

LEGISLATIVE COUNCIL BRIEF

Hazardous Chemicals Control Bill

INTRODUCTION

A At the meeting of the Executive Council on 9 May 2006, the Council ADVISED and the Chief Executive ORDERED that the Hazardous Chemicals Control Bill (the Bill), at **Annex A**, should be introduced into the Legislative Council to regulate the import, export, manufacture and use of non-pesticide hazardous chemicals^{Note 1}, including those covered by the Stockholm Convention on Persistent Organic Pollutants (the Stockholm Convention) and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention).

JUSTIFICATIONS

2. The Stockholm Convention and the Rotterdam Convention deal with hazardous chemicals including pesticides and non-pesticide chemicals. The Stockholm Convention covers ten pesticides/industrial chemicals (eight pesticides, one being both a pesticide and a non-pesticide industrial chemical, and one non-pesticide industrial chemical) and two unintentionally produced by-products. The Rotterdam Convention covers 24 pesticides, four severely hazardous pesticide formulations and 11 non-pesticide industrial chemicals. In gist, the Stockholm Convention aims to restrict the manufacture and use of persistent organic pollutants with a view to ultimately eliminating them. The Rotterdam Convention aims to regulate international trade in certain hazardous chemicals and pesticides.

3. In Hong Kong, the registration and control of pesticides is provided for under the Pesticides Ordinance (Cap 133), which is administered by the Agriculture, Fisheries and Conservation Department. An import/export licence is also required to be obtained under the consignment-based licensing system under the Import and Export Ordinance (Cap 60) for the import/export of any pesticide (save for cases of

^{Note 1} The expression “non-pesticide hazardous chemical” means any chemical, other than a chemical that is a pesticide, that has potentially harmful or adverse effect on human health or the environment.

transit^{Note 2} and air transshipment cargo^{Note 3}). The power to issue such a licence is now delegated by the Director-General of Trade and Industry to the Director of Agriculture, Fisheries and Conservation.

4. The Stockholm Convention entered into force on 17 May 2004. The Central People's Government has applied the Stockholm Convention to the Hong Kong Special Administrative Region (HKSAR) since 11 November 2004. The Stockholm Convention requires each contracting party to prepare its national implementation plan. While it does not expressly impose a deadline for enacting implementing legislation, there is a need for the HKSAR to use its best endeavours to put such legislation in place as soon as practically possible. The Rotterdam Convention entered into force on 24 February 2004 and became applicable to the People's Republic of China on 20 June 2005. The Rotterdam Convention has not been applied to the HKSAR because we are not in a position to comply with the Rotterdam Convention without the necessary legislation. In order for the HKSAR to comply with the Stockholm Convention and the Rotterdam Convention, we consider it necessary to introduce the Bill to regulate non-pesticide hazardous chemicals that are subject to either Convention, in a way very similar to how hazardous pesticides are regulated under the Pesticides Ordinance (Cap 133) and the Import and Export Ordinance (Cap 60). We also consider it necessary for the Bill to allow the flexibility of regulating in the future other non-pesticide hazardous chemicals that impose potentially harmful or adverse effects on human health or the environment.

5. We therefore propose that the Bill should provide for the prohibition of the import, export, manufacture and use of non-pesticide hazardous chemicals except under and in accordance with an activity-based permit. The Environmental Protection Department (EPD) would be responsible for processing applications for the issue or renewal of such permits and related matters. The EPD will also be responsible for enforcement action under the Bill and will work closely with the Customs and Excise Department, which is responsible for carrying out routine inspection at control points, dealing with smuggling cases and referring cases of suspected offences under the Bill to the EPD for follow-up actions.

6. Non-pesticide hazardous chemicals to be regulated under the Bill are divided into two types, i.e. Type 1 chemicals and Type 2 chemicals. Type 1 chemicals now include two non-pesticide industrial chemicals (i.e.

Note 2 Articles in transit refer to any article which –

- (a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and
- (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong

Note 3 Air transshipment cargo means transshipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of Hong Kong International Airport.

hexachlorobenzene and polychlorinated biphenyls (PCB)) regulated under the Stockholm Convention (PCB also regulated under the Rotterdam Convention). Type 2 chemicals now include ten non-pesticide industrial chemicals regulated under the Rotterdam Convention. These two types of chemicals would be subject to the following proposed controls -

- (a) the manufacture of any Type 1 chemical is not allowed, except where the chemical is for use for laboratory-scale research purpose or as a reference standard and the manufacture of the chemical is carried out under and in accordance with a permit issued under the Bill;
- (b) the import into Hong Kong, the export from Hong Kong or the use of any Type 1 chemical is not allowed except where it is carried out under and in accordance with a permit issued under the Bill; and
- (c) the import into Hong Kong, the export from Hong Kong, or the manufacture or use of any Type 2 chemical is not allowed except where it is carried out under and in accordance with a permit issued under the Bill.

Each permitted activity (i.e. import, export, manufacture or use) will be specified in a permit which is valid for 12 months.

7. We also propose that, save in cases of transit and air transshipment cargo discussed in paragraph 9 below, an import/export licence should be obtained under the consignment-based licensing system under the Import and Export Ordinance (Cap 60) for the import/export of any non-pesticide hazardous chemicals. This proposed arrangement is very similar to that adopted in respect of hazardous pesticides. In this regard, the Import and Export (General) Regulations (Cap 60A) will be amended as part of the Bill. We also propose that the power to issue such a licence under the Import and Export Ordinance (Cap 60) should be delegated to the Director of Environmental Protection (DEP) so that he can deal with the issue of licences and imposition of conditions. In respect of exported hazardous chemicals regulated under the Rotterdam Convention, we would require information such as a safety data sheet, labeling, and information on precautionary measures in handling when considering applications for the issue of an export licence. The licence would, as a licence condition, require the provision of such information to accompany the export.

8. To comply with the Stockholm Convention and the Rotterdam Convention, transshipment cargo^{Note 4} of non-pesticide hazardous chemicals that are regulated under the two Conventions would need to be subject to import/export control and so would non-pesticide hazardous chemicals that are in transit and regulated under the Stockholm Convention.

9. In the light of comments from carriers about their difficulty in complying with the import/export licensing requirements relating to transit and air transshipment cargo, we propose that carriers need not apply for import/export licences under the Import and Export Ordinance (Cap 60). The import/export control requirement under the two Conventions referred to in paragraph 8 above will be met by the following measures -

- (a) carriers would need to have obtained permits under the Bill for the import/export of those chemicals;
- (b) they would need to have obtained explicit permissions from both export and import countries; and
- (c) they would need to notify EPD within a period of seven days of arrival of the cargo the details of the cargo with relevant documents.

The requirements in (b) and (c) above will be imposed as conditions in the import and export permits under the Bill. This proposal aims to strike a balance between trade facilitation and compliance with the Conventions.

THE BILL

10. The main provisions of the Bill are set out below -

- (a) Part 1 (Clauses 1 to 5) contains preliminary provisions. In particular, it provides for the application of the Bill to a non-pesticide hazardous chemical that is specified in Schedule 1 or 2 of the Bill. It further provides that the Bill does not apply to such a chemical in certain cases or circumstances specified in the Schedules. Part 1 also provides that the Bill is to bind the HKSAR Government;

^{Note 4} Transshipment cargo means any imported article that -

- (a) is consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong; and
- (b) is or is to be removed from the vessel, aircraft or vehicle in which it was imported and either returned to the same vessel, aircraft or vehicle or transferred to another vessel, aircraft or vehicle before being exported, whether it is or is to be transferred directly between such vessels, aircraft or vehicles or whether it is to be landed in Hong Kong after its importation and stored, pending exportation.

