

For discussion
on 22 November 2004

**LEGISLATIVE COUNCIL
PANEL ON ENVIRONMENTAL AFFAIRS**

**Review of the Animals and Plants
(Protection of Endangered Species) Ordinance (Cap. 187)**

Purpose

This paper briefs Members on the proposed amendments to the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (“the Ordinance”). The purposes of the legislative proposals are to –

- (a) ensure Hong Kong’s full compliance with the international control regime on endangered species; and
- (b) streamline the provisions of the Ordinance so as to facilitate compliance by the trade and the general public.

Background

2. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”), which has been extended to Hong Kong since 1976, aims to regulate international trade in endangered species and protect wildlife from over exploitation/extinction. The import and export of the species including their readily recognisable parts and derivatives listed in its Appendices are subject to control. Details of the Appendices are set out below –

Appendix I

Species threatened with extinction which are or may be affected by trade.

Appendix II

Species which, unless trade is controlled, could be threatened with extinction, and species that are not readily distinguishable from these species in appearance or other aspects and hence must be subject to regulation to avoid any possible loopholes in the control.

Appendix III

Species identified by any Party to CITES for trade control within its jurisdiction with the objective of preventing or restricting exploitation that requires the cooperation of other Parties.

3. Under the Convention, the import and export of CITES Appendix I species are only permitted in certain specified circumstances (e.g. for exhibitions) under a valid export (or re-export) permit and import permit. International trade in CITES Appendix II or III species requires an export (or re-export) permit. The Conference of the Parties to CITES (“COP”) meets every two years and, among other things, review the species listed in the Appendices to the Convention.

4. The Ordinance gives effect to CITES in Hong Kong. It provides that, except those with exemptions, a licence issued by the Director of Agriculture, Fisheries and Conservation is required for the import, export, possession or control of species listed in the Schedules to the Ordinance¹, which cover the species in Appendices I, II and III to CITES. The Secretary for the Environment, Transport and Works is empowered to revise Schedule 1, 2 or 3 or the Sixth Schedule to the Ordinance by notice published in the Gazette under Section 19(1A) of the Ordinance to bring them in line with the species listing in the Appendices to CITES.

Note ¹ Schedule 1 lists the animal species.
Schedule 2 lists the animal parts and derivatives.
Schedule 3 lists the plant species.
Schedule 5 lists the animal species contained in “controlled medicines”, which currently cover all animal species specified in the Sixth Schedule.
The Sixth Schedule lists all CITES Appendix I species, including both animals and plants.

5. Although CITES aims to control international trade only and does not control possession of endangered species, our current legislation maintains a certain degree of control over the possession or control of endangered species. The objective of the additional controls was to enable us to tackle the problem of smuggling, which was rampant when the Ordinance was first enacted in 1976. For the same reason, though again not a requirement of CITES, a licence is required for the import of CITES Appendix II species.

6. Section 18 of the Ordinance empowers the Chief Executive to exempt from licensing control any scheduled species. The Animals and Plants (Protection of Endangered Species) (Exemption) Order (Cap. 187 sub. leg. A) (“the Exemption Order”) provides for the following exemptions -

- (a) the import of CITES Appendix III species and products manufactured from CITES Appendix II and Appendix III species (such as garments, handbags, jewellery, furnishings and ornamentals), subject to the production of documents showing that the species or manufactured products concerned originate from CITES-approved sources;
- (b) the possession or control of certain CITES Appendix II species (including certain cage-birds, snakes and plants) and Appendix III species; and
- (c) the import, export, possession or control of personal effects² made from CITES-listed species except those listed in the Schedule to the Exemption Order.

The exemption mechanism allows the Government to focus resources on the most deserving areas such that we can enforce CITES in the most cost-effective way.

Note ² “Personal effects” refers to personal property other than those acquired by a person outside his country of usual residence and are being imported into that country.

Need for legislative amendments

7. We need to amend the legislation for the following reasons -
- (a) the legislation in Hong Kong has earlier been identified by the CITES Secretariat as not fully meeting the requirements of CITES in respect of control over international trade in medicines made from endangered species. Although we have amended Schedule 5 to the Ordinance to control medicines made from animal species listed in the Sixth Schedule (i.e. CITES Appendix I species) that should be the main concern, we still need to align our control regime with the requirements in CITES in respect of control over international trade in medicines made from other endangered species. This can only be implemented by amending the Ordinance;
 - (b) the Agriculture, Fisheries and Conservation Department (AFCD), the enforcement authority, has reviewed the Ordinance and its subsidiary legislation and considers that there is a need to streamline the licensing system and to improve the control regime. Since the Ordinance was enacted in 1976, a number of amendments have been made to it including the Exemption Order to take account of changes of CITES requirements. Over time, the Ordinance and the Exemption Order have become so complicated that they are not easy to comprehend;
 - (c) the exemptions provided in the Exemption Order for different scheduled species also vary considerably. For example, some CITES Appendix II species are exempted from the requirement of a possession licence but some are not. Similarly, exemption is provided for the possession of all parrots including CITES Appendix I species. However, the exemption is not applicable to other live Appendix I species. We need to remove those inconsistent treatment not justified on operational grounds;
 - (d) the Ordinance contains a number of control measures that are

