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

**Background brief prepared for the
meeting on 13 July 2009**

Purpose

This paper gives a summary of discussion by the Panel on Environmental Affairs (the Panel) on the proposal to extend the Convention on Biological Diversity (the Convention) and the Cartagena Protocol on Biosafety (the Protocol) to Hong Kong.

Introduction

2. The Convention was adopted at the 1992 Earth Summit on Sustainable Development and came into operation in December 1993. The objectives of the Convention are -

- (a) conservation of biological diversity^{Note1};
- (b) sustainable use of the components of biological diversity; and
- (c) fair and equitable sharing of the benefits arising from the utilization of genetic resources.

The Convention seeks to facilitate achievement of these objectives by providing a guidance framework on the essential components of and the key considerations involved in formulating a comprehensive conservation strategy. Individual Parties are required to adopt measures with regard to the Convention's provisions as far as possible and as appropriate in the light of specific local circumstances for protecting biological diversity. At present, there are over 190 Parties to the Convention, including China, but the Convention has yet to be extended to Hong Kong.

^{Note1} Biological diversity" means the variability among living organisms from all sources. It also refers to genetic differences within each species as well as the variety of terrestrial, marine and aquatic ecosystems.

3. The Protocol was adopted under the Convention in 2000 to provide for the safe transfer, handling and use of genetically modified organisms (GMO)^{Note2} that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health^{Note3}, with specific focus on trans-boundary movements of GMOs. The Protocol mainly seeks to protect individual Parties from potentially adverse impacts of imported GMOs on their biological diversity through the regulation of import and export of GMOs. To promote exchange of information among Parties and facilitate their compliance with the Protocol requirements in the **Appendix**, the Protocol requires the Parties to make available information, such as summaries of risk assessments and decisions regarding importation or release of a GMO, to the Biosafety Clearing House which serves as a central information sharing system on matters relating to the implementation of the Protocol. It has come into force since September 2003. There are currently 150 Parties to the Protocol, including China. According to the Convention, a party may not participate in a protocol unless it is, or becomes at the same time, a party to the Convention. Hence, the Protocol cannot be extended to Hong Kong unless the Convention is applicable to Hong Kong.

Extension of the Convention and Protocol to Hong Kong

4. Article 153 of the Basic Law provides that the application of international agreements, to which the People's Republic of China is or becomes a party, to the Hong Kong Special Administrative Region (HKSAR) shall be decided by the Central People's Government (CPG) in accordance with the circumstances and needs of HKSAR, and after seeking the views of the HKSAR Government. According to the Administration, both the Convention and the Protocol are important international agreements on protection of biological diversity and global sustainable development. Their application to Hong Kong can reinforce Hong Kong's commitment in cooperating with the international community to protect the natural environment. Moreover, as an international city, Hong Kong is expected to share similar international obligations relating to the protection and sustainable use of biological diversity. It also needs to follow the Protocol's requirements on trans-boundary movement of GMOs where its trading partners have joined the Protocol. Hence, the Administration has obtained the agreement-in-principle of CPG to extend the Convention and the Protocol to Hong Kong.

5. While the existing nature conservation policy and measures are generally in line with the objectives and requirements of the Convention, the only major area in the Convention on which further measures have to be development is the regulation, management and control of the risks associated with the use and release of GMOs into the environment. The Convention and the Protocol cannot be extended to Hong

Note2 "Genetically modified organism" means any organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology. GMO may cover a variety of live food crops, seeds, fish etc but does not include processed food products.

Note3 The risk to human health in the context of the Protocol refers to the indirect risk imposed as a result of the GMO's adverse impacts on biological diversity.

Kong unless these measures are put in place. In this connection, a new piece of legislation is required to provide the legal basis for the requirements set out in the Protocol in relation to the regulation of GMOs. Subject to the passage of the proposed legislation, and upon completion of other necessary preparatory work, the Administration will request CPG to complete the formalities on the extension.

The Bill

6. The Bill seeks to control the release of GMOs into the environment and the import and export of GMOs, as well as provide for related matters.

Major issues raised by the Panel

7. The proposal to extend the Convention and the Protocol to Hong Kong was discussed at the Panel meetings on 22 December 2003, 25 April 2005 and 30 March 2009.

8. While supporting the extension of the Protocol to Hong Kong, some members pointed out that the proposed control regime on GMOs might not contribute much to the protection of local biodiversity, given that trans-boundary movements of GMOs for intentional introduction into the environment was rare in Hong Kong. Instead, more should be done to protect biodiversity from destructive activities, such as felling of trees and illegal dumping. The control over these activities would be more effective in protecting the biodiversity in Hong Kong.