- (b) Part 2 (Clauses 6 to 9) deals with the restrictions on the manufacture, export, import, and use of Type 1 chemicals and Type 2 chemicals. That Part provides that except under and in accordance with a permit, a person is not allowed to manufacture, export, import or use any Type 1 chemical or Type 2 chemical, or cause any such chemical to be manufactured, exported, or imported;
- (c) Part 3 (Clauses 10 to 18) deals with matters relating to permits. In particular, that Part provides for the issue and renewal of permits. It also empowers DEP to impose conditions on a permit issued under the Bill and to vary such conditions;
- (d) Part 4 (Clauses 19 to 31) deals with the cancellation and suspension of permits. In particular, that Part empowers DEP to cancel or suspend permits. It also empowers DEP to give directions on the disposal of any Type 1 chemical or Type 2 chemical when a permit is cancelled by him, and to vary such directions;
- (e) Part 5 (Clauses 32 to 37) provides for the enforcement powers of authorized officers and the forfeiture of things seized by such officers; and
- (f) Part 6 (Clauses 38 to 51) contains miscellaneous provisions. In particular, it provides for the appeals to the Administrative Appeals Board against the decisions of DEP given under the Bill and empowers the Secretary for the Environment, Transport and Works (SETW) to grant exemptions from any provision of the Bill on a case-by-case basis. Part 6 also empowers DEP to issue duplicates of permits and SETW to make regulations for the better carrying out of the Bill, including making regulations to prescribe fees payable under the Bill.

11. The relevant provisions in the Import and Export (General) Regulations (Cap 60A) being amended as part of the Bill are at **Annex B**.

B

LEGISLATIVE TIMETABLE

12. The legislative timetable is -

Publication in the Gazette	12 May 2006
First Reading and commencement of Second Reading debate	24 May 2006

IMPLICATIONS OF THE PROPOSAL

C 13. The proposal has financial, civil service, economic, sustainability and environmental implications as set out at **Annex C**.

14. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will bind the Government. The proposal has no productivity implications.

PUBLIC CONSULTATION

15. An initial survey conducted by EPD in early 2005 indicates little current trading and/or domestic use of the chemicals covered by the Stockholm Convention and Rotterdam Convention in Hong Kong. We held a stakeholder consultation workshop on the preparation of the draft Hong Kong Implementation Plan for the Stockholm Convention (HKIP) on 18 November 2005. In gist, the stakeholders appreciated the quality of the work that underpinned the preparation of the draft HKIP, which included the enactment of the Bill as one of the action items.

16. On 27 February 2006, we consulted the Legislative Council Panel on Environmental Affairs on the draft HKIP and the legislative proposals. Members were in general in support of the draft HKIP and the legislative proposals. Some members asked for more information on who would be affected by the legislative proposals and whom we had consulted in this regard.

17. On 3 March 2006, we held a briefing session for the relevant trade and stakeholders and clarified the legislative proposals. Following the briefing session, we received written substantive comments from the Business Environment Council Limited and Carrier Liaison Group. In gist, the former was supportive. It asked that the Government should provide enough guidelines on the permit application procedures and consider the cost implications on the trade. It also asked for a cost effective licensing approach for transshipment of scheduled chemicals and scheduled chemicals in transit.

18. The latter's main concern relates to the import/export control over air transshipment cargo. It has proposed that all proposed licences or permits must be in electronic form and e-process enabled. It has also made a general proposal of a "one for all" general licence to the carriers for the purpose of applying for transshipment licence/permit for all commodities.

19. On 13 March 2006, we consulted the Advisory Council on the Environment on the draft HKIP, including the legislative proposals. The Council supported the initiatives in the draft HKIP and the legislative proposals.

PUBLICITY

20. A press release will be issued on 10 May 2006. A spokesman will be available to handle enquiries.

BACKGROUND

21. The Stockholm Convention is a global treaty to protect human health and the environment from the potentially harmful persistent organic pollutants. In implementing the Convention, governments will take measures to restrict the production/use and/or reduction/ultimate elimination of an initial set of 12 persistent organic pollutants identified by the United Nations Environmental Programme.

22. The Rotterdam Convention aims to promote shared responsibility and cooperative efforts among the contracting parties in the international trade of certain hazardous chemicals and pesticides in order to protect human health and the environment from potential harm. The Convention has introduced a mandatory Prior Informed Consent Procedure to monitor and control the import and export of certain hazardous chemicals and disseminate national importing decisions to the contracting parties.

ENQUIRY

23. Any enquiry on this brief should be directed to Mr Esmond Lee, Deputy Director of Environmental Protection (telephone number: 2594 6004).

Environmental Protection Department
10 May 2006

HAZARDOUS CHEMICALS CONTROL BILL

CONTENTS

Clause Page

PART 1

PRELIMINARY

1.	Short title and commencement	1
2.	Interpretation	1
3.	Application of Ordinance	4
4.	Ordinance binds Government	4
5.	Criteria under Rotterdam Convention or Stockholm Convention be followed when determining whether certain chemical is hazardous chemical	5

PART 2

REGULATION OF SCHEDULED CHEMICALS

6.	Restriction on manufacture of scheduled chemicals	5
7.	Restriction on export of scheduled chemicals	5
8.	Restriction on import of scheduled chemicals	6
9.	Restriction on use of scheduled chemicals	6

PART 3

**ISSUE, ETC. OF PERMITS AND VARIATION OF PERMIT
CONDITIONS**

Issue and renewal of permits, etc.

10.	Issue and renewal of permits, etc.	6
11.	Power of Director to impose conditions on permits	8

12.	Refusal of application for permits, etc.	9
-----	--	---

Variation of permit conditions, etc.

13.	Power of Director to vary permit conditions	9
14.	Director to notify his decisions to vary or refuse to vary permit conditions	10
15.	When Director's decisions to vary permit conditions take effect	10
16.	Return of permits to Director after variation of permit conditions takes effect	10
17.	Director to issue permits with conditions varied	11

Offences regarding contravention of permit conditions

18.	Offences regarding contravention of permit conditions	11
-----	---	----

PART 4

CANCELLATION OR SUSPENSION OF PERMITS

Cancellation of permits

19.	Power of Director to cancel permits	11
20.	When cancellation of permits takes effect	12
21.	Return of permits to Director on cancellation of permits	12
22.	Power of Director to give directions regarding disposal of scheduled chemicals on cancellation of permits, etc.	12
23.	Power of Director to vary directions given under section 22	13
24.	Director to notify his decisions to vary or refuse to vary directions	14
25.	When Director's decisions to vary directions take effect	14
26.	Offences regarding failing to comply with Director's directions in respect of disposal of scheduled chemicals	14

Suspension of permits

27.	Power of Director to suspend permits	15
28.	When suspension of permits takes effect	15
29.	Return of permits to Director on suspension of permits	15
30.	Return of permits to permit holders after expiry of suspension periods	16

*Supplementary provisions regarding cancellation or
suspension of permits*

31.	Supplementary provisions regarding cancellation or suspension of permits	16
-----	--	----

PART 5

ENFORCEMENT POWERS, ETC.

