

LEGISLATIVE COUNCIL BRIEF

International Organizations
(Privileges and Immunities) Ordinance
(Chapter 558)

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

INTRODUCTION

At the meeting of the Executive Council on 27 March 2012, the Council ADVISED and the Chief Executive ORDERED that the International Organizations (Privileges and Immunities) (Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction) Order, at **Annex A**, be made under section 3 of the International Organizations (Privileges and Immunities) Ordinance.

A

JUSTIFICATIONS

Inspections by the Technical Secretariat

2. Hong Kong is obliged to implement the requirement under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Convention) to confer privileges and immunities (“Ps & Is”) on the inspection teams from the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons (“OPCW”) and the observers of the inspection. The range of Ps & Is is set out in paragraphs 10-15 of Part II of the Annex on Implementation and Verification to the Convention (“Verification Annex”). A copy of the relevant Ps & Is is at **Annex B**.

B

The Chemical Industry in Hong Kong

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

Need for Local Legislation

4. In line with the common law practice, provisions of international agreements applicable to Hong Kong, which affect private rights and obligations or require exceptions to be made to the existing laws of Hong Kong, should be transformed onto the domestic legal plane. Having regard to our common law tradition, the best means of underpinning the relevant Ps & Is as conferred by Part II of the Verification Annex to the Convention is to enact local legislation in the form of an Order under the International Organizations (Privileges and Immunities) Ordinance which will set out expressly and specifically the relevant Ps & Is.

5. Among the list of Ps & Is, we consider the provisions set out in paragraph 10 (related to the granting of multiple entry/exit and/or transit visas to the inspectors and inspection assistants) and the second sentence in paragraph 13 (related to the abuse of Ps & Is) can be dealt with by administrative measures. The rest of the Ps & Is will be covered by the International Organizations (Privileges and Immunities) (Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction) Order (“the Order”).

THE ORDER

6. The principal object of the Order is to give effect to the Ps & Is set out in paragraphs 11, 12, 13 (first sentence only), 14 and 15 of Part II of the Verification Annex to the Convention in respect of the acts performed in Hong Kong by members of the inspection teams and observers in the exercise of their official functions under the Convention.

LEGISLATIVE TIMETABLE

Scrutiny by the Legislative Council (“LegCo”)

7. The Order will be published in the Gazette on 13 April 2012. Under section 34 of the Interpretation and General Clauses Ordinance, it will then be laid on the table of the LegCo for negative vetting on 18 April 2012.

Implementation

8. We propose that the Order shall come into operation on 8 June 2012, taking into account the lead time required for negative vetting upon gazettal.

IMPLICATIONS

9. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Order will not affect the current binding effect of the International Organizations (Privileges and Immunities) Ordinance.

10. The Ps & Is conferred on the inspection team and observers under the Order do not have significant financial implications for the Government.

11. The proposal has no civil service, economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

12. The LegCo Panel on Commerce and Industry was briefed and expressed support for the Order at its meeting of 21 February 2012.

PUBLICITY

13. A spokesperson will be available for answering media and public enquiries.

BACKGROUND

14. The Convention, which came into force on 29 April 1997, is an international treaty that aims at banning the development, production, use and retention of chemical weapons. The main requirements under the Convention are –

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

15. To implement the Convention in Hong Kong, we introduced the Chemical Weapons (Convention) Ordinance which came into effect in 2004. The Ordinance provides for legal authority to –

- (a) ban the use, development, production, acquisition, stockpiling, retention and participation in the transfer of chemical weapons, and seize chemical weapons found in Hong Kong for disposal in accordance with the provisions in the Convention;
- (b) control and monitor the production and related activities pertinent to chemicals specified in the three Schedules to the Convention;
- (c) require the submission of information from chemical facilities for the purposes of compiling annual declarations to the OPCW; and
- (d) enable the inspection teams sent by the Technical Secretariat to conduct inspections of facilities in Hong Kong by granting such teams access to the facilities.

ENQUIRY

16. Any enquiries on the brief should be addressed to Mrs Candy Yeung, Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) at telephone number 2810 2855.

Commerce and Economic Development Bureau
April 2012

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

Section 1

1

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

(Made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558))

1. Commencement

This Order comes into operation on 8 June 2012.

