

立法會
Legislative Council

LC Paper No. CB(1) 709/05-06
(These minutes have been seen
by the Administration)

Ref: CB1/BC/12/04/2

**Bills Committee on
Protection of Endangered Species of Animals and Plants Bill**

**Minutes of Seventh meeting
held on Monday, 9 January 2006, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHOY So-yuk, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
- Members absent** : Hon Martin LEE Chu-ming, SC, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon SIN Chung-kai, JP
Hon WONG Yung-kan, JP
- Public officers attending** : Environmental Protection Department

Mr Roy TANG
Deputy Director of Environmental Protection (3)

Mr Eric CHAN
Assistant Director (Conservation)

Miss Christina CHONG
Senior Administration Officer (Conservation Division) 2

Agriculture, Fisheries and Conservation Department

Mr C S CHEUNG
Senior Endangered Species Protection Officer

Department of Justice

Mr Sunny CHAN
Senior Government Counsel

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

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Council Secretary (1)2

I Confirmation of minutes

(LC Paper No. CB(1) 641/05-06 -- Minutes of the meeting held on
20 December 2005)

The minutes of the meeting on 20 December 2005 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(3) 504/04-05 -- The Bill
Ref: EP 55/25/01 Pt.14 -- The Legislative Council Brief
LC Paper No. CB(1) 663/05-06(01) -- List of follow-up actions arising from
the discussion on 20 December 2005
LC Paper No. CB(1) 663/05-06(02) -- Administration's response to LC Paper
No. CB(1) 663/05-06(01))

2. The Committee deliberated (Index of proceedings attached in **Annex A**).

3. The Administration was requested to -

- (a) review the scope of the term "commercial purposes" to ensure that it covered any act, the purpose of which was related to trade or business. To also re-consider including the term in the principal Ordinance rather than in Schedule 3;

- (b) review the level of penalty for provision of false information under clause 44 having regard to similar provisions under the existing legislation and practices in other Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- (c) advise the criteria which the Administration would adopt in considering applications for exemption orders under clause 47; and
- (d) make available the revised Schedule 3 and the complete set of Committee Stage amendments before 15 January 2006.

4. It was agreed that the next meeting on Thursday, 19 January 2006, at 10:45 am would be extended to 1:30 pm.

III Any other business

5. There being no other business, the meeting ended at 4:10 pm.

Council Business Division 1
Legislative Council Secretariat
18 January 2006

**Proceedings of the meeting of the
Bills Committee on Protection of Endangered Species of Animals and Plants Bill**

**Meeting on Monday, 9 January 2006, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000059	Chairman	Confirmation of minutes of the meeting held on 20 December 2005 (LC Paper No. CB(1) 641/05-06)	
000100 - 000137	Chairman	Welcoming remarks	
000138 - 001053	Administration	Administration's response to follow-up actions arising from the discussion at the meeting on 20 December 2005 (LC Paper No. CB(1)663/05-06(02))	
001054 - 003324	ALA7 Administration Chairman Ms Audrey EU	<p>ALA7's concern -</p> <p>(a) need for clarity in defining the term "commercial purposes" given the much higher level of penalties for offences related to commercial purposes; and</p> <p>(b) whether an act would be construed as a "commercial purpose" if -</p> <p>(i) a loss was incurred in a trade or business of the scheduled species; and</p> <p>(ii) a benefit was obtained by a non-trading or non-business party</p> <p>Administration's explanation -</p> <p>(a) the definitions of "commercial purposes" in the Bill and in section 13A of Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) were broadly similar; and</p>	The Administration to review the scope of the term "commercial purposes" to ensure that it covered any act, the purpose of which was related to trade or business