32.	Power to enter non-domestic premises, etc. for routine inspection	18
33.	Power to enter any premises, etc. in other cases	19
34.	Warrants to be obtained for exercising powers under section 33	21
35.	Production of proof of identity	21
36.	Search by same sex	21
37.	Forfeiture of things seized by authorized officers	22

PART 6

MISCELLANEOUS PROVISIONS

38.	Appointment of authorized officers	23
39.	Director's power to issue duplicates of permits	23
40.	Provision of false or inaccurate information, etc.	24
41.	Proceedings for or in connection with acts of employees	25
42.	Appeals to Administrative Appeals Board	25
43.	Admissibility of documents, etc.	25
44.	Service of notices, etc.	26
45.	Power of Secretary to make regulations – General	26
46.	Power of Secretary to make regulations – Fees	28

47.	Exemptions	28
48.	Delegation	29
49.	Power of Director to specify forms	29
50.	Power of Secretary to amend Schedules	29
51.	Related amendments	29
Schedule 1		29
Schedule 2		31
Schedule 3	Related Amendments	33

A BILL

To

Regulate the manufacture, export, import and use of chemicals that are not pesticides and have potentially harmful or adverse effects on human health or the environment (including such chemicals that are subject to the regulation of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade or the Stockholm Convention on Persistent Organic Pollutants); and to provide for related, consequential or incidental matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Hazardous Chemicals Control Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires –

“authorized officer” (獲授權人員) means the Director or any public officer appointed to be an authorized officer under section 38;

“container” (容器) includes a packet;

“court” (法院) includes a magistrate;

“Director” (署長) means the Director of Environmental Protection or any Deputy Director of Environmental Protection;

“duplicate permit” (許可證複本) means a duplicate permit issued under section 39;

“export” (出口), in relation to a scheduled chemical, means to take the chemical, or cause the chemical to be taken, out of Hong Kong by air, land or water;

“function” (職能) includes a power and a duty;

“hazardous chemical” (有毒化學品) means any chemical that –

- (a) is not a pesticide; and
- (b) has potentially harmful or adverse effect on human health or the environment,

including any such chemical that is subject to the regulation of the Rotterdam Convention or the Stockholm Convention;

“import” (進口), in relation to a scheduled chemical, means to bring the chemical, or cause the chemical to be brought, into Hong Kong by air, land or water;

“manufacture” (製造), in relation to a scheduled chemical, includes causing the chemical to be manufactured;

“notice of cancellation” (取消通知) means a notice referred to in section 19;

“notice of suspension” (暫時吊銷通知) means a notice referred to in section 27;

“part” (部分), in relation to any thing, means any part of that thing, whether or not that part is a constituent element of that thing;

“permit” (許可證) means a permit issued or renewed under section 10;

“permit holder” (許可證持有人), where the context requires, includes a holder of a permit which –

- (a) has been or is to be cancelled or suspended under section 19 or 27; or
- (b) has been or is to be partially cancelled or suspended under section 31;

“pesticide” (除害劑) means a pesticide as defined in section 2 of the Pesticides Ordinance (Cap. 133);

“premises” (處所) includes any place and in particular includes any aircraft, vehicle or vessel;

“prescribed fee” (訂明費用), in relation to any matter, means the fee payable under this Ordinance in relation to that matter and prescribed by any regulation made under section 46;

“Rotterdam Convention” (《鹿特丹公約》) means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998 as amended from time to time and as applied to Hong Kong;

“scheduled chemical” (受管制化學品) means a Type 1 chemical or Type 2 chemical;

“Secretary” (局長) means the Secretary for the Environment, Transport and Works;

“Stockholm Convention” (《斯德哥爾摩公約》) means the Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001 as amended from time to time and as applied to Hong Kong;

“thing” (物品) includes a substance;

“Type 1 chemical” (第 1 類化學品) means a hazardous chemical specified in Part 1 of Schedule 1;

“Type 2 chemical” (第 2 類化學品) means a hazardous chemical specified in Part 1 of Schedule 2;

“vary” (更改) –

- (a) in relation to the conditions of a permit, means –
 - (i) to modify any of those conditions;
 - (ii) to substitute any condition for any of those conditions;

- (iii) to add any condition to those conditions;
 - (iv) to cancel any of those conditions; or
 - (v) to do 2 or more of the acts mentioned in subparagraphs (i), (ii), (iii) and (iv); or
- (b) in relation to the directions given under section 22, means –
- (i) to modify any of those directions;
 - (ii) to substitute any direction for any of those directions;
 - (iii) to add any direction to those directions;
 - (iv) to cancel any of those directions; or
 - (v) to do 2 or more of the acts mentioned in subparagraphs (i), (ii), (iii) and (iv).

3. Application of Ordinance

(1) Subject to subsections (2) and (3), this Ordinance applies to a scheduled chemical, whether or not the chemical exists alone or is a part of any preparation or product.

(2) This Ordinance does not apply to –

- (a) a Type 1 chemical to the extent as provided in Part 2 of Schedule 1; and
- (b) a Type 2 chemical to the extent as provided in Part 2 of Schedule 2.

(3) In this section, “preparation” (製劑) means a mixture or solution composed of 2 or more substances.

4. Ordinance binds Government

- (1) Subject to subsection (2), this Ordinance binds the Government.
- (2) No prescribed fee is payable by the Government.

5. Criteria under Rotterdam Convention or Stockholm Convention be followed when determining whether certain chemical is hazardous chemical

When determining whether a chemical is a hazardous chemical for the purposes of this Ordinance, the criteria to be followed as set out in or required under the Rotterdam Convention or the Stockholm Convention in determining whether a chemical should be subject to the regulation of the Convention are to be taken into account.

PART 2

REGULATION OF SCHEDULED CHEMICALS

6. Restriction on manufacture of scheduled chemicals

(1) Except under and in accordance with a permit, a person shall not manufacture any scheduled chemical.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(3) In any proceedings for an offence under subsection (1), it is a defence for the person charged to prove that he did not know and could not with reasonable diligence have known that the chemical was a scheduled chemical.

7. Restriction on export of scheduled chemicals

(1) Except under and in accordance with a permit, a person shall not export any scheduled chemical.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(3) In any proceedings for an offence under subsection (1), it is a defence for the person charged to prove that he did not know and could not with reasonable diligence have known that the chemical was a scheduled chemical.

8. Restriction on import of scheduled chemicals

(1) Except under and in accordance with a permit, a person shall not import any scheduled chemical.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(3) In any proceedings for an offence under subsection (1), it is a defence for the person charged to prove that he did not know and could not with reasonable diligence have known that the chemical was a scheduled chemical.

9. Restriction on use of scheduled chemicals

(1) Except under and in accordance with a permit, a person shall not use any scheduled chemical.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(3) In any proceedings for an offence under subsection (1), it is a defence for the person charged to prove that he did not know and could not with reasonable diligence have known that the chemical was a scheduled chemical.

PART 3

ISSUE, ETC. OF PERMITS AND VARIATION OF PERMIT CONDITIONS

Issue and renewal of permits, etc.

10. Issue and renewal of permits, etc.

(1) The Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, issue a permit for the carrying out of the following activities –

- (a) the manufacture of one or more scheduled chemicals;

- (b) the export of one or more scheduled chemicals;
- (c) the import of one or more scheduled chemicals;
- (d) the use of one or more scheduled chemicals.

(2) The Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, renew a permit issued under subsection (1).

