

立法會
Legislative Council

LC Paper No. CB(1) 724/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/08/2

**Bills Committee on
Genetically Modified Organisms (Control of Release) Bill**

**Minutes of sixth meeting
held on Monday, 30 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon Margaret NG
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Tanya CHAN
Dr Hon LEUNG Ka-lau
Hon WONG Ting-kwong, BBS, JP
- Member absent** : Hon CHAN Hak-kan
- Public officers attending** : Environmental Protection Department

Mr Albert LAM
Deputy Director of Environmental Protection (2)

Mr Vincent TANG
Assistant Director
(Nature Conservation & Infrastructure Planning)

Miss Vivien LI
Senior Administrative Officer (Nature Conservation)
- Agriculture, Fisheries and Conservation Department

Mr C C LAY
Assistant Director (Conservation)

Mr Simon CHAN
Senior Conservation Officer (Biodiversity) (Atg)

Department of Justice

Ms Mabel CHEUNG
Senior Government Counsel

Miss Elaine NG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 460/09-10 — Minutes of the meeting held on
11 November 2009)

The minutes of the meeting held on 11 November 2009 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 488/09-10(01) — List of follow-up actions arising
from the discussion at the meeting
on 11 November 2009

LC Paper No. CB(1) 488/09-10(02) — Administration's response to
CB(1) 488/09-10(01))

Relevant papers

(LC Paper No. CB(3) 624/08-09 — The Bill

Ref: EP 86/21/25 (09) Pt.8 — The Legislative Council Brief

LC Paper No. LS 77/08-09 — Legal Service Division Report

LC Paper No. CB(1) 2224/08-09(02) — Assistant Legal Adviser's letter
dated 2 July 2009 to the
Administration

LC Paper No. CB(1) 2224/08-09(03) — Administration's response to
CB(1) 2224/08-09(02)

LC Paper No. CB(1) 2646/08-09(09) — Assistant Legal Adviser's letter
dated 31 July 2009 to the
Administration

LC Paper No. CB(1) 2646/08-09(10) — Administration's response to
CB(1) 2646/08-09(09))

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**).

3. The Administration was requested to -
- (a) advise whether there was a need to report to the Director in the event that a genetically modified organism (GMO) was lost in transit or transshipment under clause 7;
 - (b) consider specifying in clause 7 the need for approval if a GMO was intended for release into the environment;
 - (c) include in the speech to be delivered by the Secretary for the Environment at the resumption of the Second Reading debate on the Bill that a written acknowledgement of receipt of GMO approval application would be issued to the applicant in an expeditious manner and in any case less than 90 days even though a 90-day period was provided in clause 9 of the Bill, and that such performance pledge would be spelt out in the practice guidelines of the Agriculture, Fisheries and Conservation Department (AFCD);
 - (d) provide a flow chart on the applications of different clauses, such as time frames (including extensions) as required under the Cartagena Protocol on Biosafety and performance pledges made by the Administration taking into account local circumstances, exemptions, appeal mechanisms etc;
 - (e) consider including in the practice guidelines the requirement for approval of the container for GMO to prevent inadvertent release into the environment;
 - (f) consider specifying in clause 25 that the register would be made available for public inspection on the website of AFCD; and
 - (g) advise the criteria which the Director would adopt in assessing non-disclosure requests, and whether the criteria would be set out in the Bill. To also review the drafting of clauses 14 and 15 to ensure consistency in the reference of “confidential information”.

(Post-meeting note: With the concurrence of the Chairman, the next meeting would be held on 8 December 2009 at 2:30 pm to continue discussion on the Bill.)

