

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 520/05-06  
(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 fifth meeting  
held on Tuesday, 29 November 2005, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon CHOY So-yuk, JP (Chairman)  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon WONG Yung-kan, JP  
Hon Tommy CHEUNG Yu-yan, JP  
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 SIN Chung-kai, JP  
Hon Albert CHAN Wai-yip
- 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

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**I 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) 398/05-06(01)	--	List of follow-up actions arising from the discussion on 22 November 2005
LC Paper No. CB(1) 398/05-06(02)	--	Administration's response to LC Paper No. CB(1) 398/05-06(01))

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

2. The Administration was requested to -

- (a) review the drafting of Schedule 3 regarding the application of convention instruments adapted in the Bill, with a view to removing any ambiguity;
- (b) provide a paper setting out the difference between the Bill and the existing Ordinances, in particular, the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) regarding the interpretation of the terms "commercial purpose" and "non-commercial purpose" with illustrations, particularly on marginal cases;

- (c) clarify whether reference should be made to the requirement under the Convention in the proposed amendment to the definition of the term “in-transit” in clause 3;
- (d) include in the speech to be delivered by the Secretary for the Environment, Transport and Works at the Second Reading debate on the Bill an undertaking that cases of possession or control of pre-Convention specimens of Appendices I and II species without the required evidence would be considered having regard to all circumstances relating to an individual case;
- (e) advise the consequential amendments required for clause 22 as a result of proposed amendment to the definition of the term “in-transit” in clause 3; and
- (f) review the licensing mechanism with a view to streamlining the procedures while maintaining the control over the import, re-export and possession or control of endangered species.

3. Members agreed to the following schedule of meetings -

- (a) Tuesday, 20 December 2005, at 8:30 am;
- (b) Monday, 9 January 2006, at 2:30 pm; and
- (c) Thursday, 19 January 2006, at 10:45 am

## **II Any other business**

4. There being no other business, the meeting ended at 6:45 pm.

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

**Meeting on Tuesday, 29 November 2005, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000145	Chairman	Welcoming remarks	
000146 - 000626	Chairman Administration	<p>Discussion on the Administration's response to the list of follow-up actions arising from the discussion on 22 November 2005 (LC Paper No. CB(1) 398/05-06(02))</p> <p><u>Clause 21 – Possession or control of specimens of Appendix II species</u></p> <p>Members had no objection to the proposed amendments to the clause</p> <p><u>Clause 55 – Transitional provisions relating to Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (the Ordinance)</u></p> <p>Members supported the proposed extension of the further grace period under clause 55(6)</p>	
000627 - 003125	Administration ALA7 Chairman Ms Audrey EU Mrs Selina CHOW	<p><u>Schedule 3 – Convention Instruments</u></p> <p>ALA7's request for clarification on the legal effect of convention instruments and the meaning of the words "shall" and "should" under Schedule 3</p> <p>Administration's response -</p> <p>(a) While convention instruments were not binding in international law, these were recommended good practices which should be entered into effect 90 days after the meeting of the Conference of the Parties at which these were adopted; and</p>	The Administration to review the drafting of Schedule 3 regarding the application of convention instruments adapted in the Bill, with a view to removing any ambiguity

Time marker	Speaker	Subject(s)	Action required
		<p>(b) text in Schedule 3 was mainly adapted from convention instruments</p> <p>Members pointed out that once convention instruments were adapted in domestic law, they would have the force of law in Hong Kong. Hence, these instruments should be suitably amended to remove any ambiguity</p>	
003126 - 004511	ALA7 Chairman Administration	<p>Given the higher penalties for offences related to commercial purposes, ALA7 was concerned about the inclusion of the definition of “commercial purpose” in Schedule 3, amendment of which could be made by way of an Order in the Gazette and would come into force with immediate effect</p> <p>Administration’s explanation -</p> <p>(a) inclusion of the convention instruments in Schedule 3 would ensure timely incorporation of the relevant changes of the convention instruments in the domestic law;</p> <p>(b) there would be sufficient consultation before subsidiary legislation was introduced to effect changes of convention instruments; and</p> <p>(c) subsidiary legislation would not take immediate effect unless in case of urgency</p> <p>Mrs Selina CHOW’s question about the propriety of including the definition for “commercial purpose” in Schedule 3 taking into account that the relevant convention instrument was not binding, and that contravention would attract higher penalties</p> <p>Ms Audrey EU’s enquiry on the difference between the Bill and the</p>	<p>The Administration to provide a paper setting out the difference between the Bill and the existing Ordinances, in particular, the Animals and Plants (Protection of Endangered Species) Ordinance regarding the interpretation of the terms “commercial purpose” and “non-commercial purpose” with illustrations, particularly on marginal cases</p>