(3) When considering whether to exercise his power under subsection (1) or (2), the Director is to have regard to –

- (a) other enactments that govern the activity to which the application relates; and
- (b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(4) The Director may not –

- (a) issue or renew a permit authorizing the manufacture of any Type 1 chemical unless –
 - (i) the chemical is only for –
 - (A) use for laboratory-scale research purpose;
 - (B) use as a reference standard for chemical analysis; or
 - (C) use for laboratory-scale research purpose and as a reference standard for chemical analysis; and
 - (ii) the issue or renewal of the permit would not be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention; and
- (b) issue or renew a permit authorizing the manufacture of any Type 2 chemical, or export, import or use of any scheduled chemical unless the issue or renewal of the

permit would not be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention.

11. Power of Director to impose conditions on permits

(1) Without affecting the generality of section 40(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1), the Director may, on issuing or renewing a permit under section 10, impose –

- (a) any such condition as he considers appropriate that relates to any premises at which the activity authorized under the permit is to be carried out;
- (b) any such condition as he considers appropriate that relates to any intended purpose or mode of operation of the activity authorized under the permit;
- (c) any such condition as he considers appropriate that requires the permit holder to comply with any other enactment that governs the activity authorized under the permit; and
- (d) any such condition as he considers appropriate for the protection of public health or the environment.

(2) When considering whether to impose any condition under subsection (1), or the conditions to be imposed under that subsection, the Director is to have regard to –

- (a) other enactments that govern the activity authorized under the permit; and
- (b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(3) The Director may not impose any condition that is inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention, but may impose a condition even if the imposition of

such condition may result in a more stringent measure than any of those required by the Conventions.

12. Refusal of application for permits, etc.

If the Director decides –

- (a) to refuse an application for the issue of a permit under section 10(1); or
- (b) to refuse an application for the renewal of a permit under section 10(2),

he shall, by notice in writing served on the applicant, inform the applicant of his decision and the reasons for his decision.

Variation of permit conditions, etc.

13. Power of Director to vary permit conditions

(1) The Director may vary the conditions of a permit –

- (a) on his own initiative; or
- (b) on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application.

(2) When considering whether to vary the conditions of a permit under subsection (1), or the variation to be made under that subsection, the Director is to have regard to –

- (a) other enactments that govern the activity authorized under the permit; and
- (b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(3) The Director may not vary the conditions of a permit if the variation would be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention, but may vary the

conditions of a permit even if the variation may result in a more stringent measure than any of those required by the Conventions.

14. Director to notify his decisions to vary or refuse to vary permit conditions

- (1) If the Director decides –
 - (a) to vary the conditions of a permit under section 13; or
 - (b) to refuse an application for the variation of the conditions of a permit under section 13,

he shall, by notice in writing served on the permit holder, inform the permit holder of his decision and the reasons for his decision.

- (2) Where the Director decides to vary the conditions of a permit under section 13, the notice shall state the manner in which the conditions are to be varied.

15. When Director's decisions to vary permit conditions take effect

- (1) Where the Director decides to vary the conditions of a permit under section 13, the variation is to take effect on the day specified in the notice referred to in section 14 for that purpose.

- (2) A variation is to take effect under subsection (1) notwithstanding that an appeal has been or is to be lodged under section 42(b) against the Director's decision.

16. Return of permits to Director after variation of permit conditions takes effect

- (1) After a variation of the conditions of a permit takes effect, the conditions of the permit shall be read subject to the variation.

- (2) Notwithstanding subsection (1), as soon as practicable after the variation takes effect, the permit holder shall return the permit to the Director.

(3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 1 and to imprisonment for 6 months.

17. Director to issue permits with conditions varied

(1) If the conditions of a permit are varied under section 13(1), the Director shall issue a permit, with its conditions varied, to the permit holder.

(2) The Director may refuse to issue a permit under subsection (1) to a permit holder if the permit holder fails to return the permit required to be returned under section 16.

(3) A permit issued under subsection (1) is to be regarded as a permit issued under section 10(1).

Offences regarding contravention of permit conditions

18. Offences regarding contravention of permit conditions

A permit holder who contravenes a condition of his permit that falls within the description of section 11(1)(a), (b), (c) or (d) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

PART 4

CANCELLATION OR SUSPENSION OF PERMITS

Cancellation of permits

19. Power of Director to cancel permits

- (1) The Director may cancel a permit if –
- (a) the permit holder contravenes any provision of this Ordinance;
 - (b) the permit holder contravenes any condition of the permit;

- (c) the cancellation appears to the Director to be necessary for the protection of public health or the environment; or
- (d) the cancellation appears to the Director to be necessary in order to comply with any of the requirements under the Rotterdam Convention and the Stockholm Convention.

(2) If the Director decides to cancel a permit, he shall, by notice in writing served on the permit holder, inform the permit holder of his decision and the reasons for his decision.

20. When cancellation of permits takes effect

(1) Where the Director decides to cancel a permit under section 19, the cancellation is to take effect on the day specified in the notice of cancellation for that purpose.

(2) A cancellation is to take effect under subsection (1) notwithstanding that an appeal has been or is to be lodged under section 42(d) against the Director's decision.

21. Return of permits to Director on cancellation of permits

(1) As soon as practicable after a cancellation of a permit takes effect, the permit holder shall return the permit to the Director.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1 and to imprisonment for 6 months.

22. Power of Director to give directions regarding disposal of scheduled chemicals on cancellation of permits, etc.

(1) Where the Director cancels a permit under section 19, he may give such directions as he considers appropriate regarding the disposal of any scheduled chemical that, but for the cancellation, is authorized to be manufactured, exported, imported or used under the permit, including the

disposal of any thing of which the chemical is a part and any container that is used for containing the chemical or thing.

(2) When considering whether to give any direction under subsection (1), or the directions to be given under that subsection, the Director is to have regard to –

- (a) other enactments that govern the disposal of the chemical concerned; and
- (b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(3) The Director may not give any direction that is inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention, but may give a direction even if the giving of such direction may result in a more stringent measure than any of those required by the Conventions.

(4) If the Director decides to give any direction under subsection (1), he shall specify such direction in the notice of cancellation.

23. Power of Director to vary directions given under section 22

(1) The Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, vary the directions given under section 22.

(2) When considering whether to vary the directions under subsection (1), or the variation to be made under that subsection, the Director is to have regard to –

- (a) other enactments that govern the disposal of the chemical concerned; and
- (b) the requirements under the Rotterdam Convention and the Stockholm Convention.

(3) The Director may not vary the directions given under section 22 if the variation would be inconsistent with any of the requirements under the

Rotterdam Convention and the Stockholm Convention, but may vary the directions even if the variation may result in a more stringent measure than any of those required by the Conventions.

24. Director to notify his decisions to vary or refuse to vary directions

- (1) If the Director decides –
 - (a) to vary the directions given under section 22; or
 - (b) to refuse an application for the variation of the directions given under section 22,

he shall, by notice in writing served on the permit holder, inform the permit holder of his decision and the reasons for his decision.

- (2) Where the Director decides to vary the directions given under section 22, the notice shall state the manner in which the directions are to be varied.

25. When Director's decisions to vary directions take effect

Where the Director decides to vary the directions given under section 22, the variation is to take effect on the day specified in the notice referred to in section 24 for that purpose.