in excess of CITES requirements due to past operational needs. With the enhanced efforts in publicity and communication with the trade and the enhanced deterrents following the substantial increase in penalties in 1995, illegal trade in endangered species is now under control. It is therefore feasible to remove certain local controls to minimize inconvenience to the trade without compromising our obligation under CITES; and

- (e) following the last COP meeting held in October 2004, we need to update the scheduled species to bring them in line with the CITES Appendices.

The Proposals

- 8. The major legislative proposals are summarized as follows -
 - (a) to simplify the provisions of the Ordinance and to align them with CITES. In this regard, the Schedules to the Ordinance will be rearranged such that the new Schedules 1, 2 and 3 will correspond to the latest CITES Appendices I, II and III respectively;
 - (b) to extend controls to cover medicines made from all animal and plant species listed under CITES;
 - (c) to revise the existing requirements such that each import/export/possession licence would be issued on the basis of individual consignment or keeping premises rather than individual species;
 - (d) to extend the exemption in respect of import/possession/control of scheduled species, other than live specimens of wild origin, to all CITES Appendix II species subject to production of valid documents in accordance with CITES;

- (e) to extend exemption in respect of import/export/possession/control of personal effects to all scheduled species, subject to production of valid documents in accordance with CITES for import of live animals in Appendices I and II, and documents proving a lawful source for the possession of live specimens of Appendix I species or those species specially specified in Appendix II. The proposed exemption does not apply to Giant Panda and Rhino as well as export of live animals of all scheduled species;
- (f) to remove the licensing requirement in respect of export of artificially propagated CITES Appendix II plants, provided that the export is under a phytosanitary certificate;
- (g) to strengthen the law enforcement power by specifying that the contravention of a licence condition is an offence, providing an authorized officer with the power of arrest, and empowering an authorized officer to enter and inspect a trading premises during the hours of daylight; and
- (h) to revise the fee structure based on the streamlined licensing system mentioned in item (c) above and by taking account of the costing figures as well as the fee levels of comparable existing fees. At present, there are 14 fee items relating to control of endangered species and 13 of them are stipulated in Schedule 4 to the Ordinance. The existing fees have not been reviewed since 1997, and among the 14 fee items, 11 of them are currently recovering less than 50% of the costs. Unlike the current licensing system under which a separate licence is required for each individual species, only a single licence will be required for species in the same consignment or kept in the same premises under the new system. The existing fee structure will need to be revised accordingly. In this regard, we propose to simplify the fee structure by replacing the 14 existing fee items with nine new fee items with eight of them to be stipulated in Schedule 4 to the Ordinance. Taking account of the fee levels of the comparable existing fees, the ultimate goal to achieve full cost

A

recovery and impacts on the trade and other users, we propose the new fee scheme detailed in **Annex A**. The costing figures are at **Annex B**. It is anticipated that most of the existing and potential licence holders will benefit from the streamlined licensing system by the reduced number of licences required and the expanded scope of the exemptions, and hence will not be adversely affected by the new fee scheme.

B

Financial and Staffing Implications

9. Under the new Ordinance, the licensing system will be streamlined. The number of licences required by the traders and the public is expected to decrease. It is anticipated that the resultant reduction in the revenue generated from the licence fees will be about two million dollars a year. AFCD will deploy the resources released from processing licence applications to step up the related enforcement, education and publicity works.

Public Consultation

10. AFCD has consulted the Endangered Species Advisory Committee (comprising academics and representatives from the trade) and representatives of the trade (including those from traditional Chinese medicine, floral, pet and leather trade groups) on the legislative proposals including the new fee scheme. The Endangered Species Protection Liaison Group (comprising representatives of law enforcement authorities, including the Customs and the Police, and local green groups) has also been consulted on the legislative proposals. They support the proposals as they could simplify the existing licensing requirements and reduce the types of fees payable. They have no strong views on the proposed fee levels.

Implementation Timetable

11. Subject to Members' views, we plan to introduce the Bill into the

Legislative Council in early 2005 with a view to implementing the new Ordinance in the latter half of 2005.

