

立法會

Legislative Council

LC Paper No. LS50/06-07

Panel on Administration of Justice and Legal Services

Background brief for the meeting on 26 March 2007

Review of legislative provisions implementing international conventions in local legislation

Purpose

This paper provides background information on the past deliberations of the Bills Committees on Waste Disposal (Amendment) Bill 2005 and Hazardous Chemicals Control Bill during which observations were made on the drafting approach taken in relation to the legislative provisions in the two Bills in implementing international conventions in local legislation, in comparison with the approach taken in existing Ordinances.

Referral to the Panel

2. The matter was referred to the Panel on 26 February 2007 by the Bills Committee on Hazardous Chemicals Control Bill. In view of the apparent different approach adopted by the Administration under the Bill, the Bills Committee considers that there is a need for consistency in the implementation of international conventions and would like the Panel on Administration of Justice and Legal Services to follow up on the subject.

Implementation of international conventions in local legislation

Basic Law

3. Article 18 of the Basic Law stipulates that “the laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.”.

Common Law

4. In construing a statute, a court may refer to an international agreement if

it is embodied in the statute or has in effect been incorporated in the statute, in accordance with powers conferred by it, by means of subsidiary legislation. An international agreement may also be referred to for the purpose of resolving ambiguities or obscurities where the statute was plainly intended to give effect to it. Where, however, a provision of a statute intended to give effect to such an agreement is clear and unambiguous, reference cannot be made to the agreement for the purpose of giving the provision a meaning other than its plain meaning, as, for example, by restricting its application to that of the corresponding provision of the agreement.¹

5. Upon the interpretation of international conventions forming part of English law, the House of Lords in Fothergill v Monarch Airlines Ltd [1980] 2 All ER 696 made the following comment -

“The constitutional function performed by courts of justice as interpreters of the written law laid down in Acts of Parliament is often described as ascertaining ‘the intention of Parliament’; but what this metaphor, though convenient, omits to take into account is that the court, when acting in its interpretative role, as well as when it is engaged in reviewing the legality of administrative action, is doing so as mediator between the state in the exercise of its legislative power and the private citizen for whom the law made by Parliament constitutes a rule binding on him and enforceable by the executive power of the state. Elementary justice or, to use the concept often cited by the European court, the need for legal certainty, demands that the rules by which the citizen is to be bound should be ascertainable by him (or, more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible. The source to which Parliament must have intended the citizen to refer is the language of the Act itself. These are the words which Parliament has itself approved as accurately expressing its intentions.”.

Local legislation

6. The prevailing approach in implementing international conventions in local legislation is that relevant parts of an international conventions that are to have the force of law in Hong Kong have been expressly set out in the Ordinance, often in a Schedule, with or without adaptation (Annex I). Under this approach, the provisions of international conventions which have the force of law in Hong Kong as enacted by the Legislative Council is clear and certain.

7. In the Waste Disposal (Amendment) Bill 2005 and the Hazardous Chemicals Control Bill a general reference clause to the conventions concerned was proposed. The two Bills Committees respectively requested the Administration to

¹ Halsbury's Law of Hong Kong, para. 365.075

advise on the exact scope of the conventions concerned which the Administration purposed to be included in the Bills. In both cases, the Administration was unable to identify the scope clearly. The legal adviser to the two Bills Committees raised the concern that this approach would create uncertainty and ambiguity and future amendments to the conventions concerned would have the force of law in Hong Kong without undergoing the law-making process when adaptation could be made to suit local needs in Hong Kong. She also pointed out to the Bills Committee on Hazardous Chemicals Control Bill that as the Administration mentioned in the Draft Hong Kong Implementation Plan under the Stockholm Convention on Persistent Organic Pollutants (LC Paper No. CB(1)950/05-06(03)) that the Stockholm Convention requirements would be met by various proposed legislative action items undertaken by various departments and the Bill also covered chemicals other than those regulated under the two Conventions, the suggestion of general reference to the two Conventions other than those specified in the Bill would create ambiguities. Upon the request of the two Bills Committees, the Administration re-considered the relevant provisions and the general reference clauses in the two Bills have since been deleted by way of Committee Stage amendments.

Deliberations of the Bills Committees

The Bills Committee on Waste Disposal (Amendment) Bill 2005

8. On the implementation of international conventions applicable to Hong Kong in local legislation, members raised the following concerns about the drafting of proposed general reference clause, namely, sections 20A(4)(f) and 20B(4)(g) (Annex II) on 6 December 2005 -

- (a) Hong Kong's obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention) were not specified in the Bill. It was noted that provisions of certain international conventions applicable to Hong Kong were specified in the schedule to the local legislation;
- (b) all obligations, including future obligations, under the Basel Convention would automatically be binding on Hong Kong following passage of the Bill. Legislative Council was not given the opportunity to scrutinize or modify future obligations for adaptation in Hong Kong; and
- (c) in connection with (b) above, the Bill would set an undesirable precedent for the mode of implementation of international conventions applicable to Hong Kong in local legislation.

9. The Administration's response was -

- (a) the general approach of paragraph (f) was not unique. For example,

one of the provisions in the Airport Authority Ordinance (Cap. 483) adopted the same approach; and

- (b) the general approach in the Bill was in order given the narrow scope of paragraph (f) i.e. breach of Hong Kong's obligations under the Basel Convention was only one of the considerations for the authority not to issue a permit for the import of waste into Hong Kong.

10. Having regard to members' views, the Administration agreed to review the proposed approach.

11. In the meeting on 20 December 2005, the Administration agreed to delete the proposed general reference clause i.e. sections 20A(4)(f) and 20B(4)(g) from the Bill. The Administration also confirmed that any reference to the Basel Convention in administrative measures would not result in conferring power on the Administration other than those expressly set out in the Ordinance as enacted.

The Bills Committee on Hazardous Chemicals Control Bill

12. After setting out the relevant requirements of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants, the Administration introduced clauses to make general reference to the two Conventions (Annex III). The Administration advised that this approach would give flexibility to the Administration in the implementation of the two Conventions.

13. The Bills Committee has deliberated on the need to make general reference to the requirements of the Conventions in the relevant clauses of the Bill.