26. Offences regarding failing to comply with Director's directions in respect of disposal of scheduled chemicals

A permit holder who fails to comply with any of the directions given under section 22 or, where the directions are varied under section 23, any of such directions as varied, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

Suspension of permits

27. Power of Director to suspend permits

(1) The Director may suspend a permit for such period as he considers appropriate if –

- (a) the permit holder contravenes any provision of this Ordinance;
- (b) the permit holder contravenes any condition of the permit;
- (c) the suspension appears to the Director to be necessary for the protection of public health or the environment; or
- (d) the suspension appears to the Director to be necessary in order to comply with any of the requirements under the Rotterdam Convention and the Stockholm Convention.

(2) If the Director decides to suspend a permit, he shall, by notice in writing served on the permit holder, inform the permit holder of his decision and the reasons for his decision.

28. When suspension of permits takes effect

(1) Where the Director decides to suspend a permit under section 27, the suspension is to take effect on the day specified in the notice of suspension for that purpose.

(2) A suspension is to take effect under subsection (1) notwithstanding that an appeal has been or is to be lodged under section 42(f) against the Director's decision.

29. Return of permits to Director on suspension of permits

(1) As soon as practicable after a suspension of a permit takes effect, the permit holder shall return the permit to the Director.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1 and to imprisonment for 6 months.

30. Return of permits to permit holders after expiry of suspension periods

After a suspension of a permit ceases to have effect, the Director may send the permit to the permit holder in such manner as the Director considers appropriate if the permit holder –

- (a) does not collect the permit from the Director within 10 working days after the cessation; or
- (b) has requested in writing that the permit be sent to him.

Supplementary provisions regarding cancellation or suspension of permits

31. Supplementary provisions regarding cancellation or suspension of permits

(1) In exercising his power under section 19 or 27, the Director may cancel or suspend a permit to the extent that it relates to one or more scheduled chemicals that are authorized to be manufactured, exported, imported or used under the permit.

(2) Where there is a partial cancellation or partial suspension of a permit, subject to subsections (3) and (4), the provisions of this Ordinance that apply to or in relation to the cancellation or suspension of a permit shall, with necessary modifications, apply to the partial cancellation or partial suspension to the extent that the permit is so cancelled or suspended.

- (3) Where there is a partial cancellation of a permit –
- (a) section 21(1) shall be construed as requiring the permit holder to return the permit to the Director as soon as practicable after the partial cancellation takes effect; and
 - (b) the Director shall, on receiving the permit so returned, issue to the permit holder, free of charge, a permit in respect of the scheduled chemicals that are authorized to be manufactured, exported, imported or used under the

permit so returned but are not chemicals to which the partial cancellation relates.

- (4) Where there is a partial suspension of a permit –
- (a) section 29(1) shall be construed as requiring the permit holder to return the permit to the Director as soon as practicable after the partial suspension takes effect;
 - (b) the Director shall, on receiving the permit so returned, issue to the permit holder, free of charge, a permit in respect of the scheduled chemicals that are authorized to be manufactured, exported, imported or used under the permit so returned but are not chemicals to which the partial suspension relates; and
 - (c) section 30 shall be construed as –
 - (i) requiring the permit holder to return the permit issued to him under paragraph (b); and
 - (ii) empowering the Director to send to the permit holder, in such manner as the Director considers appropriate, the permit returned under paragraph (a) if the permit holder –
 - (A) does not collect the permit so returned within 10 working days after the partial suspension ceases to have effect; or
 - (B) has requested in writing that the permit be sent to him.

(5) A permit issued under subsection (3)(b) or (4)(b) is to be regarded as a permit issued under section 10(1).

(6) In this section –
 “partial cancellation” (局部取消), in relation to a permit, means the cancellation of the permit to the extent that it relates to one or more, but not all,

scheduled chemicals that are authorized to be manufactured, exported, imported or used under the permit;

“partial suspension” (局部暫時吊銷), in relation to a permit, means the suspension of the permit to the extent that it relates to one or more, but not all, scheduled chemicals that are authorized to be manufactured, exported, imported or used under the permit.

PART 5

ENFORCEMENT POWERS, ETC.

32. Power to enter non-domestic premises, etc. for routine inspection

(1) For the purposes of ascertaining whether this Ordinance has been or is being complied with, an authorized officer may, at any reasonable time, enter any premises, other than domestic premises, which he reasonably believes is used for manufacturing any scheduled chemical or for facilitating the export, import or use of any such chemical.

(2) After entering any premises under subsection (1), an authorized officer may, at the premises, exercise any or all of the following powers –

- (a) to require the production of, inspect and examine –
 - (i) any thing that is or he reasonably believes to be a scheduled chemical; or
 - (ii) any thing that contains or he reasonably believes to contain any such chemical, including any thing that he reasonably believes to have any such chemical as its part;
- (b) to require the production or provision of, inspect and examine –
 - (i) any permit or other document to which any scheduled chemical relates, including any

document that relates to the origin or nature of such chemical; and

- (ii) any other document or information or any other thing that he reasonably believes to be relevant to an offence under section 6, 7, 8 or 9;
 - (c) to take and make copies of any permit, document and information referred to in paragraph (b);
 - (d) to take, without payment but subject to the issue of a receipt for it, such sample of any thing as he may reasonably require for the purposes of examination and investigation to determine whether an offence may have been committed under section 6, 7, 8 or 9.
- (3) A person commits an offence if he –
- (a) without reasonable excuse, fails to comply with a requirement made under subsection (2)(a) or (b); or
 - (b) wilfully obstructs an authorized officer in the exercise of any power conferred under subsection (1) or (2).

(4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(5) Where a sample of any thing is taken away by an authorized officer under subsection (2) for the purposes of examination and investigation, the Director may, after the examination and investigation, direct that the sample be returned to its owner or to the premises from which it was taken or disposed of in such other way as he considers appropriate.

33. Power to enter any premises, etc. in other cases

(1) Where a warrant has been issued under section 34 in respect of any premises, an authorized officer may enter the premises and exercise any or all of the following powers –

- (a) to stop and search any person found at the premises whom he reasonably believes to have committed or is committing an offence under section 6, 7, 8 or 9;
 - (b) to require the production of, inspect and examine –
 - (i) any thing that is or he reasonably believes to be a scheduled chemical; or
 - (ii) any thing that contains or he reasonably believes to contain any such chemical, including any thing that he reasonably believes to have any such chemical as its part;
 - (c) to require the production or provision of, inspect and examine –
 - (i) any permit or other document to which any scheduled chemical relates, including any document that relates to the origin or nature of such chemical; and
 - (ii) any other document or information or any other thing that he reasonably believes to be or contain evidence of the commission of an offence under section 6, 7, 8 or 9;
 - (d) to take and make copies of any permit, document and information referred to in paragraph (c);
 - (e) to seize, remove and detain any thing that he reasonably believes to be or contain evidence of the commission of an offence under section 6, 7, 8 or 9.
- (2) A person commits an offence if he –
- (a) without reasonable excuse, fails to comply with a requirement made under subsection (1)(b) or (c); or
 - (b) wilfully obstructs an authorized officer in the exercise of any power conferred under subsection (1).

(3) A person who commits an offence under subsection (2) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

34. Warrants to be obtained for exercising powers under section 33

(1) A court may issue a warrant in respect of any premises if it is satisfied by information on oath that there are reasonable grounds for believing that –

- (a) an offence under section 6, 7, 8 or 9 has been or is being committed at the premises; or
- (b) there is or may be at the premises any thing that is or contains, or is likely to be or contain, evidence of the commission of an offence under section 6, 7, 8 or 9.

