not for the personal benefit of the individuals themselves. Such privileges and immunities shall be accorded to them for the entire period between arrival on and departure from the territory of the inspected State Party or Host State, and thereafter with respect to acts previously performed in the exercise of their official functions.

- (a) The members of the inspection team shall be accorded the inviolability enjoyed by diplomatic agents pursuant to Article 29 of the Vienna Convention on Diplomatic Relations of 18 April 1961.
- (b) The living quarters and office premises occupied by the inspection team carrying out inspection activities pursuant to this Convention shall be accorded the inviolability and

protection accorded to the premises of diplomatic agents pursuant to Article 30, paragraph 1, of the Vienna Convention on Diplomatic Relations.

- (c) The papers and correspondence, including records, of the inspection team shall enjoy the inviolability accorded to all papers and correspondence of diplomatic agents pursuant to Article 30, paragraph 2, of the Vienna Convention on Diplomatic Relations. The inspection team shall have the right to use codes for their communications with the Technical Secretariat.
- (d) Samples and approved equipment carried by members of the inspection team shall be inviolable subject to provisions contained in this Convention and exempt from all customs duties. Hazardous samples shall be transported in accordance with relevant regulations.
- (e) The members of the inspection team shall be accorded the immunities accorded to diplomatic agents pursuant to Article 31, paragraphs 1, 2 and 3, of the Vienna Convention on Diplomatic Relations.
- (f) The members of the inspection team carrying out prescribed activities pursuant to this Convention shall be accorded the exemption from dues and taxes accorded to diplomatic agents pursuant to Article 34 of the Vienna Convention on Diplomatic Relations.
- (g) The members of the inspection team shall be permitted to bring into the territory of the inspected State Party or Host State Party, without payment of any customs duties or related charges, articles for personal use, with the exception of articles the import or export of which is prohibited by law or controlled by quarantine regulations.
- (h) The members of the inspection team shall be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions.

- (i) The members of the inspection team shall not engage in any professional or commercial activity for personal profit on the territory of the inspected State Party or the Host State.

12. When transiting the territory of non-inspected States Parties, the members of the inspection team shall be accorded the privileges and immunities enjoyed by diplomatic agents pursuant to Article 40, paragraph 1, of the Vienna Convention on Diplomatic Relations. Papers and correspondence, including records, and samples and approved equipment, carried by them, shall be accorded the privileges and immunities set forth in paragraph 11 (c) and (d).

13. Without prejudice to their privileges and immunities the members of the inspection team shall be obliged to respect the laws and regulations of the inspected State Party or Host State and, to the extent that is consistent with the inspection mandate, shall be obliged not to interfere in the internal affairs of that State. If the inspected State Party or Host State Party considers that there has been an abuse of privileges and immunities specified in this Annex, consultations shall be held between the State Party and the Director-General to determine whether such an abuse has occurred and, if so determined, to prevent a repetition of such an abuse.

14. The immunity from jurisdiction of members of the inspection team may be waived by the Director-General in those cases when the Director-General is of the opinion that immunity would impede the course of justice and that it can be waived without prejudice to the implementation of the provisions of this Convention. Waiver must always be express.

15. Observers shall be accorded the same privileges and immunities accorded to inspectors pursuant to this section, except for those accorded pursuant to paragraph 11 (d).