14. In the meeting on 29 January 2007, the Administration advised the Bills Committee that -

- (a) convention requirements were many and detailed. Not all requirements were set out in the Bill, but the Bill provided a framework enabling the Convention requirements to be implemented; and
- (b) even if reference was not made to the Convention requirements, the Director of Environmental Protection could perform his statutory functions having regard to and in a manner consistent with the Convention requirements so long as this did not contradict the express wording of the Bill.

15. Ms Audrey EU's views were -

- (a) if reference was made to the Convention requirements in the Bill, this

would have the effect of requiring the Director to take account of the Convention requirements, including any subsequent changes, even if the Convention requirements went further than what was permitted under the Bill;

- (b) even if reference was not made to the Convention requirements in the Bill, this would not prevent the Director from making reference to such and any other requirements when exercising his discretion upon the issue/variation of permits. But the Director may only be empowered to carry out those functions which was expressly stipulated in the Bill; and
- (c) there should be consistency in the implementation of international conventions through local legislation and the matter should be followed up by the Panel on Administration of Justice and Legal Services.

16. The Chairman of the Bills Committee's views were -

- (a) relevant Convention requirements should be clearly specified in the Bill; and
- (b) the inclusion of a general reference clause on Convention requirements in the issue/variation of permits might not be necessary lest this might give rise to grey areas and uncertainties.

17. In the meeting on 15 March 2007, the Administration agreed to delete all general reference clauses in the Bill. The Administration also confirmed that the power of the Administration in implementing the two Conventions was set out in the Bill.

Advice sought

18. Members are invited to note the deliberations and conclusion of the two Bills Committees.

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
21 March 2007

Local legislation which adopt the prevailing approach

- (1) Cap 30 SECT 23D
- (2) Cap 76 SECT 2
- (3) Cap 434 SECT 3
- (4) Cap 434 SECT 12
- (5) Cap 462 SECT 3
- (6) Cap 497 SECT 3
- (7) Cap 500 SECT 3
- (8) Cap 500 SECT 10
- (9) Cap 508 SECT 9
- (10) Cap 512 SECT 3
- (11) Cap 557 SECT 3
- (10) Cap 558A SECT 3
- (13) Cap 558B SECT 3
- (14) Cap 558 SECT 3
- (15) Cap 558A SCHED SCHEDULE
- (16) Cap 558B SCHED SCHEDULE
- (17) Cap 557 SECT 4

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Chapter: 30 Title: WILLS ORDINANCE Gazette Number:
 Section: 23D Heading: **Form of international will** Version Date:

Remarks:
 not yet in operation

PART IIA

INTERNATIONAL WILLS

- || (1) The Annex to the Convention on International Wills shall have the force of law in Hong Kong.
 || (2) The Annex is set out in the Schedule.
 (3) In this Part-
 "the Convention on International Wills" (國際遺囑公約) means the Convention providing a
 Uniform Law on the Form of an International Will concluded at Washington on 26 October 1973;
 "international will" (國際遺囑) means a will made in accordance with the requirements of the
 Annex, as set out in the Schedule.

(Part IIA added 56 of 1995 s. 8)
 [cf. 1982 c. 53 s. 27 U.K.]

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Chapter:	76	Title:	RECOGNITION OF TRUSTS ORDINANCE	Gazette Number:
Section:	2	Heading:	Applicable law and recognition of trusts	Version Date: 30/06/1997

(1) The provisions of the Convention set out in the Schedule shall have the force of law in Hong Kong.

(2) If there is any inconsistency between the text of the Convention in English as so set out and the text in Chinese, the text in English shall prevail.

(3) The provisions of the Convention shall, so far as applicable, have effect not only in relation to the trusts described in Articles 2 and 3 thereof but also in relation to any other trusts of property arising under the law of Hong Kong or by virtue of a judicial decision whether in Hong Kong or elsewhere.

(4) Where Articles 15 and 16 do not prevent the application of any provision of law, that provision of law shall, to the extent specified in Articles 15 and 16, apply notwithstanding anything to the contrary in any other Article of the Convention.

(5) In Article 17 the reference to a State includes a reference to any country or territory (whether or not a party to the Convention) which has its own system of law.

(6) Article 22 shall not be construed as affecting the law to be applied in relation to anything done or omitted before the coming into force of this Ordinance.

(Enacted 1989)

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Chapter: 434 Title: MERCHANT SHIPPING Gazette Number: 1 of 2005
(LIMITATION OF
SHIPOWNERS
LIABILITY) ORDINANCE
Section: 3 Heading: **Convention to have force of law** Version Date: 18/03/2005

PART II

CARRIAGE OF PASSENGERS AND LUGGAGE BY SEA

- (1) Subject to this Part, the provisions of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 set out in Schedule 1 (in this Part and in that Schedule referred to as "the Convention" (公約)) have the force of law in Hong Kong. (Amended 1 of 2005 s. 3)
- (2) Notwithstanding paragraph 1 of Article 2 of the Convention, and subject to this Part, the Convention applies to regional carriage. (Added 1 of 2005 s. 3)

(Enacted 1993)

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Chapter:	434	Title:	MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) ORDINANCE	Gazette Number: 1 of 2005
Section:	12	Heading:	Convention to have force of law	Version Date: 18/03/2005

PART III

LIMITATION OF LIABILITY FOR MARITIME CLAIMS

Subject to this Part, the provisions of the Convention on Limitation of Liability for Maritime Claims, 1976 set out in Schedule 2 (in this Part and in that Schedule referred to as "the Convention" (公約)) have the force of law in Hong Kong.

(Enacted 1993. Amended 1 of 2005 s. 10)

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Chapter: 462 Title: CARRIAGE OF GOODS BY SEA ORDINANCE Gazette Number:
 Section: 3 Heading: **Application of Hague Rules as amended** Version Date: 30/06/1997

|| (1) Subject to subsection (3) the Rules as set out in the Schedule shall have the force of law.

(2) The Rules shall also apply to the carriage of goods by sea in ships where the port of shipment is in Hong Kong, whether or not the carriage is between ports in 2 different States within the meaning of Article X.