(2) A warrant issued under subsection (1) may authorize an authorized officer –

- (a) to enter, by force if necessary, and search the premises specified in the information; and
- (b) to take with him such assistants as may be necessary.

(3) A warrant issued under subsection (1) continues in force until the purpose for which the entry is necessary has been satisfied.

35. Production of proof of identity

Before or on exercising a power conferred by this Part, an authorized officer shall produce written evidence as to his identity.

36. Search by same sex

A person may only be searched under section 33(1)(a) by another person of the same sex.

37. Forfeiture of things seized by authorized officers

(1) If an offence is prosecuted under section 6, 7, 8 or 9, the court may, on its own motion or on application, order any scheduled chemical, any thing of which the chemical is a part, or any container used for containing the chemical or thing, which is seized under section 33(1)(e) –

(a) to be returned to its owner or the person from whom it was seized; or

(b) to be forfeited to the Government.

(2) Where an order is made under subsection (1)(b) –

(a) any thing that is forfeited to the Government under the order is to be regarded as the property of the Government and is free from all rights of any other person; and

(b) the Director may dispose of it in such manner as he considers appropriate.

(3) In any proceedings for the making of an order under subsection (1), any statement or other indication concerning the nature of any scheduled chemical which is displayed on or affixed in any manner to –

(a) the chemical;

(b) any thing of which the chemical is a part; or

(c) the container used for containing the chemical or that thing,

at the time when the chemical or that thing was seized is to be regarded, in the absence of evidence to the contrary, as a true description of the chemical.

(4) This section applies whether or not a person is convicted of an offence under section 6, 7, 8 or 9.

PART 6

MISCELLANEOUS PROVISIONS

38. Appointment of authorized officers

The Director may in writing appoint any public officer to be an authorized officer for the purposes of this Ordinance.

39. Director's power to issue duplicates of permits

(1) If a permit is lost, destroyed or defaced, the Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, issue to the permit holder a duplicate permit to replace the original permit.

(2) A duplicate permit has the same effect as the original permit and is to be regarded as having been issued under section 10(1).

(3) On the issue of a duplicate permit, the original permit ceases to be valid.

(4) When making an application for a duplicate permit, the permit holder shall return the original permit to the Director if it is available to him.

(5) The Director may refuse to issue a duplicate permit to the permit holder if he does not return the original permit under subsection (4).

(6) Where the permit holder is not required to return the original permit under subsection (4) because it is not available to him at the time of making the application, if –

- (a) the original permit becomes available to him at any time after the application is made; and
- (b) the application has not been withdrawn by him or refused by the Director,

the permit holder shall, as soon as practicable after the original permit becomes available to him, report this fact to the Director and shall take all reasonable steps to obtain possession of the permit and return it as soon as practicable to the Director.

40. Provision of false or inaccurate information, etc.

(1) A person commits an offence if he, in purported compliance with a requirement imposed under this Ordinance to produce any document or provide any information –

- (a) produces any document or provides any information that he knows to be misleading, false or inaccurate in a material particular;
- (b) recklessly produces any document or provides any information that is misleading, false or inaccurate in a material particular; or
- (c) produces any document or provides any information that he has no reasonable ground to believe to be true or accurate.

(2) A person commits an offence if he, when required to produce any document or provide any information in respect of any matter to an authorized officer in the exercise of his powers under this Ordinance, withholds the document or information.

(3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(4) Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence alleged to have been committed against this section may be brought within any of the following periods which expires earlier –

- (a) 2 years after the alleged commission of the offence; or

- (b) 6 months after the first discovery of the alleged commission of the offence by the Director.

41. Proceedings for or in connection with acts of employees

In any proceedings against a person under this Ordinance for or in connection with an act of his employee –

- (a) it is not a defence for that person to show that his employee acted without his authority; and
- (b) in the absence of evidence to the contrary, any material fact that is known to the employee is to be regarded as having been known to the employer.

42. Appeals to Administrative Appeals Board

A person aggrieved by a decision of the Director relating to –

- (a) the refusal of an application for the issue or renewal of a permit under section 10;
- (b) the variation of the conditions of a permit under section 13 by the Director on his own initiative;
- (c) the refusal of an application for the variation of the conditions of a permit under section 13;
- (d) the cancellation of a permit under section 19;
- (e) the refusal of an application for the variation of the directions given by the Director under section 23; or
- (f) the suspension of a permit under section 27,

may appeal to the Administrative Appeals Board against that decision.

43. Admissibility of documents, etc.

A document purporting to be a document given or issued by the Secretary or the Director and purporting to be signed by him or a public officer authorized by him in that behalf is admissible in evidence in any proceedings without further proof and, in the absence of evidence to the contrary –

- (a) is to be regarded as a document given or issued by the Secretary or the Director (as the case may be) and as so signed; and
- (b) is evidence of the facts stated in it.

44. Service of notices, etc.

A notice or other document (however described) required or permitted to be served or sent (however described) under this Ordinance is to be regarded as having been duly served or sent if –

- (a) in the case of the Director –
 - (i) it is delivered to him at his principal office; or
 - (ii) it is sent to him by registered post addressed to him at his principal office;
- (b) in the case of an individual –
 - (i) it is delivered to the individual by personal service; or
 - (ii) it is sent to the individual by registered post addressed to the individual at the individual's last known address; or
- (c) in the case of a body corporate –
 - (i) it is delivered to any place in Hong Kong at which the body carries on business and giving it to a person apparently concerned in the management of, or apparently employed by, the body; or
 - (ii) it is sent to the body by registered post addressed to the body at the body's last known address.

45. Power of Secretary to make regulations – General

(1) The Secretary may make regulations for the better carrying out of the provisions of this Ordinance.

(2) Without affecting the generality of subsection (1), the Secretary may by regulation –

- (a) provide for –
 - (i) applications for the issue or renewal of permits, including the information, particulars and documents to be supplied in respect of such applications and the period within which such applications are to be made;
 - (ii) applications for the variation of the conditions of permits, including the information, particulars and documents to be supplied in respect of such applications and the period within which such applications are to be made;
 - (iii) applications for the variation of the directions of the Director regarding the disposal of scheduled chemicals, including the information, particulars and documents to be supplied in respect of such applications and the period within which such applications are to be made; and
 - (iv) applications for duplicates of permits, including the information, particulars and documents to be supplied in respect of such applications and the period within which such applications are to be made;
- (b) provide for the imposition of requirements by the Director in relation to the applications referred to in paragraph (a);
- (c) provide for the duration of permits;
- (d) require fees to be paid in respect of the applications referred to in paragraph (a) and any other matter provided for in this Ordinance;

- (e) prescribe anything which is to be or may be prescribed under any regulation made under this section; and
 - (f) provide for incidental, consequential and transitional provisions that are necessary or expedient in consequence of the regulations.
 - (3) A regulation made under this section may –
 - (a) make different provisions for –
 - (i) different classes, kinds or descriptions of chemicals; and
 - (ii) different purposes, circumstances or cases; and
 - (b) provide that a contravention of the regulation shall be an offence and may, in respect of the offence, provide for a penalty of a fine not exceeding level 3 and imprisonment for 1 year.

46. Power of Secretary to make regulations – Fees

(1) The Secretary may by regulation prescribe the fees payable under this Ordinance.

(2) Without affecting the generality of section 29 of the Interpretation of General Clauses Ordinance (Cap. 1), a regulation made under subsection (1) may make different provisions for –

- (a) different classes, kinds or descriptions of chemicals; and
- (b) different purposes, circumstances or cases.