Time marker	Speaker	Subject(s)	Action required
		<p>(b) an act would be construed as a “commercial purpose” if it was for the purpose of obtaining profit or other economic benefit, even in the case where there was no monetary gain</p> <p>The Chairman’s concern that trading of endangered species for non-commercial purposes, such as charity, might be allowed. As such, there was a need to review the scope of the definition of “commercial purposes”</p>	
003325 - 003656	Mr WONG Ting-kwong Chairman Administration	<p>Mr WONG Ting-kwong’s enquiry on whether the giving of a red packet for accepting an endangered species as a gift would constitute an offence</p> <p>Administration’s response that as long as the act was not for the purpose of obtaining profit or other economic benefits, it would not be construed as a “commercial purpose”</p>	
003657 - 003927	Ms Audrey EU Chairman Administration	Discussion on the propriety of including the definition of “commercial purpose” under Schedule 3	The Administration to re-consider including the definition of “commercial purposes” in the principal Ordinance rather than in Schedule 3
003928 - 004106	Chairman Administration	<p>Discussion on the proposed replacement of the word “state” in clause 29(1) with “give”</p> <p>The Administration’s explanation that the use of word was in line with other provisions of the Bill</p>	
004107 - 005222	Administration Chairman Ms Audrey EU ALA7 Mr WONG Ting-kwong	<p>Clause-by-clause examination of the Bill</p> <p><u>Clause 41 – Return or forfeiture of things seized on prosecution of offences under section 29,38 or 44</u></p>	

Time marker	Speaker	Subject(s)	Action required
		Ms Audrey EU's query on the need to delete the reference to clause 38 in clauses 41 and 42	
005223 - 005700	Ms Audrey EU Chairman Administration	<u>Clause 42 – Return or forfeiture of things seized where no prosecution for offences</u> <u>Clause 43 – Disposal of forfeited things</u>	
005701 - 010212	Administration Ms Audrey EU Chairman Mr WONG Ting-kwong	<u>Clause 44 – Furnishing false information</u> Members' concern that the level of penalty under clause 44 might be too low to achieve the necessary deterrent effect	The Administration to review the level of penalty for provision of false information under clause 44 having regard to similar provisions under the existing legislation and practices in other Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
010213 - 010318	Administration Chairman	<u>Clause 45 – Protection of informers</u> <u>Clause 46 – Appeals to Administrative Appeals Board</u>	
010319 - 011235	Administration Chairman Mr WONG Ting-kwong	<u>Clause 47 – Exemption orders</u> Chairman's concern about possible abuse of exemption orders. There was a need to set out criteria for exemption regarding scientific institutions	The Administration to advise the criteria which would be adopted in considering applications for exemption orders
011236 - 011313	Administration Chairman	<u>Clause 48 – Power to amend schedules</u>	
011314 - 011657	Administration Chairman	<u>Clause 49 – Advisory Committee</u>	

Time marker	Speaker	Subject(s)	Action required
011658 - 011740	Administration Chairman	<p><u>Clause 50 – Director and authorized officers to be subject to Chief Executive’s directions</u></p> <p><u>Clause 51 – Director empowered to specify forms</u></p> <p><u>Clause 52 – Issue of re-export certificates</u></p>	
011741 - 011910	Administration Chairman	<p><u>Clause 53 – Power of Secretary to make regulations</u></p>	
011911 - 012010	Administration Chairman	<p>Part IX</p> <p><u>Clause 54 – Repeal of Animals and Plants(Protection of Endangered Species) Ordinance</u></p> <p><u>Clause 55 – Transitional provisions relating to Animals and Plants(Protection of Endangered Species) Ordinance</u></p> <p>The Administration would introduce Committee Stage amendments (CSAs) to extend the further grace period of three months in clause 55(6) to six months for possession of any specimens of Appendix I or II species which were not subject to licensing control before the commencement of the Bill</p>	
012011 - 012127	Administration Chairman	<p>Part X</p> <p><u>Clause 56 – Scheduled amended</u></p> <p>Customs and Excise Service Ordinance</p> <p><u>Clause 57 – Ordinance referred to in sections 17 and 17A</u></p>	
012128 - 012243	Administration Chairman	<p>Administrative Appeals Board Ordinance</p> <p><u>Clause 58 – Schedule amended</u></p>	

Time marker	Speaker	Subject(s)	Action required
012244 - 012349	Chairman ALA7 Administration	Discussion on need to review the drafting of Schedule 3 which was modeled after Convention instruments to ensure conformity to the existing drafting practices of local legislation	
012350 - 012740	Administration Chairman Mr WONG Ting-kwong	Schedule 1 Scheduled species Schedule 2 Fees	
012741 - 013206	Administration Chairman	Schedule 3 Convention instruments	
013207 - 013841	Chairman Administration ALA7	Schedule of meetings Next meeting to be held on 19 January 2006 at 10:45 am to discuss the CSAs proposed by the Administration. The meeting might have to be extended until 1:30 pm	The Administration to make available the revised Schedule 3 and a complete set of CSAs before 15 January 2006

Council Business Division 1
Legislative Council Secretariat
18 January 2006