(3) Nothing in this section shall be taken as applying anything in the Rules to any contract for the carriage of goods by sea, unless the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title.

(4) The Rules shall also apply to-

(a) any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract; and

(b) any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods by sea which expressly provides that the Rules are to govern the contract as if the receipt were a bill of lading,

but where paragraph (b) applies, the Rules shall be construed and have effect-

(i) as if the following were omitted-

(A) "However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith." from paragraph 4 of Article III; and

(B) paragraph 7 of Article III; and

(ii) subject to any other necessary modification.

(5) (a) If and in so far as the contract contained in or evidenced by a bill of lading or receipt referred to in paragraph (a) or (b) of subsection (4) applies to deck cargo or live animals, the Rules as applied by that subsection shall be construed and have effect as if all the words following "whatsoever" were omitted from Article I(c).

(b) In this subsection "deck cargo" (艙面貨物) means cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(Enacted 1994)

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Chapter: 497

Title: SUBMARINE
TELEGRAPH
ORDINANCE

Gazette Number:

Section: 3

Heading: **Convention to have the
force of law**

Version Date: 30/06/1997

|| Subject to the provisions of this Ordinance, the Convention as set out in the Schedule, being an English translation of the French original, shall continue to have the force of law in Hong Kong.
(Enacted 1996) [cf. 1885 c. 49 s. 2 U.K.]

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Chapter:	500	Title:	CARRIAGE BY AIR ORDINANCE	Gazette Number:	L.N. 215 of 2006
Section:	3	Heading:	Amended Convention to have the force of law	Version Date:	15/12/2006

PART II

INTERNATIONAL CARRIAGE TO WHICH THE AMENDED CONVENTION BUT NOT THE MONTREAL CONVENTION APPLIES

(Amended 22 of 2005 s. 5)

(1) The provisions of the amended Convention as set out in Schedule 1, so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons, and subject to this Ordinance, have the force of law in relation to any carriage by air to which the amended Convention applies, irrespective of the nationality of the aircraft performing that carriage. (Amended 22 of 2005 s. 6)

(2) Notwithstanding subsection (1), where the Montreal Convention applies to a carriage by air to which the amended Convention applies (whether or not the Guadalajara Convention also applies), the provisions in this Part do not apply to that carriage by air. (Added 22 of 2005 s. 6)

(Enacted 1997) [1961 c. 27 s. 1(1) U.K.]

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Chapter:	500	Title:	CARRIAGE BY AIR	Gazette Number:	L.N. 215 of
			ORDINANCE		2006
Section:	10	Heading:	Guadalajara Convention to	Version Date:	15/12/2006
			have the force of law		

(1) The provisions of the Guadalajara Convention as set out in Schedule 2, so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons, and subject to section 11, have the force of law in relation to any carriage by air to which the Guadalajara Convention applies, irrespective of the nationality of the aircraft performing that carriage. [1962 c. 43 s. 1(1) U.K.]

(2) (Repealed 22 of 2005 s. 9)

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Chapter:	508	Title:	MERCHANT SHIPPING (COLLISION DAMAGE LIABILITY AND SALVAGE) ORDINANCE	Gazette Number:	
Section:	9	Heading:	Salvage Convention 1989 to have the force of law	Version Date:	30/06/1997

PART III

SALVAGE

- || (1) The provisions of the International Convention on Salvage 1989 ("the Convention"), as set out in Part I of Schedule 1, shall have the force of law in Hong Kong. [cf. 1994 c. 28 s. 1(1) U.K.]
- (2) The provisions of Part II of Schedule 1 shall have effect in connection with the Convention, and subsection (1) shall have effect subject to the provisions of that Part. [cf. 1994 c. 28 s. 1(2) U.K.]
- (3) Nothing in subsection (1) or (2) shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the day on which this Part comes into force. [cf. 1994 c. 28 s. 1(4) U.K.]
- (4) The provisions of Schedule 2 (which make amendments consequential on subsections (1) and (2)) shall have effect, but nothing in any amendment made by those provisions shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the day on which the amendment comes into force. [cf. 1994 c. 28 s. 1(6) U.K.]
- (5) Sections 23, 24 and 25 of the Interpretation and General Clauses Ordinance (Cap 1) apply to the repeal of an Act mentioned in Schedule 2 as they apply to the repeal of an Ordinance.

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Chapter:	512	Title:	CHILD ABDUCTION AND GAZETTE NUMBER: L.N. 439 of CUSTODY ORDINANCE 1997
Section:	3	Heading:	Convention to have force of law in Hong Kong Version Date: 05/09/1997

|| Subject to the provisions of this Ordinance, the provisions of the Convention as set out in Schedule 1 shall have the force of law in Hong Kong.

[cf. 1985 c. 60 s. 1(2) U.K.]

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Chapter:	557	Title:	CONSULAR RELATIONS	Gazette Number:	16 of 2000
			ORDINANCE		
Section:	3	Heading:	Provisions of Vienna Convention on Consular Relations	Version Date:	10/03/2000

(1) Subject to section 4(2) and (3), the provisions set out in the Schedule (being Articles or parts of Articles of the Vienna Convention on Consular Relations done at Vienna on 24 April 1963) shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2) to (8).

(2) In those Articles or parts of Articles-

"authorities of the receiving State" (接受國當局、接受國官吏、接受國機關) shall be construed as including any police officer and any person exercising a power of entry to any premises under any enactment;

"grave crime" (嚴重罪行) shall be construed as meaning any offence punishable (on a first conviction) with imprisonment for a term up to 5 years or with a more severe sentence;

"Ministry for Foreign Affairs" (外交部) shall be construed as meaning the Ministry of Foreign Affairs of the People's Republic of China;

"national of the receiving State" (接受國國民) shall be construed as meaning a Chinese national.

(3) The reference in paragraph 2 of Article 17 to any privileges and immunities accorded by customary international law or by international agreements shall be construed as a reference to any privileges and immunities conferred in Hong Kong under the International Organizations and Diplomatic Privileges Ordinance (Cap 190) or the International Organizations (Privileges and Immunities) Ordinance (Cap 558).