47. Exemptions

(1) The Secretary may, in any particular case, exempt in writing any person or chemical, or any class of persons or chemicals, from any provision of this Ordinance.

(2) An exemption under this section may be granted subject to such conditions as the Secretary considers appropriate.

(3) When considering whether to grant any exemption under subsection (1), or the exemption to be granted under that subsection, the Secretary is to have regard to the requirements under the Rotterdam Convention and the Stockholm Convention.

(4) The Secretary may not grant any exemption that is inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention.

48. Delegation

(1) The Secretary may in writing delegate any of his functions under section 47 to a public officer.

(2) The Director may in writing delegate any of his functions under this Ordinance, other than the functions under this subsection and section 38, to a public officer.

49. Power of Director to specify forms

The Director may specify any form to be used for the purposes of any matter provided for under this Ordinance.

50. Power of Secretary to amend Schedules

The Secretary may by order published in the Gazette amend Schedules 1 and 2.

51. Related amendments

The enactment specified in Schedule 3 is amended as set out in that Schedule.

SCHEDULE 1

[ss. 2, 3 & 50]

PART 1

TYPE 1 CHEMICALS

Item	Chemical	CAS registry number
1.	Hexachlorobenzene (HCB)	118-74-1
2.	Polychlorinated biphenyls (PCB)	1336-36-3

PART 2

EXTENT TO WHICH PART 2 OF ORDINANCE DOES NOT APPLY TO TYPE 1 CHEMICALS

1. Interpretation of this Part

In this Part, “manufactured product” (製成品) means a product that, during its manufacture, is formed into a specific physical shape or design and has an end use function wholly or partly dependent on its shape or design.

2. Limitations on application of sections 7(1), 8(1) and 9(1) of Ordinance to Type 1 chemicals other than polychlorinated biphenyls

Sections 7(1), 8(1) and 9(1) of this Ordinance do not apply to a Type 1 chemical that is not polychlorinated biphenyls if the chemical is a constituent element of a manufactured product.

3. Limitations on application of sections 7(1), 8(1) and 9(1) of Ordinance to polychlorinated biphenyls

Sections 7(1), 8(1) and 9(1) of this Ordinance do not apply to a Type 1 chemical that is polychlorinated biphenyls if –

- (a) the chemical is a constituent element of a manufactured product; and
- (b) the concentration of the chemical does not exceed 0.005 per cent (or 50 ppm) and its volume does not exceed 0.05 litre.

SCHEDULE 2

[ss. 2, 3 & 50]

PART 1

TYPE 2 CHEMICALS

Item	Chemical	CAS registry number
1.	Asbestos:	
	(a) actinolite	77536-66-4
	(b) anthophyllite	77536-67-5
	(c) amosite	12172-73-5
	(d) crocidolite	12001-28-4
	(e) tremolite	77536-68-6
2.	Polybrominated biphenyls (PBB):	
	(a) hexabromobiphenyl	36355-01-8
	(b) octabromobiphenyl	27858-07-7
	(c) decabromobiphenyl	13654-09-6
3.	Polychlorinated terphenyls (PCT)	61788-33-8
4.	Tetraethyl lead	78-00-2
5.	Tetramethyl lead	75-74-1
6.	Tris (2,3-dibromopropyl) phosphate	126-72-7

PART 2

EXTENT TO WHICH PART 2 OF ORDINANCE DOES NOT APPLY
TO TYPE 2 CHEMICALS1. **Interpretation of this Part**

In this Part –

“article in transit” (過境物品) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60);

“manufactured product” (製成品) means a product that, during its manufacture, is formed into a specific physical shape or design and has an end use function wholly or partly dependent on its shape or design.

2. Limitations on application of sections 6(1), 7(1), 8(1) and 9(1) of Ordinance to Type 2 chemicals

- (1) Sections 6(1), 7(1), 8(1) and 9(1) of this Ordinance do not apply to a Type 2 chemical if the chemical is, or is a part of, any of the following things –
- (a) any food as defined in section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);
 - (b) any additive as defined in regulation 2(1) of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W);
 - (c) any pharmaceutical product as defined in section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138);
 - (d) any radioactive substance as defined in section 2 of the Radiation Ordinance (Cap. 303);
 - (e) any waste as defined in section 2(1) of the Waste Disposal Ordinance (Cap. 354);
 - (f) any chemical weapons as defined in section 2(1) of the Chemical Weapons (Convention) Ordinance (Cap. 578);
 - (g) any thing listed in Schedules I or II of the Single Convention on Narcotic Drugs, 1961 which was adopted on 30 March 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961 which was adopted on 24 March 1972; or
 - (h) any thing listed in the Convention on Psychotropic Substances, 1971 which was adopted on 21 February 1971.

(2) Sections 7(1), 8(1) and 9(1) of this Ordinance do not apply to a Type 2 chemical if the chemical is a constituent element of a manufactured product.

(3) Sections 7(1) and 8(1) of this Ordinance do not apply to a Type 2 chemical if the chemical is, or is a part of, an article in transit.

SCHEDULE 3

[s. 51]

RELATED AMENDMENTS

1. **First Schedule amended**

The First Schedule to the Import and Export (General) Regulations (Cap. 60 sub. leg. A) is amended, in Part I, by adding –

“9. Any chemical to which section 8 of the Hazardous Chemicals Control Ordinance (of 2006) applies under section 3 of that Ordinance.

10. Any article that has as its part any chemical to which section 8 of the Hazardous Chemicals Control Ordinance (of 2006) applies under section 3 of that Ordinance.”.

2. **Second Schedule amended**

The Second Schedule is amended, in Part I, by adding –

“7. Any chemical to which section 7 of the Hazardous Chemicals Control Ordinance (of 2006) applies under section 3 of that Ordinance. All places outside Hong Kong.

8. Any article that has as its part any chemical to which section 7 of the Hazardous Chemicals Control Ordinance (of 2006) applies under section 3 of that Ordinance. All places outside Hong Kong.”.

Ordinance (of 2006) applies under section 3 of that Ordinance.

Explanatory Memorandum

The main purpose of this Bill is to regulate the manufacture, export, import and use of chemicals that are not pesticides and have potentially harmful or adverse effects on human health or the environment (“non-pesticide hazardous chemicals”), including such chemicals that are subject to the regulation of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade which was adopted on 10 September 1998 or the Stockholm Convention on Persistent Organic Pollutants which was adopted on 22 May 2001.

2. Part 1 (clauses 1 to 5) contains preliminary provisions. In particular –

- (a) clause 2 defines certain terms used in the Bill;
- (b) clause 3 provides for the application of the Bill to a non-pesticide hazardous chemical that is specified in Part 1 of Schedule 1 or 2 to the Bill (“scheduled chemical”), although it further provides that the Bill does not apply to a scheduled chemical to the extent as provided in Part 2 of those Schedules; and
- (c) clause 4 provides that the Bill (if enacted) binds the HKSAR Government.

3. Part 2 (clauses 6 to 9) deals with the restrictions on the manufacture, export, import and use of scheduled chemicals. That Part provides that except under and in accordance with a permit, a person is not allowed to manufacture, export, import or use any scheduled chemical, or cause any such chemical to be manufactured, exported or imported. It also provides that a contravention of the relevant provision is an offence and provides for the penalty in respect of the offence.