9. Questions were raised on the criteria in deciding whether the extension of an international agreement to Hong Kong should be obligatory, and the means through which such an agreement would be implemented. There was also concern over the lack of details on implementation, impacts of the proposed control on the affected trades, financial implication, penalties for non-compliance, and the control on import of GMOs from a non-Party to the Protocol, without which members would find it difficult to support the proposal. The Administration was urged to apprise the affected trades of the details of the control regime so that they would know exactly what was required of them.

Relevant papers

Fact sheet prepared by the Research & Library Services Division for the EA Panel meeting on 22 December 2003

<http://www.legco.gov.hk/yr03-04/english/panels/ea/papers/ea1222cb1-611-4-e.pdf>

Information paper provided by the Administration for the EA Panel meeting on 22 December 2003

<http://www.legco.gov.hk/yr03-04/english/panels/ea/papers/ea1222cb1-611-5-e.pdf>

Minutes of the EA Panel meeting on 22 December 2003

<http://www.legco.gov.hk/yr03-04/english/panels/ea/minutes/ea031222.pdf>

Information paper provided by the Administration for the EA Panel meeting on 25 April 2005

<http://www.legco.gov.hk/yr04-05/english/panels/ea/papers/ea0425cb1-1316-6-e.pdf>

Minutes of the EA Panel meeting on 25 April 2005

<http://www.legco.gov.hk/yr04-05/english/panels/ea/minutes/ea050425.pdf>

Information paper provided by the Administration for the EA Panel meeting on 30 March 2009

<http://www.legco.gov.hk/yr08-09/english/panels/ea/papers/ea0330cb1-1123-4-e.pdf>

Minutes of the EA Panel meeting on 30 March 2009

<http://www.legco.gov.hk/yr08-09/english/panels/ea/minutes/ea20090330.pdf>

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Summary of the Protocol's Major Requirements

Categories of LMO	Requirements		
	Advance Informed Agreement Procedure	Documentation during import and export	Others
LMO intended for intentional introduction into the environment*	<ul style="list-style-type: none"> ➤ For the first trans-boundary movement of LMOs for intentional introduction into the environment of the importing party, the exporting party shall notify the competent authority of the importing party prior to trans-boundary of the LMOs. The notification shall contain information specified in the Protocol including a risk assessment report, suggested methods for safe handling, storage, transport and use, etc. ➤ The competent authority of the importing party shall acknowledge receipt of the notification within 90 days of receipt. ➤ The competent authority of the importing party shall inform the notifier and the Biosafety Clearing House (BCH) within 270 days of receiving the notification on whether the import is approved, whether additional information is requested or whether the consideration period needs to be extended. However, failure by the importing party to communicate its decision within 270 days of receipt of the notification shall not imply its consent to the intentional trans-boundary movement. 	<ul style="list-style-type: none"> ➤ To clearly identify them as LMO. ➤ To specify its identity and relevant traits and/or characteristics. ➤ To specify any requirements for the safe handling, storage, transport and use. ➤ To specify the contact point for further information and, as appropriate, the name and address of the importer and exporter. ➤ To contain a declaration that the movement is in conformity with the requirements of the Protocol. 	<ul style="list-style-type: none"> ➤ Nil

Categories of LMO	Requirements		
	Advance Informed Agreement Procedure	Documentation during import and export	Others
LMO intended for direct use as food or feed, or for processing (FFP)*	<ul style="list-style-type: none"> ➤ Not applicable 	<ul style="list-style-type: none"> ➤ To clearly identify that they “may contain” LMO and are not intended for intentional introduction into the environment. ➤ To specify a contact point for further information. ➤ The Conference of the Parties serving as the meeting of the Parties to the Protocol shall take a decision on the detailed requirements for documentation, including specification of their identity and any unique identification, no later than two years after the Protocol came into force on 11 September 2003. 	<ul style="list-style-type: none"> ➤ Nil
LMO for contained use*	<ul style="list-style-type: none"> ➤ Not applicable 	<ul style="list-style-type: none"> ➤ To clearly identify them as LMO. ➤ To specify any requirements for the safe handling, storage, transport and use. ➤ To specify the contact point for further information including the name and address of the individual and institution to whom the LMOs are consigned. 	<ul style="list-style-type: none"> ➤ Nil

Categories of LMO	Requirements		
	Advance Informed Agreement Procedure	Documentation during import and export	Others
Domestic use of a LMO that may be subject to trans-boundary movement for direct use as FFP	➤ Not applicable	➤ Not applicable	➤ The Party shall inform BCH.

* According to the Protocol, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall consider the need for and modalities of developing standards with regard to the identification, handling, packaging and transport practices, after the Protocol has come into operation.