(4) For the purposes of Article 45 and that Article as applied by Article 58 a waiver shall be deemed to have been expressed by a State if it has been expressed by-

- (a) the person charged with the duty of acting in the capacity of; or
- (b) any person for the time being performing the functions of,

head, of the superintending diplomatic mission of that State or of the consular post concerned.

(5) Articles 50, 51, 52, 54, 62 and 67 shall be construed as granting any privilege or immunity provided for in those Articles.

(6) The reference in Article 57 to the privileges and immunities provided in Chapter II shall be construed as referring to those provided in Section II of that Chapter.

(7) The reference in Article 70 to the rules of international law concerning diplomatic relations shall be construed as a reference to the provisions of the Regulations of the People's Republic of China

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Chapter:	558A	Title:	INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (OFFICE OF THE COMMISSION OF THE EUROPEAN COMMUNITIES) ORDER	Gazette Number:	L.N. 166 of 2003
Section:	3	Heading:	Provisions of Office Agreement	Version Date:	14/11/2003

(1) The provisions set out in the Schedule (being Articles of the Office Agreement) shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2) to (4).

(2) In those Articles-

"Head" (主任) shall be construed as meaning the person charged with the duty of acting as the Head of the Office;

"Office" (辦事處) shall be construed as meaning the Office of the Commission of the European Communities in Hong Kong;

"permanent resident of the Hong Kong Special Administrative Region" (香港特別行政區永久性居民) shall be construed as meaning a person who belongs to a class or description of persons specified in Schedule 1 to the Immigration Ordinance (Cap 115).

(3) The reference to any other law of the People's Republic of China in Article 3 of the Office Agreement shall be construed as a reference to any national law of the People's Republic of China listed in Annex III to the Basic Law and applied in Hong Kong by way of promulgation or legislation in accordance with Article 18 of the Basic Law.

(4) The reference to the members of the Office in Article 4 of the Office Agreement shall be construed as a reference to-

(a) the officers of the Office (including the Head) entrusted in that capacity with the exercise of the functions of the Office;

(b) the persons employed in the administrative or technical service of the Office;
and

(c) the persons employed in the domestic service of the Office.

(5) The reference to the provisions of the Convention in Article 4 of the Office Agreement shall be construed as a reference to paragraph 3 of Article 15, the Articles in Chapter II and Article 71 of the Convention as set out in the Schedule to the Consular Relations Ordinance (Cap 557).

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Chapter:	558B	Title:	INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (WORLD TRADE ORGANIZATION) ORDER	Gazette Number:	L.N. 62 of 2005
Section:	3	Heading:	Provisions of 1947 Convention have force of law in Hong Kong	Version Date:	07/07/2005

(1) It is declared that the provisions of the 1947 Convention as specified in the Schedule shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with the other provisions of this section.

(2) In applying those provisions of the 1947 Convention-

(a) a reference to any specialized agency, however expressed, shall be construed as a reference to the WTO, and, without limiting the generality of the foregoing, the reference to "meetings convened by a specialized agency" in section 1(vi) of the 1947 Convention shall be construed accordingly;

(b) a reference to any member, however expressed and whether with or without reference to any specialized agency (with the exception of section 13(f) of the 1947 Convention), shall be construed as a reference to a WTO member, and, without limiting the generality of the foregoing, the reference to "representatives of members" in section 1(v) of the 1947 Convention shall be construed accordingly;

(c) (i) the reference to "will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country" in section 9(b) of the 1947 Convention shall be construed as a reference to "will not be sold in the Hong Kong Special Administrative Region of the People's Republic of China except under conditions agreed to with the Government of the Hong Kong Special Administrative Region of the People's Republic of China";

(ii) the reference to "Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question" in section 19(f) of the 1947 Convention shall be construed as a reference to "Have the right to import free of duty their furniture and effects at the time of first taking up their post in the Hong Kong Special Administrative Region of the People's Republic of China";

(d) the reference to "the territory of each State party to this Convention in respect

of that agency" in section 11 of the 1947 Convention shall be construed as a reference to the area of the Hong Kong Special Administrative Region of the People's Republic of China;

(e) the reference to "the Government of such State" in section 11 of the 1947 Convention shall be construed as a reference to the Central People's Government of the People's Republic of China;

(f) without prejudice to the generality of paragraph (a), the reference to "Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency" in section 12 of the 1947 Convention shall be construed as a reference to "Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the WTO";

(g) notwithstanding the generality of paragraph (b), the reference to "present in a member State" in section 15 of the 1947 Convention shall be construed as a reference to "present in the Hong Kong Special Administrative Region of the People's Republic of China";

(h) section 17 of the 1947 Convention shall be construed as if it read as follows: "The provisions of sections 13(a), (b), (c) and (f), 14 and 15 are not applicable in relation to the authorities of the Hong Kong Special Administrative Region of the People's Republic of China in the case where the person concerned is a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China or is or has been a representative of the Hong Kong Special Administrative Region of the People's Republic of China.";

(i) the reference to "sections 19 ..." in section 21 of the 1947 Convention shall be construed as a reference to "section 19(a), (b) and (f)".

(3) For the avoidance of doubt, a reference to any functions or duties of the representatives of WTO members in sections 13 and 14 of the 1947 Convention means the functions or duties, as the case may be, of such representatives as referred to in those sections, which are construed in accordance with subsection (2), relating to the meetings convened by the WTO.

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Chapter:	558	Title:	INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) ORDINANCE	Gazette Number: L.N. 83 of 2000
Section:	3	Heading:	Provisions of international agreements to have the force of law	Version Date: 07/04/2000

|| The Chief Executive in Council may-

- || (a) by order in the Gazette, declare that the provisions of an international agreement relating to the status, privileges and immunities of an international organization and of persons connected with such organization, and which are specified in the order, shall have the force of law in Hong Kong; and
- || (b) in such order make such provisions as the Chief Executive in Council may consider necessary for carrying into effect the provisions of any such agreement in connection with such privileges and immunities.