Advice Sought

12. Members are requested to advise on the proposals set out in paragraph 8 above.

Environment Branch
Environment, Transport and Works Bureau
November 2004

Fee Proposals under the new Protection of Endangered Species of Animals and Plants Ordinance

Existing Fee Structure				New Fee Structure								
Item	Existing fee item	Fee Level (\$)	Cost recovery level at 2004-05 prices	Item	New fee item	Cost at 2005-06 price level (\$) (details at Annex B)	Cost recovery level in terms of comparable existing fees	Fee level with full cost recovery (\$)	Proposed fee level in the first year (\$)	Proposed % increase each year to achieve full cost recovery	No. of years required to achieve full cost recovery	Assessment of impact on traders/users (based on 2003 data)
1	Import of one or more live animals of the same species (per licence)	420	89%	1	Import of one or more live animals (whether or not of the same species) in one consignment (per licence)	467	90%	465	460	10%	2	With the implementation of the proposed legislative amendments, about 40% of the applicants will be exempted from the import licence requirement and hence will not be affected by the new fee scheme. About 40% would still be required to apply for import licences but they will benefit from the legislative amendments, since the number of licences they need to apply for will decrease because of the multiple- species provision. For the rest of the applicants who will not benefit from the streamlined licensing system and hence be affected by the fee proposals, the impact of the fee revision of a 10% increase should be acceptable.
				2	Introduction from the sea of one or more live animals (whether or not of the same species) in one consignment (per licence)	467	90%	465	460	10%	2	

Existing Fee Structure				New Fee Structure								
Item	Existing fee item	Fee Level (\$)	Cost recovery level at 2004-05 prices	Item	New fee item	Cost at 2005-06 price level (\$) (details at Annex B)	Cost recovery level in terms of comparable existing fees	Fee level with full cost recovery (\$)	Proposed fee level in the first year (\$)	Proposed % increase each year to achieve full cost recovery	No. of years required to achieve full cost recovery	Assessment of impact on traders/users (based on 2003 data)
2	Import of animal parts and derivatives of the same species (per licence)	140	31%	3	Import of one or more specimens (other than live animals and whether or not of the same species) in one consignment (per licence)	447	31%	445	170	21%	7	With the implementation of the proposed legislative amendments, about 95% of the applicants will be exempted from the import licence requirement and hence will not be affected by the new fee scheme. About 4% would still be required to apply for import licences but they will benefit from the legislative amendments, since the number of licences they need to apply for will decrease because of the multiple-species provision. For the rest of the applicants will not benefit from the streamlined licensing system and will be affected by the fee increase, the impact should be acceptable since the increase is to be implemented by phases.
3	Import of one or more plants or plant derivatives of the same species (per licence)	140	31%									
4	Import of controlled medicines (per licence)	140	31%									

Existing Fee Structure				New Fee Structure								
Item	Existing fee item	Fee Level (\$)	Cost recovery level at 2004-05 prices	Item	New fee item	Cost at 2005-06 price level (\$) (details at Annex B)	Cost recovery level in terms of comparable existing fees	Fee level with full cost recovery (\$)	Proposed fee level in the first year (\$)	Proposed % increase each year to achieve full cost recovery	No. of years required to achieve full cost recovery	Assessment of impact on traders/users (based on 2003 data)
5	Export of one or more live animals of the same species (per licence)	140	44%	5	Export of one or more specimens (whether or not of the same species) in one consignment (per licence)	305	46%	305	160	14%	6	For existing fee item 5, with the implementation of the proposed legislative amendments, multiple species may be covered in one single licence which will benefit approximately 60% of the applicants. As for the remaining 40% who will not benefit from the streamlined licensing system, the impact of the fee proposals should be acceptable since the increase is to be implemented by phases.
6	Export of animal parts and derivatives of the same species (per licence)	140	45%									
7	Export of one or more plants or plants derivatives of the same species (per licence)	140	45%	6	Re-export of one or more specimens (whether or not of the same species) in one consignment (per licence)	305	46%	305	160	14%	6	For existing fee item 6, 7 and 8, with the implementation of the proposed legislative amendments, multiple species may be covered in one single licence which will benefit about 50% of the applicants. As for the remaining 50% who will not benefit from the streamlined licensing system, the impact of the fee proposals should be acceptable since the increase is to be implemented by phases.
8	Export of controlled medicines (per licence)	140	45%									