2. Interpretation

In this Order—

Convention (《公約》) has the meaning given by section 2(1) of the Chemical Weapons (Convention) Ordinance (Cap. 578);

Verification Annex (《核查附件》) means the Annex on Implementation and Verification to the Convention.

3. Provisions of Convention having force of law in Hong Kong

(1) It is declared that the provisions of paragraphs 11, 12, 13 (from “Without prejudice” to “the internal affairs of that State.”), 14 and 15 of Part II of the Verification Annex as specified in the Schedule have the force of law in Hong Kong and for that purpose are to be construed in accordance with subsections (2) and (3).

(2) In applying the following paragraphs of Part II of the Verification Annex, the references to the following expressions are to be construed as meaning Hong Kong—

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

Section 3

2

- (a) in paragraph 11, “the territory of the inspected State Party or Host State”;
 - (b) in paragraph 11(g), “the territory of the inspected State Party or Host State Party”;
 - (c) in paragraph 11(i), “the territory of the inspected State Party or the Host State”;
 - (d) in paragraph 12, “the territory of non-inspected States Parties”; and
 - (e) in paragraph 13, “the inspected State Party or Host State”.
- (3) In applying paragraph 11(d) of Part II of the Verification Annex, the reference to “relevant regulations” is to be construed as meaning the laws of Hong Kong relating to the handling and transport of hazardous goods.

Schedule

[s. 3]

Provisions of Convention Having Force of Law in Hong Kong

Part II of Verification Annex

...

B. PRIVILEGES AND IMMUNITIES

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11. To exercise their functions effectively, inspectors and inspection assistants shall be accorded privileges and immunities as set forth in subparagraphs (a) to (i). Privileges and immunities shall be granted to members of the inspection team for the sake of this Convention and not for the personal benefit of the individuals themselves. Such privileges and immunities shall be accorded to them for the entire period between arrival on and departure from the territory of the inspected State Party or Host State, and thereafter with respect to acts previously performed in the exercise of their official functions.
- (a) The members of the inspection team shall be accorded the inviolability enjoyed by diplomatic agents pursuant to Article 29 of the Vienna Convention on Diplomatic Relations of 18 April 1961.
 - (b) The living quarters and office premises occupied by the inspection team carrying out inspection activities pursuant to this Convention shall be accorded the inviolability and protection accorded to the premises of diplomatic agents pursuant to Article 30, paragraph 1, of the Vienna Convention on Diplomatic Relations.

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

- (i) The members of the inspection team shall not engage in any professional or commercial activity for personal profit on the territory of the inspected State Party or the Host State.
- 12. When transiting the territory of non-inspected States Parties, the members of the inspection team shall be accorded the privileges and immunities enjoyed by diplomatic agents pursuant to Article 40, paragraph 1, of the Vienna Convention on Diplomatic Relations. Papers and correspondence, including records, and samples and approved equipment, carried by them, shall be accorded the privileges and immunities set forth in paragraph 11(c) and (d).
- 13. Without prejudice to their privileges and immunities the members of the inspection team shall be obliged to respect the laws and regulations of the inspected State Party or Host State and, to the extent that is consistent with the inspection mandate, shall be obliged not to interfere in the internal affairs of that State. ...
- 14. The immunity from jurisdiction of members of the inspection team may be waived by the Director-General in those cases when the Director-General is of the opinion that immunity would impede the course of justice and that it can be waived without prejudice to the implementation of the provisions of this Convention. Waiver must always be express.
- 15. Observers shall be accorded the same privileges and immunities accorded to inspectors pursuant to this section, except for those accorded pursuant to paragraph 11(d).

...

Clerk to the Executive Council

COUNCIL CHAMBER

2012

Explanatory Note

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13 January 1993 (*the Convention*) has been extended to Hong Kong as from 1 July 1997. Through the enactment of the Chemical Weapons (Convention) Ordinance (Cap. 578), the relevant provisions of the Convention are implemented in Hong Kong. The principal object of this Order is to give effect to the privileges and immunities accorded to members of the inspection teams and observers under the Convention, for the acts they perform in Hong Kong in the exercise of their official functions.

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

Annex on Implementation and Verification

Part II. General Rules of Verification

B. Privileges and Immunities

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

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

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

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

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

representatives of foreign Governments on temporary official missions.

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

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

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

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

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