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Chapter:	558A	Title:	INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (OFFICE OF THE COMMISSION OF THE EUROPEAN COMMUNITIES) ORDER	Gazette Number:	L.N. 166 of 2003
Schedule:		Heading:	SCHEDULE	Version Date:	14/11/2003

[section 3]

PROVISIONS OF OFFICE AGREEMENT HAVING THE FORCE OF LAW IN HONG KONG

3. The European Communities-the European Coal and Steel Community, the European Community and the European Atomic Energy Community-shall each have legal personality in the Hong Kong Special Administrative Region of the People's Republic of China.

Accordingly, the European Communities shall have the capacity to conclude contracts, to acquire and dispose of immovable and movable property as necessary for the effective fulfillment of their duties, in accordance with the procedural and administrative requirements imposed by the law of the Hong Kong Special Administrative Region of the People's Republic of China and by any other law of the People's Republic of China, and to conduct legal proceedings, and shall be represented for that purpose by the Commission.

4. The Office, its Head and members accredited by the Commission of the European Communities who are nationals of the member states of the European Communities but not in their capacity as the permanent residents of the Hong Kong Special Administrative Region, as well as the members of their families forming part of their respective households, shall enjoy consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the provisions of the Vienna Convention on Consular Relations of 24 April 1963.

They will, consistent with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the other national laws of China applicable in the Hong Kong Special Administrative Region in accordance with the Basic Law, enjoy such rights and consular privileges and immunities as are necessary for the effective fulfillment of their duties.

5. The laissez-passer issued by the European Communities to officials and other servants of its institutions shall be recognized as a valid travel document.

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Chapter:	558B	Title:	INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (WORLD TRADE ORGANIZATION) ORDER	Gazette Number:	L.N. 62 of 2005
Schedule:		Heading:	SCHEDULE	Version Date:	07/07/2005

[section 3]

|| PROVISIONS OF 1947 CONVENTION HAVING FORCE OF LAW IN HONG KONG
Article I—Definitions and Scope

Section 1

In this Convention:

...

(iv) For the purposes of article III, the words "property and assets" shall also include property and funds administered by a specialized agency in furtherance of its constitutional functions.

(v) For the purposes of articles V ..., the expression "representatives of members" shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of delegations.

(vi) In sections 13, 14, 15 ..., the expression "meetings convened by a specialized agency" means meetings: (1) of its assembly and of its executive body (however designated), and (2) of any commission provided for in its constitution; (3) of any international conference convened by it; and (4) of any committee of any of these bodies.

(vii) The term "executive head" means the principal executive official of the specialized agency in question, whether designated "Director-General" or otherwise.

...

Article II—Juridical Personality

Section 3

The specialized agencies shall possess juridical personality. They shall have the capacity (a) to

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Chapter:	557	Title:	CONSULAR RELATIONS	Gazette Number:	16 of 2000
			ORDINANCE		
Section:	4	Heading:	Orders providing for additional or reduced privileges and immunities	Version Date:	10/03/2000

(1) The Chief Executive in Council may-

- (a) by order in the Gazette, declare that the additional privileges and immunities-
 - (i) accorded to a State under an international agreement; and
 - (ii) specified in the order,shall have the force of law in Hong Kong; and
- (b) in such order make such provisions as the Chief Executive in Council may consider necessary for carrying into effect in Hong Kong the provisions of the international agreement in connection with such privileges and immunities.

(2) The Chief Executive in Council may, by order in the Gazette, declare that such of the privileges and immunities contained in the Schedule-

- (a) that are not accorded to a State under an international agreement to which that State is a party; and
- (b) as specified in the order,

shall be excluded in the application of section 3 in relation to-

- (i) any consular post of that State;
- (ii) persons connected with the consular post.

(3) The Chief Executive in Council may, by order in the Gazette, declare that any privilege or immunity conferred by or under this Ordinance and as specified in the order shall no longer have the force of law in Hong Kong in relation to-

- (a) all or any of the consular posts of a State;
- (b) such persons connected with the consular post or posts as the Chief Executive in Council may consider proper,

on the ground that that State is failing to accord the corresponding privilege or immunity to a consular post of the People's Republic of China in a territory of that State, or to persons connected

with such consular post.

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19. Information as to waste delivered for disposal

(1) The Director may require any person who delivers to him for disposal any waste (other than household waste) to state the nature of the waste and to give such other information relating to the waste as the Director may require. (*Amended L.N. 76 of 1982; L.N. 74 of 1986*)

(2) Any person who, in complying with a requirement under subsection (1) makes any statement or gives any information which he knows to be incorrect in a material particular or who recklessly makes a statement or gives information which is incorrect in a material particular or knowingly omits any material particular therefrom commits an offence and is liable to a fine of ~~\$5,000~~.

↑ at level 6

20A. Permit required for the import of waste into Hong Kong

(1) The import into Hong Kong of—

- (a) any waste of a kind specified in the Sixth Schedule, unless the waste is uncontaminated and is imported for the purpose of a reprocessing, recycling or recovery operation or the reuse of the waste; or
- (b) any waste of a kind specified in the Seventh Schedule, or not specified in the Sixth Schedule,

requires a permit issued by the waste disposal authority under this section.

(2) An application for a permit under this section—

- (a) shall be in the form that the waste disposal authority directs specifying—
 - (i) the reason for the proposed waste import;
 - (ii) the name and address of the importer of the waste;
 - (iii) the name and address of the waste producer;
 - (iv) the name and address of the disposer of the waste;
 - (v) the address of the waste disposal or reuse facility to be used;
 - (vi) the name and address of every intended carrier of the waste or his agent;

- (vii) the names of the states of export and transit and their competent authorities;
- (viii) whether the permit is for a single shipment or multiple shipments;
- (ix) the projected date of each shipment and the period of time over which waste is to be imported;
- (x) the mode of transportation envisaged;
- (xi) a physical description of the waste and its composition and information on any special handling requirements;
- (xii) the type of packaging envisaged;
- (xiii) the estimated quantity by weight or volume of waste to be imported;
- (xiv) details of the process by which and place at which the waste was or is being generated;
- (xv) a description of the method of disposal or reuse; and
- (xvi) such other information as the waste disposal authority may reasonably require to determine whether or not to issue a permit; and

(b) shall be accompanied by—

- (i) documents confirming the contractual arrangements, if any, for the disposal or reuse of the waste;
- (ii) a contingency plan showing the procedures to be followed in case of accident;
- (iii) documents confirming the existence of the liability insurance and bond or other financial guarantee mentioned in subsection (4)(b); and
- (iv) the prescribed fee.