III. Any other business

4. There being no other business, the meeting ended at 10: 30 am.

**Bills Committee on
Genetically Modified Organisms (Control of Release) Bill**

**Proceedings of the sixth meeting
on Monday, 30 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000001 - 000330	Chairman	The minutes of the meeting held on 11 November 2009 (LC Paper No. CB(1) 460/09-10) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000331 - 000857	Administration Chairman	Continuation of clause-by-clause examination of the Bill. Clause 6 - Notification to Director of certain releases of genetically modified organisms (GMOs) Administration's response was set out in Annex C to LC Paper No. CB(1) 488/09-10(02) where amendments were proposed for clause 6.	
000858 - 001600	Chairman Administration Mr WONG Ting-kwong ALA5	Clause 7 - Restrictions on import of GMOs intended for release into environment Mr WONG Ting-kwong's concern about the need for reporting to the Director in the event that a GMO was lost in transit or transshipment. Discussion on the meaning of "processing" under clause 7(1)(b)(ii).	The Administration to advise whether there was a need to report to the Director in the event that a GMO was lost in transit or transshipment under clause 7.
001601 - 001721	Chairman Administration	Clause 8 - Application for approval of GMOs for release into environment	
001722 - 002449	Chairman Administration Mr WONG Ting-kwong	Clause 9 - Acknowledgement of receipt of GMO approval applications Mr WONG Ting-kwong's query on the need for 90 days for the Director to acknowledge receipt of a GMO	The Administration to include in the speech to be delivered by SEN at the resumption of the Second Reading debate on the Bill that a written acknowledgement of

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		<p>approval application.</p> <p>Administration's response -</p> <p>(a) clause 9 was modelled after Article 9 of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Protocol);</p> <p>(b) a written acknowledgement of receipt of GMO approval application would be issued to the applicant in an expeditious manner and in any case less than 90 days as specified in the Bill; and</p> <p>(c) a performance pledge to this effect would be spelt out in the practice guidelines of the Agriculture, Fisheries and Conservation Department (AFCD).</p> <p>Chairman's request for inclusion of the above undertaking in the speech to be delivered by the Secretary for the Environment (SEN) at the resumption of the Second Reading debate on the Bill.</p>	<p>receipt of GMO approval application would be issued to the applicant in an expeditious manner and in any case less than 90 days even though a 90-day period was provided in clause 9 of the Bill, and that such performance pledge would be spelt out in the practice guidelines of AFCD.</p>
002500 - 004849	<p>Chairman Administration Mr WONG Ting-kwong Ms Cyd HO</p>	<p>Clause 10 - Approval of GMOs</p> <p>Mr WONG Ting-kwong's enquiries -</p> <p>(a) how the 270 days referred to in clause 10(1) should be calculated; and</p> <p>(b) number of extensions that could be allowed under clause 10(5).</p> <p>Chairman's enquiries -</p> <p>(a) whether the notice of extension under clause 10(5) had to be issued within 270 days;</p> <p>(b) meaning of "acceptable or manageable" under clause 10(2); and</p>	<p>The Administration to provide a flow chart on the applications of different clauses, such as time frames (including extensions) as required under the Protocol and performance pledges made by the Administration taking into account local circumstances, exemptions, appeal mechanisms etc.</p>

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		<p>(c) available appeal channels.</p> <p>Ms Cyd HO's request for a flow chart to show the applications of different clauses.</p> <p>Administration's response -</p> <p>(a) the Director was required to state the reasons for extension under clause 10(6) in the written notice to be issued under clause 10(5);</p> <p>(b) the different time frames under the Bill were set with reference to the Protocol; and</p> <p>(c) clear guidelines would be set out in the application forms.</p>	
004850 - 005134	ALA5 Administration Chairman	<p>ALA5's enquiry on the party responsible for preparing the risk assessment report.</p> <p>Administration's explanation that a GMO approval application had to be accompanied by a risk assessment report prepared by the applicant.</p>	
005135 - 005709	Chairman Administration Miss Tanya CHAN Ms Cyd HO	<p>Clause 11 - Request for variation of decisions on GMO approval applications</p> <p>Discussion on the time limit for request to vary decisions on GMO approval applications.</p> <p>Ms Cyd HO's enquiry on disposal of GMOs which had not been approved.</p> <p>Administration's explanation that as trans-boundary movement of GMOs intended for release into the environment would be subject to the Advance Informed Agreement procedure, these GMOs would not be allowed to be imported into Hong Kong without prior approval.</p>	