Existing Fee Structure				New Fee Structure								
Item	Existing fee item	Fee Level (\$)	Cost recovery level at 2004-05 prices	Item	New fee item	Cost at 2005-06 price level (\$) (details at Annex B)	Cost recovery level in terms of comparable existing fees	Fee level with full cost recovery (\$)	Proposed fee level in the first year (\$)	Proposed % increase each year to achieve full cost recovery	No. of years required to achieve full cost recovery	Assessment of impact on traders/users (based on 2003 data)
9	Possession of one or more live animals of the same species (per licence)	140	44%	7	Possession or control of one or more specimens (whether or not of the same species) which are kept in the same premises (per licence)	319	44%	320	160	14%	6	With the implementation of the proposed legislative amendments, about 80% of the applicants will be exempted from the possession licence requirement. About 10% would still be required to apply for possession licences but they will benefit from the legislative amendments since the number of licences they need to apply for will decrease because of the multiple-species provision. The rest of the applicants will not benefit from the streamlined licensing system but the impact of the fee proposals should be acceptable since the increase is to be implemented by phases.
10	Possession of animal parts and derivatives of the same species (per licence)	140	44%									
11	Possession of one or more plants or plant derivatives of the same species (per licence)	140	44%									
12	Possession of controlled medicines (per licence)	140	44%									

Existing Fee Structure				New Fee Structure								
Item	Existing fee item	Fee Level (\$)	Cost recovery level at 2004-05 prices	Item	New fee item	Cost at 2005-06 price level (\$) (details at Annex B)	Cost recovery level in terms of comparable existing fees	Fee level with full cost recovery (\$)	Proposed fee level in the first year (\$)	Proposed % increase each year to achieve full cost recovery	No. of years required to achieve full cost recovery	Assessment of impact on traders/users (based on 2003 data)
13	Renewal, extension or variation of a licence (per licence)	117	51%	8	Renewal, extension or variation of a licence (per licence)	223	52%	225	135	15%	5	With the implementation of the proposed legislative amendments, about 70% of the traders would no longer need variation of their licences. About 15% will benefit from the streamlined licensing system because fewer licences will need to be varied or renewed due to the multiple-species provision. The rest will be affected by the fee proposal but the impact should be acceptable since the increase is to be implemented by phases.
14	Re-export Certificate under the Convention on International Trade in endangered species of wild fauna and flora (CITES) (per certificate) (non-statutory fee item)	255	96%	9	Re-export Certificate under the Convention on International Trade in endangered species of wild fauna and flora (CITES) (per certificate) (non-statutory fee item)	261	98%	260	260	2%	1	The impact of the fee proposal is minimal and should be acceptable.

The following guidelines that were applied in the ongoing and the 2000-01 fee revision exercises for Government fees and charges are followed when preparing the above fee proposals:–

- (i) to achieve full-cost recovery within seven years for fees with existing cost recovery rate of less than 40% below target, through an increase of about 20%;
- (ii) to achieve full-cost recovery within three to seven years for those fees with existing cost recovery rate of between 40% and 70%, through an increase of about 15%; and
- (iii) to achieve full-cost recovery within one to three years for those fees with existing cost recovery rate of over 70% of target, through an increase of about 10% or lower.

COST COMPUTATION

Agriculture, Fisheries and Conservation Department

Animals and Plants (Protection of Endangered Species) Ordinance
Costs at 2005/06 Prices

	Import or introduction from the sea of one or more live animals (whether or not of the same species) in one consignment (per licence) (Items 1 & 2)	Import or Introduction from the sea of one or more specimens (other than live animals and whether or not of the same species) in one consignment (per licence) (Items 3 & 4)	Export or Re-export of one or more specimens (whether or not of the same species) in one consignment (per licence) (Items 5 & 6)	Possession or control of one or more specimens (whether or not of the same species) which are kept in the same premises (per licence) (Item 7)	Renewal, extension or variation of a licence (per licence) (Item 8)	Re-export Certificate under the Convention on International Trade in Endangered Species of wild fauna and flora (CITES) (per licence) (Item 9)
	\$	\$	\$	\$	\$	\$
Staff Costs	257,159	244,789	950,351	295,561	82,698	1,566,964
Departmental Expenses	6,305	8,623	147,759	5,688	1,663	31,852
Accommodation Costs	8,945	7,429	30,961	8,511	2,556	49,607
Depreciation	231	220	852	265	74	1,405
Central Administrative Overheads	7,380	7,025	27,275	8,483	2,373	44,971
Total Cost	280,020	268,086	1,157,198	318,508	89,364	1,694,799
Estimated number of licences for financial year 2005-06	600	600	3,800	1,000	400	6,500
Unit Cost at 2005-06 prices	467	447	305	319	223	261
Proposed fee	460	170	160	160	135	260