(3) The waste disposal authority may either issue, with or without conditions, or refuse to issue a permit for the import of the waste, and shall notify the applicant of his decision and, in the case of refusal, the reasons for such refusal.

(4) The waste disposal authority shall not issue a permit under this section for the import of any waste unless he is satisfied—

- (a) that the waste will be managed in Hong Kong in accordance with the laws of Hong Kong and in an environmentally sound manner;
- (b) that there is in force, or there will be in force at the time of the import of the waste—
 - (i) liability insurance to cover claims arising out of damage to human health, property and the environment which may result from the import operation; and

- (ii) a bond, or other financial guarantee acceptable to the waste disposal authority, providing for payment to the waste disposal authority of the cost of any seizure or disposal of the waste under section 20F that may occur; ~~and~~
- (c) in the case of waste to be imported other than for the purpose of reuse or a reprocessing, recycling or recovery operation, that—
 - (i) the state of export does not have the facilities, capacity or disposal sites that would allow disposal of the waste in an environmentally sound manner; or
 - (ii) the import of the waste is for a purpose which the waste disposal authority considers necessary or desirable in the interests of the environmentally sound and efficient management of the waste disposal system in Hong Kong; ~~or~~
- (d) in the case of waste to be imported for reuse or for a reprocessing, recycling or recovery operation, that the waste is required as a raw material for such reuse or operation in Hong Kong;

20B. Permit required for the export of waste from Hong Kong

- (1) The export from Hong Kong of—
 - (a) any waste of a kind specified in the Sixth Schedule, unless the waste is uncontaminated and is exported for the purpose of a reprocessing, recycling or recovery operation or the reuse of the waste; or
 - (b) any waste of a kind specified in the Seventh Schedule, or not specified in the Sixth Schedule,
 requires a permit issued by the waste disposal authority under this section.
- (2) An application for a permit under this section—
 - (a) shall be in the form that the waste disposal authority directs specifying—
 - (i) the reason for the proposed waste export;
 - (ii) the name and address of the exporter of the waste;
 - (iii) the name and address of the waste producer;
 - (iv) the name and address of the disposer of the waste;
 - (v) the address of the waste disposal or reuse facility to be used;
 - (vi) the name and address of every intended carrier of the waste or his agent;
 - (vii) the names of the states of import and transit and their competent authorities;
 - (viii) whether the permit is for a single shipment or multiple shipments;

- △ (e) in the case of waste of a kind specified in the Seventh Schedule, that the waste is not exported from a state that is listed in Schedule 9; and
- || (f) that the issue of such permit is not in breach of Hong Kong's obligations under The Basel Convention.

- (ix) the projected date of each shipment and the period of time over which waste is to be exported;
- (x) the mode of transportation envisaged;
- (xi) a physical description of the waste and its composition and information on any special handling requirements;
- (xii) the type of packaging envisaged;
- (xiii) the estimated quantity by weight or volume of waste to be exported;
- (xiv) details of the process by which and place at which the waste was or is being generated;
- (xv) a description of the method of disposal or reuse; and
- (xvi) such other information as the waste disposal authority may reasonably require to determine whether or not to issue a permit; and

(b) shall be accompanied by—

- (i) documents confirming the contractual arrangements, if any, for the disposal or reuse of the waste;
- (ii) documents confirming the existence of the liability insurance and the bond or other financial guarantee mentioned in subsection (4)(b); and
- (iii) the prescribed fee.

(3) The waste disposal authority may either issue, with or without conditions, or refuse to issue a permit for the export of the waste, and shall notify the applicant of his decision and, in the case of refusal, the reasons for such refusal.

(4) The waste disposal authority shall not issue a permit under this section for the export of any waste unless he is satisfied—

- (a) that the competent authority of the state of import and of each state of transit has consented to the import or transit, as the case may be, of the waste;
- (b) that the competent authority of the state of import and of each state of transit has confirmed that its laws, if any, as regards the existence of—
 - (i) liability insurance to cover claims arising out of damage to human health, property and the environment which may result from the export operation; and
 - (ii) a bond, or other financial guarantee, providing for payment to the competent authority of the state of import and each state of transit of the cost of any seizure or disposal of the waste by such competent authority,have been complied with in respect of the proposed export;
- (c) that the waste will be managed or disposed of in an environmentally sound manner;

- || (d) that the waste will not be disposed of within the area south of the parallel of 60° south; ~~and~~
- (e) in the case of waste to be exported other than for the purpose of a reprocessing, recycling or recovery operation or the reuse of the waste, that—
- (i) Hong Kong does not have the facilities, capacity or disposal sites that would allow disposal of the waste in an environmentally sound manner; or
 - (ii) the export of the waste is for a purpose which the waste disposal authority considers necessary or desirable in the interests of the environmentally sound and efficient management of the waste disposal system in Hong Kong; ~~or~~
- || (f) in the case of waste to be exported for the purpose of a reprocessing, recycling or recovery operation or for reuse, that the waste is required as a raw material for such operation or reuse in the state of import ~~or~~ ^

^ ; and

- || ^ (g) that the issue of such permit is not in breach of Hong Kong's obligations under The Basel Convention.