4. Part 3 (clauses 10 to 18) deals with matters relating to permits. In particular –

- (a) clause 10 provides for the issue and renewal of a permit;
- (b) clause 11 empowers the Director of Environmental Protection (“the Director”) to impose conditions on a permit;
- (c) clause 12 provides for the refusal by the Director of any application for a permit;
- (d) clause 13 empowers the Director to vary the conditions of a permit;
- (e) clause 14 imposes a duty on the Director to notify the permit holder of the Director’s decision regarding the variation of the conditions of his permit;
- (f) clause 16 provides for the return of a permit to the Director after the variation of the conditions of the permit takes effect;
- (g) clause 17 empowers the Director to issue a permit, with its conditions varied, to the permit holder; and
- (h) clause 18 provides that a contravention of a permit condition that falls within a description specified in clause 11(1) is an offence and provides for the penalty in respect of the offence.

5. Part 4 (clauses 19 to 31) deals with the cancellation and suspension of permits. In particular –

- (a) clause 19 empowers the Director to cancel a permit;
- (b) clause 21 provides for the return of a permit to the Director on its cancellation;
- (c) clause 22 empowers the Director to give directions regarding the disposal of any scheduled chemical when a permit is cancelled by him;

- (d) clause 23 empowers the Director to vary such directions;
 - (e) clause 24 imposes a duty on the Director to notify the permit holder as to whether he decides to vary such directions;
 - (f) clause 26 provides that a failure to comply with any such directions is an offence and provides for the penalty in respect of the offence;
 - (g) clause 27 empowers the Director to suspend a permit;
 - (h) clause 29 provides for the return of a permit to the Director on its suspension; and
 - (i) clause 30 provides for the return of a permit to the permit holder after the expiry of the suspension period.
6. Part 5 (clauses 32 to 37) deals with the enforcement powers of the Director and any other authorized officer appointed by him under the Bill. In particular –
- (a) clause 32 confers certain powers on an authorized officer to enable him to carry out any routine inspection;
 - (b) clause 33 confers certain powers on an authorized officer who has obtained a warrant from the court to enter any premises;
 - (c) clause 34 empowers the court to issue such a warrant to an authorized officer; and
 - (d) clause 37 deals with the forfeiture of things seized by an authorized officer.
7. Part 6 (clauses 38 to 51) contains miscellaneous provisions. In particular –
- (a) clause 38 empowers the Director to appoint any public officer to be an authorized officer for the purposes of the Bill;
 - (b) clause 39 empowers the Director to issue a duplicate of a permit;

- (c) clause 40 creates offences in relation to the provision of false or inaccurate information, etc. and provides for the penalties in respect of those offences;
- (d) clause 42 provides for the appeal against a decision of the Director;
- (e) clause 43 provides for the admissibility of certain documents in any proceedings;
- (f) clause 44 provides for the service of a notice or other document required or permitted to be served or sent under the Bill;
- (g) clauses 45 and 46 empower the Secretary for the Environment, Transport and Works (“the Secretary”) to make regulations;
- (h) clause 47 empowers the Secretary to grant an exemption from any provision of the Bill in a particular case;
- (i) clause 48 empowers –
 - (i) the Secretary to delegate his functions under clause 47 (exemptions) to a public officer; and
 - (ii) the Director to delegate his functions under the Bill, other than his functions under clauses 38 (appointment of authorized officers) and 48(2), to a public officer;
- (j) clause 49 empowers the Director to specify any form to be used for the purposes of the Bill;
- (k) clause 50 empowers the Secretary to amend Schedules 1 and 2; and
- (l) clause 51 and Schedule 3 provide for the related amendments to be made to the Import and Export (General) Regulations (Cap. 60 sub. leg. A).

Chapter:	60A	IMPORT AND EXPORT (GENERAL) REGULATIONS	Gazette Number	Version Date
Schedule:	1		L.N. 248 of 2003	08/01/2004

[regulations 3, 6, 6AA & 7]
(29 of 2000 s. 2)

PART I

1. Pesticides.
2. Pharmaceutical products and medicines as defined by section 2 of the Pharmacy and Poisons Ordinance (Cap 138).
3. Textiles, other than woven or knitted fabric swatches and sample yarn imported by air and not exceeding 0.8 m² in size in the case of fabric swatches and 1.2 kg in weight in respect of each type of yarn.
- 4-5. (Repealed L.N. 246 of 1997)
- 5A. Rough diamonds within the meaning of regulation 6DA. (L.N. 179 of 2002)
6. Frozen or chilled beef, mutton, pork, veal or lamb, and the frozen or chilled offal of any animal from which such meat is derived. (L.N. 142 of 2000)
7. The frozen or chilled carcass of a domestic fowl, duck, goose or turkey or any part of such a carcass. (L.N. 142 of 2000)
8. Any frozen or chilled part of a bird mentioned in item 7 which is edible or used in the preparation of food, other than the carcass or a part of the carcass of such a bird. (L.N. 142 of 2000)

PART II

- 1-2. (Repealed 33 of 2003 s. 2)
3. Optical disc mastering and replication equipment. (L.N. 529 of 1997)
(L.N. 136 of 1994)

Chapter:	60A	IMPORT AND EXPORT (GENERAL) REGULATIONS	Gazette Number	Version Date
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Schedule:	2		L.N. 248 of 2003	08/01/2004
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[regulations 4, 5, 6, 6AA & 7]
(29 of 2000 s. 2)

PART I

Item	Article	Country or place
1.	Textiles.	All countries.
2.	Pesticides.	All countries.
3.	Pharmaceutical products and medicines as defined by section 2 of the Pharmacy and Poisons Ordinance (Cap 138).	All countries.
4-5.	(Repealed L.N. 246 of 1997)	
6.	Rough diamonds within the meaning of regulation 6DA.	Without prejudice to regulation 6DE, any country or place. (L.N. 179 of 2002)

PART II

Item	Article	Country or place
1-2.	(Repealed 33 of 2003 s. 2)	
3.	Optical disc mastering and replication equipment.	All places outside Hong Kong. (L.N. 529 of 1997) (L.N. 136 of 1994)

IMPLICATIONS OF THE PROPOSAL

Financial and Civil Service Implications

It is estimated that the recurrent cost arising from the implementation of the proposed Bill is about \$582,000 per year (\$500,000 for the Environmental Protection Department (EPD) and \$82,000 for the Trade and Industry Department), involving minimal additional staffing requirements. The additional resource requirement will be met by EPD's existing allocation. On the other hand, the new licensing system under the Bill would give rise to revenue of about \$500,000 per year.

Economic Implications

2. According to an initial survey conducted by EPD in early 2005, there is little current trading and/or domestic use of the chemicals that are subject to the Stockholm Convention and Rotterdam Convention in Hong Kong. Against this, the proposed enactment of the new legislation to control and regulate chemicals under these two Conventions is unlikely to have significant additional compliance burden on traders/carriers. Further, administrative burden on the Government is modest.

Sustainability Implications

3. The proposal will help to ensure the HKSARG's compliance with the obligations under the Stockholm Convention and Rotterdam Convention with regard to the control and regulation of non-pesticide hazardous chemicals and is in line with the sustainability principles of avoiding environmental problems for present and future generations, seeking to find opportunities to enhance environmental quality, and providing a living environment which promotes and protects the physical health of the people of Hong Kong.

Environmental Implications

4. The enactment of the Bill will help to reduce environmental and public health risks resulting from non-pesticide hazardous chemicals. The Bill per se does not have any environmental implications.