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005710 - 010519	Chairman Administration Mr WONG Ting-kwong	<p>Clause 12 - Variation of decision on GMO approval applications or variation requests on Director's own initiative</p> <p>Mr WONG Ting-kwong's view that specifications might be required for containers of GMOs to prevent inadvertent release into the environment.</p>	<p>The Administration to consider including in the practice guidelines the requirement for approval of the container for GMO to prevent inadvertent release into the environment.</p>
010520 - 011729	Chairman Administration Ms Cyd HO	<p>Ms Cyd HO's views/enquiries -</p> <p>(a) need to spell out in clause 7 that approval application was required for import of GMOs originally intended for food, feed or processing (FFP) but subsequently decided to be released into the environment; and</p> <p>(b) disposal of such GMOs.</p> <p>Administration's explanation -</p> <p>(a) GMOs imported for FFP would only need to comply with documentation requirements, and the restrictions on import under clause 7 would not apply;</p> <p>(b) a person who knowingly imports GMOs intended for release into the environment would commit an offence unless conditions under clause 7(2)(a),(b) and (c) were met;</p> <p>(c) disposal arrangements under Part 6 of the Bill would apply to GMOs which had been imported; and</p> <p>(d) guidelines for approval of GMOs would be clearly set out in the application forms.</p>	<p>The Administration to consider specifying in clause 7 the need for approval if a GMO was intended for release into the environment.</p>
011730 - 011902	Chairman Administration	<p>Clause 13 - Entry of information on GMO approval applications and variation requests (other than that specified in non-disclosure requests)</p>	

Time marker	Speaker	Subject(s)	Action required
		in register.	
011903 - 012733	<p>Chairman Administration Mr WONG Ting-kwong Ms Cyd HO</p>	<p>Clause 14 - Making of non-disclosure requests</p> <p>Mr WONG Ting-kwong's enquiries -</p> <p>(a) whether the register kept under clause 13 was open to the public; and</p> <p>(b) the basis for making non-disclosure requests.</p> <p>Ms Cyd HO's enquiry on whether AFCD would still hold the information under a non-disclosure request in custody to facilitate future reference.</p> <p>Administration's explanation -</p> <p>(a) the register kept under clause 13 would be uploaded onto the Internet for inspection by the public;</p> <p>(b) non-disclosure requests would probably be made on grounds of confidentiality in respect of scientific researches and commercial dealings; and</p> <p>(c) consideration would be given to setting practice guidelines on record keeping of information under a non-disclosure request.</p> <p>Chairman's request to specifying in clause 25 that the register would be uploaded onto the website of AFCD.</p>	<p>The Administration to consider specifying in clause 25 that the register will be made available for public inspection on the website of AFCD.</p>
012734 - 015631	<p>Chairman Mr WONG Ting-kwong Administration Ms Cyd HO Miss Tanya CHAN</p>	<p>Discussion on the criteria which the Director would adopt in assessing non-disclosure requests.</p> <p>Chairman's concerns -</p> <p>(a) an applicant might request for non-disclosure of any information since clause 14 did not specify the kind of</p>	<p>The Administration to advise the criteria which the Director would adopt in assessing non-disclosure requests, and whether the criteria would be set out in the Bill. To also review the drafting of clauses 14 and 15 to ensure consistency</p>

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		<p>information which could not be disclosed;</p> <p>(b) there might be a need to amend clause 14 to qualify the information which the applicant could request for non-disclosure to bring this in line with the "proposed confidential information" referred to under clause 15; and</p> <p>(c) whether the Director's decision on non-disclosure request was subject to appeal.</p> <p>Ms Cyd HO's views/concerns -</p> <p>(a) non-disclosure requests should only be made on grounds of confidentiality in respect of scientific research and patents/copyrights, but not on grounds of commercial purposes;</p> <p>(b) there was a need to spell out the criteria which the Director would adopt in assessing non-disclosure requests; and</p> <p>(c) whether the public could appeal against the Director's decisions on non-disclosure requests</p> <p>Miss Tanya CHAN's support that there should be justifications for non-disclosure requests</p> <p>Administration's explanation -</p> <p>(a) clause 15(2) already provided that the Director could decide not to enter certain confidential information in the register if he/she was satisfied that the non-disclosure of information would not be contrary to public interest;</p> <p>(b) the Director's decision on non-disclosure requests under clause 16(3) was subject to</p>	<p>in the reference of "confidential information".</p>

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		<p>appeal under clause 39(1);</p> <p>(c) confidentiality of information was provided under Article 21 of the Protocol and this would apply to commercial and industrial as well as research and development information; and</p> <p>(d) the expert group would advise the Director on the non-disclosure requests.</p>	
015632 - 020412	Chairman Administration Ms Cyd HO	<p>Clause 15 - Director's decision on non-disclosure requests.</p> <p>Discussion on the time frames for GMO approval applications and non-disclosure requests under clauses 9, 10, 13 and 15.</p>	