(3) 在就第(1)款所訂罪行而進行的法律程序中，被檢控的人如證明他並不知道以及即使作出合理努力亦不會能夠知道有關化學品是受管制化學品，即可以此作為免責辯護。

9. 對使用受管制化學品的限制

- (1) 除根據和按照許可證的規定外，任何人不得使用任何受管制化學品。
- (2) 任何人違反第(1)款，即屬犯罪，一經定罪，可處第5級罰款及監禁1年。
- (3) 在就第(1)款所訂罪行而進行的法律程序中，被檢控的人如證明他並不知道以及即使作出合理努力亦不會能夠知道有關化學品是受管制化學品，即可以此作為免責辯護。

第3部

許可證的發出和許可證條件的更改等

許可證的發出和續期等

10. 許可證的發出和續期等

(1) 如任何人提出符合根據第45條訂立的任何規例的規定的申請，而申請人已符合根據或憑藉任何該等規例就該申請施加的任何其他規定，署長可應申請發出進行以下活動的許可證——

- (a) 製造一種或多於一種受管制化學品；
- (b) 出口一種或多於一種受管制化學品；
- (c) 進口一種或多於一種受管制化學品；
- (d) 使用一種或多於一種受管制化學品。

(2) 如任何人提出符合根據第45條訂立的任何規例的規定的申請，而申請人已符合根據或憑藉任何該等規例就該申請施加的任何其他規定，署長可應申請將根據第(1)款發出的許可證續期。

- (3) 署長在考慮是否根據第(1)或(2)款行使其權力時，須顧及——
- (a) 管限有關申請所關乎的活動的其他成文法則；及

(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) 在《鹿特丹公約》及《斯德哥爾摩公約》下的規定。
- (4) 署長不得——
- (a) 發出授權製造任何第 1 類化學品的許可證或將該許可證續期，但在以下情況下則屬例外——
- (i) 該化學品僅是——
- (A) 為實驗室規模的研究的目的而使用；
- (B) 用作化學分析的參照標準；或
- (C) 為實驗室規模的研究的目的而使用並用作化學分析的參照標準；及
- (ii) 該許可證的發出或續期，不會抵觸在《鹿特丹公約》及《斯德哥爾摩公約》下的任何規定；及
- (b) 發出授權製造任何第 2 類化學品的許可證或將該許可證續期，或發出授權出口、進口或使用任何受管制化學品的許可證或將該許可證續期，但如該許可證的發出或續期，不會抵觸在《鹿特丹公約》及《斯德哥爾摩公約》下的任何規定，則屬例外。

11. 署長就許可證施加條件的權力

- (1) 在不影響《釋義及通則條例》(第 1 章) 第 40(2)(b) 條的一般性的原則下，署長可在根據第 10 條發出許可證或將許可證續期時——
- (a) 在該許可證所授權進行的活動將會在任何處所進行的情況下，施加任何他認為適當的關乎該處所的條件；
- (b) 施加任何他認為適當的關乎該許可證所授權進行的活動的原定用途或操作方式的條件；
- (c) 施加任何他認為適當的規定該許可證持有人遵守管限該許可證所授權進行的活動的任何其他成文法則的條件；及
- (d) 施加任何他認為適當的為保障公眾健康或保護環境的條件。
- (2) 署長在考慮是否根據第 (1) 款施加條件，或根據該款施加何種條件時，須顧及——
- (a) 管限有關許可證所授權進行的活動的其他成文法則；及
- (b) 在《鹿特丹公約》及《斯德哥爾摩公約》下的規定。

- (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) 署長不得施加任何抵觸在《鹿特丹公約》及《斯德哥爾摩公約》下的任何規定的條件，然而即使署長施加的條件可導致的措施，較該等公約所規定的任何措施為嚴苛，他仍可如此施加該條件。

12. 拒絕許可證等的申請

如署長決定——

(a) 拒絕要求根據第 10(1) 條發出許可證的申請；或

(b) 拒絕要求根據第 10(2) 條將許可證續期的申請，

他須藉向申請人送達書面通知，告知該申請人其決定及決定的理由。

許可證條件的更改等

13. 署長更改許可證條件的權力

(1) 署長——

(a) 可主動更改許可證的條件；或

(b) 在任何人提出符合根據第 45 條訂立的任何規例的規定的申請，而申請人已符合根據或憑藉任何該等規例就該申請施加的任何其他規定的情況下，可應申請更改許可證的條件。

(2) 署長在考慮是否根據第 (1) 款更改許可證的條件，或根據該款作出何種更改時，須顧及——

(a) 管限該許可證所授權進行的活動的其他成文法則；及

(b) 在《鹿特丹公約》及《斯得哥爾摩公約》下的規定。

(3) 如署長更改許可證的條件，會抵觸在《鹿特丹公約》及《斯得哥爾摩公約》下的任何規定，則他不可如此更改該等條件，然而即使署長更改許可證的條件可導致的措施，較該等公約所規定的任何措施為嚴苛，他仍可如此更改該等條件。

14. 署長須通知他對更改或拒絕更改許可證條件的決定

(1) 如署長決定——

(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—

違反許可證條件的罪行

18. 違反許可證條件的罪行

任何許可證持有人如違反第 11(1)(a)、(b)、(c) 或 (d) 條所描述的許可證的條件，即屬犯罪，一經定罪，可處第 4 級罰款及監禁 6 個月。

第 4 部

許可證的取消或暫時吊銷

許可證的取消

19. 署長取消許可證的權力

(1) 在以下情況下，署長可取消許可證——

- (a) 有關許可證持有人違反本條例的任何條文；
- (b) 有關許可證持有人違反該許可證的任何條件；
- (c) 署長覺得為保障公眾健康或保護環境而有必要取消該許可證；或
- (d) 署長覺得為遵從在《鹿特丹公約》及《斯德哥爾摩公約》下的任何規定而有必要取消該許可證。

(2) 如署長決定取消許可證，他須藉向有關許可證持有人送達書面通知，告知該許可證持有人其決定及決定的理由。

20. 許可證的取消何時生效

(1) 凡署長決定根據第 19 條取消許可證，該項取消在取消通知中為該目的而指明之日生效。

(2) 儘管已有或將有根據第 42(d) 條針對署長的決定而提出的上訴，有關取消仍根據第 (1) 款生效。

21. 在許可證取消後將之交回署長

(1) 許可證持有人須在該許可證的取消生效後，在切實可行範圍內盡快將該許可證交回署長。

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) 任何人無合理辯解而違反第(1)款，即屬犯罪，一經定罪，可處第1級罰款及監禁6個月。

