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24 June 2005

Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Hong Kong  
(Attn.: Miss Monna Lai)

Dear Miss Lai,

**Protection of Endangered Species of Animals and Plants Bill**

Thank you for your letter of 16 June 2005.

2. Regarding your further comments on the Protection of Endangered Species of Animals and Plants (the Bill), our responses are set out below.

**Clause 2**

Convention Instrument

3. This Bill adopts terms from the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) that are not defined in the CITES articles, but their meaning are set out in the relevant Convention instruments which represent international understanding on the interpretation of the terms. The contents of Convention instruments may be modified from time to time by the Conference of the Parties according to the latest international trend and developments in technology and business practices. However, without amending the CITES itself, the Conference of the Parties may not pass any resolution or make any decision that would be inconsistent with the articles or basic principles in the CITES. As such, the meaning of the defined terms set out in Schedule 3 (which captures the relevant parts of Convention instruments) would not and could not affect the governing principles of the CITES articles enshrined in the main body of the Bill.

4. For example, the basic principle of the CITES on the protection of endangered species against over-exploitation through international trade is reflected in the clauses that impose heavier penalties on offences committed for commercial purposes. While the term “commercial purposes” is not defined in the CITES articles, the Conference of the Parties has passed a resolution (Conf. 5.10) giving guidelines on what kind of activity can be described as “commercial”. We consider that the meaning of “commercial purposes” deriving from this resolution should be incorporated into Schedule 3 because the Conference of the Parties may revise the relevant instrument from time to time in order to keep pace with the fast emergence of new commercial practices. The basic principle in the CITES and this Bill concerning the strict regulation over commercial exploitation of endangered species will not be affected because no matter how the Conference of the Parties may vary the meaning of “commercial purposes” by future resolutions, it cannot derogate from that basic principle.

#### Re-export Certificate

5. According to clause 2(1), the meaning of the terms listed in clause 2 will not be applicable if the context otherwise requires. The context in which the defined word “export” alone appears is clearly different from the context in which the term “Convention export permit” appears. “Export” means to take, or cause to be taken, out of Hong Kong (please see, for example, clauses 7(1) and 13(1)). This definition is not applicable to the meaning of a “Convention export permit”. A “Convention export permit” is separately defined in relation to a specimen of a scheduled species brought into Hong Kong from a place outside Hong Kong. It refers to certain types of documents that are issued by a relevant authority of that place and are acceptable for the purpose of importing that specimen into Hong Kong (please see, for example, clauses 5, 11, 17, 18 and 19).

#### **Clauses 3 and 22**

6. Paragraph 1 of CITES Article VII provides for exemption for specimens in transit or transshipment. For the purpose of the above provision, CITES Conference of the Parties has issued Resolution Conf. 9.7 (Rev. CoP13) whereby certain conditions have to be fulfilled before the exemption may apply. In the circumstances, not all goods or objects brought into Hong Kong by a carrier fall automatically within the exemption under the CITES although they are regarded as “remaining in customs control”. Clauses 3 and 22 form a system to dealing with a specimen in transit as set out in the above CITES Article and Resolution. These clauses follow the requirements of CITES in exempting the goods, including the requirement for the production of a valid document.

## **Clauses 23 and 52**

7. It is indeed our intent that Schedule 1 to the Bill should be amended by the Secretary for the Environment, Transport and Works exercising her power under clause 48 as soon as practicable in order to implement any changes made to the CITES Appendices. As this involves going through the legislative amendment procedures, there are different factors affecting the time required for completing the necessary process. For example, we may need to make reference to the final text of the new Appendices issued under a CITES Notification before finalizing the wording of the amendments to the Schedule. Sometimes it can take a few weeks after a CITES meeting before the Notification becomes available.

8. In addition, there are cases where an importing country requires a document issued by the relevant authority of the exporting country confirming that the specimens in the shipment are not CITES-listed species. Such a document will have to be issued in the form of a re-export certificate under clause 52.

## **Clause 26**

9. The policy on clause 46(4) is consistent with that relating to the return of the relevant licence issued under clause 23 by the Director. It is in fact part of the licensing scheme under the Bill that a licence, whether it is for import, export, introduction from the sea, re-export or possession or control, will be subject to certain conditions of use and will be returned to the licence holder pending the determination of the Administrative Appeals Board (AAB) once an appeal has been lodged under clause 46(1). Such a licence, if returned to the licence holder, would only be required to be surrendered to the Director after AAB has confirmed the Director's decision relating to the cancellation of such a licence.

10. Under the CITES, the Director should not allow the export or re-export of a specimen unless he is satisfied that CITES requirements are complied with. The imposition of general conditions that may have the effect of restricting a licence holder from using the licence to export or re-export specimens pending appeal in fact forms part of our regulatory regime. It relates to the operation of the licensing scheme and does not affect the status of a decision pending appeal as provided in clause 46(4). In other words, the licence holder of an export or re-export licence would be entitled under the licensing scheme, like the holder of an import, introduction from the sea or possession or control licence, to hold the licence (the use of which is always subject to the conditions imposed) pending the decision of AAB under clause 26.

11. The Director would examine each and every case carefully before exercising his power under clause 26(1) to cancel the relevant licence issued under clause 23. If AAB reverses the decision of the Director, it is up to the licence holder, who alleges loss and damage due to the delay in the export or re-export of the endangered species concerned, to consider whether it is appropriate to lodge a civil claim to recover such alleged loss and damage.

Yours sincerely,

(Eric Chan)  
for Director of Environmental Protection