22. 署長就於取消許可證後處置受管制化學品作出指示的權力等

(1) 凡署長根據第19條取消許可證，而某受管制化學品若非該許可證遭取消本可根據該許可證的授權而製造、出口、進口或使用，則署長可就處置該化學品，包括就處置該化學品屬其中一部分的任何物品以及任何用作盛載該化學品或物品的容器，作出他認為適當的指示。

(2) 署長在考慮是否根據第(1)款作出指示，或根據該款作出何種指示時，須顧及——

- (a) 管限處置有關化學品的其他成文法則；及
- (b) 在《鹿特丹公約》及《斯德哥爾摩公約》下的規定。

(3) 署長不得作出任何抵觸在《鹿特丹公約》及《斯德哥爾摩公約》下的任何規定的指示，然而即使署長作出的指示可導致的措施，較該等公約所規定的任何措施為嚴苛，他仍可如此作出該指示。

(4) 如署長決定根據第(1)款作出任何指示，他須在有關取消通知中指明該指示。

23. 署長更改根據第22條作出的指示的權力

(1) 如任何人提出符合根據第45條訂立的任何規例的規定的申請，而申請人已符合根據或憑藉任何該等規例就該申請施加的任何其他規定，署長可應申請，更改根據第22條作出的有關指示。

(2) 署長在考慮是否根據第(1)款更改指示，或根據該款作出何種更改時，須顧及——

- (a) 管限處置有關化學品的其他成文法則；及

(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) 在《鹿特丹公約》及《斯德哥爾摩公約》下的規定。

(3) 如署長更改根據第 22 條作出的任何指示，會抵觸在《鹿特丹公約》及《斯德哥爾摩公約》下的任何規定，則他不可如此更改該等指示，然而即使署長更改任何指示可導致的措施，較該等公約所規定的任何措施為嚴苛，他仍可如此更改該等指示。

24. 署長須通知他對更改或拒絕更改其指示的決定

(1) 如署長決定——

(a) 更改根據第 22 條作出的指示；或

(b) 拒絕要求更改根據第 22 條作出的指示的申請，

他須藉向有關許可證持有人送達書面通知，告知該許可證持有人其決定及決定的理由。

(2) 凡署長決定更改根據第 22 條作出的指示，有關通知須說明更改該指示的方式。

25. 署長更改指示的決定何時生效

凡署長決定更改根據第 22 條作出的指示，該項更改在第 24 條提述的通知中為該目的而指明之日生效。

26. 沒有遵從署長就處置受管制化學品作出的指示屬罪行

許可證持有人沒有遵從根據第 22 條作出的任何指示或(凡指示已根據第 23 條更改)任何經更改的指示，即屬犯罪，一經定罪，可處第 3 級罰款及監禁 6 個月。

許可證的暫時吊銷

27. 署長暫時吊銷許可證的權力

(1) 在以下情況下，署長可將許可證暫時吊銷一段他認為適當的期間——

(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) 有關許可證持有人違反本條例的任何條文；
- (b) 有關許可證持有人違反該許可證的任何條件；
- (c) 署長覺得為保障公眾健康或保護環境而有必要暫時吊銷許可證；或
- (d) 署長覺得為遵從在《鹿特丹公約》及《斯德哥爾摩公約》下的任何規定而有必要暫時吊銷該許可證。

(2) 如署長決定暫時吊銷許可證，他須藉向有關許可證持有人送達書面通知，告知該許可證持有人其決定及決定的理由。

28. 許可證的暫時吊銷何時生效

(1) 凡署長決定根據第 27 條暫時吊銷許可證，該項暫時吊銷在暫時吊銷通知中為該目的而指明之日生效。

(2) 儘管已有或將有根據第 42(f) 條針對署長的決定而提出的上訴，有關暫時吊銷仍根據第 (1) 款生效。

29. 在許可證暫時吊銷後將之交回署長

(1) 許可證持有人須在該許可證的暫時吊銷生效後，在切實可行範圍內盡快將該許可證交回署長。

(2) 任何人無合理辯解而違反第 (1) 款，即屬犯罪，一經定罪，可處第 1 級罰款及監禁 6 個月。

30. 在暫時吊銷期屆滿後將許可證交回許可證持有人

在許可證的暫時吊銷失效後，如有關許可證持有人——

- (a) 沒有在暫時吊銷失效後的 10 個工作天內，向署長取回該許可證；或
- (b) 以書面要求將該許可證送給他，

則署長可按他認為適當的方式，將該許可證送交該許可證持有人。

- (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.

- (d) 規定須就 (a) 段提述的申請以及在本條例中規定的任何其他事宜而繳付的費用；
 - (e) 訂明根據在本條下訂立的規例須予或可予訂明的任何事項；及
 - (f) 訂定因該規例而需要或適宜的附帶、相應及過渡性條文。
- (3) 根據本條訂立的規例可——
- (a) 就——
 - (i) 不同類別、不同種類或不同描述的化學品訂定不同條文；及
 - (ii) 不同目的、不同情況或不同個案訂定不同條文；及
 - (b) 規定違反該規例即屬犯罪，並可就該罪行，訂定不超過第 3 級罰款及不超過 1 年監禁的罰則。

46. 局長訂立規例的權力——費用

- (1) 局長可藉規例訂明根據本條例須繳付的費用。
- (2) 在不影響《釋義及通則條例》(第 1 章) 第 29 條的一般性的原則下，根據第 (1) 款訂立的規例可——
 - (a) 就不同類別、不同種類或不同描述的化學品訂定不同條文；及
 - (b) 就不同目的、不同情況或不同個案訂定不同條文。

47. 豁免

- (1) 局長可在任何個別個案中，以書面豁免任何人或化學品、或任何類別的人或類別的化學品，不受本條例的任何條文規限。
- (2) 根據本條批給的豁免，可受局長認為適當的條件規限。
- (3) 局長在考慮是否根據第 (1) 款批給豁免，或根據該款批給何種豁免時，須顧及在《鹿特丹公約》及《斯德哥爾摩公約》下的規定。
- (4) 局長不得批給任何抵觸在《鹿特丹公約》及《斯德哥爾摩公約》下的任何規定的豁免。

- (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.