Time marker	Speaker	Subject(s)	Action required
		<p>existing Ordinances regarding the interpretation of the terms “commercial purpose” and “non-commercial purpose” and their applicability to the Hong Kong situation</p>	
004512 - 005319	<p>Administration ALA7 Chairman</p>	<p><u>Convention export permit</u></p> <p>Members agreed to replace the term “Convention export permit” with “Convention certifying document”</p> <p><u>Meaning of “in transit”</u></p> <p>ALA7’s enquiry on whether reference should be made to the requirement under the Convention in the proposed amendment to the definition of the term “in-transit” in clause 3</p>	<p>The Administration to clarify whether reference should be made to the requirement under the Convention in the proposed amendment to the definition of the term “in-transit” in clause 3</p>
005320 - 010423	<p>Administration Chairman Mrs Selina CHOW Mr WONG Ting-kwong</p>	<p><u>Living animals/plants of wild origin</u></p> <p>Administration’s confirmation that the import, export of re-export of artificially propagated Appendix I and II species would be kept under control, and that animals/plants grown-ups of young specimens collected from wild were still considered to be of wild origins</p> <p>Discussion on the propriety of consulting the trades regarding the removal of the difference in control of Appendix II animals/plants of wild and non-wild origins, which in members’ view was a policy decision</p> <p>Mr WONG Ting-kwong remained concerned that persons who might not be able to distinguish between specimens of Appendix II species under their possession or control were of wild or non-wild origin would be caught by the law</p>	

Time marker	Speaker	Subject(s)	Action required
010424 - 011245	Administration Chairman Mr WONG Yung-kan	<p>Clause-by-clause examination of the Bill</p> <p><u>Clause 17 - Import of pre-Convention specimens</u></p> <p><u>Clause 18 - Import of specimens of Appendix II species</u></p> <p><u>Clause 19 - Import of specimens of Appendix III species</u></p>	
011246 - 013734	Administration Chairman Mr WONG Yung-kan Mr WONG Ting-kwong Mrs Selina CHOW	<p><u>Clause 20 - Possession of pre-Convention specimens</u></p> <p>Members' concerns -</p> <p>(a) persons might have contravened the Bill if they could not provide the required evidence in respect of pre-Convention specimens under their possession or control; and</p> <p>(b) need for flexibility in exercising control over possession, particularly if the possession was not for commercial purpose</p> <p>Administration's explanation on the required evidence to be submitted and the discretionary action taken</p>	<p>The Administration to include in the speech to be delivered by the Secretary for the Environment, Transport and Works at the Second Reading debate on the Bill an undertaking that cases of possession or control of pre-Convention specimens of Appendices I and II species without the required evidence would be considered having regard to all circumstances relating to an individual case</p>
013735 - 013828	Administration Chairman Mr WONG Ting-kwong	<u>Clause 21 – Possession or control of specimens of Appendix II species</u>	
013829 - 014041	Administration Chairman Mr WONG Yung-kan	<u>Clause 22 – Import, re-export and possession or control of specimens in transit</u>	<p>The Administration to advise the consequential amendments required for clause 22 as a result of proposed amendment to the definition of the term “in-transit” in clause 3</p>

Time marker	Speaker	Subject(s)	Action required
014042 - 020915	Administration ALA7 Mrs Selina CHOW Chairman Mr WONG Ting-kwong Mr WONG Yung-kan	<p><u>Clause 23 – Issue of licences</u></p> <p>Members’ concerns -</p> <p>(a) query on the need for possession licence when importers had already obtained import licence for the specimens;</p> <p>(b) importers concerned should only be required to notify the Agriculture, Fisheries and Conservation Department when there was transaction of the specimens;</p> <p>(c) requirement for importers to renew possession licence after expiry of the two-year validity period would cause unnecessary inconvenience; and</p> <p>(d) need to review the licensing mechanism with a view to streamlining the procedures while maintaining control</p> <p>Administration’s explanation -</p> <p>(a) requirement for possession licence was aimed at combating smuggling;</p> <p>(b) the Bill had already relaxed control on the possession of non-wild and non-live Appendix II species, and about 80% of the existing applicants would be exempted from the possession licence requirement; and</p> <p>(c) import and possession licences were issued at the same time upon import</p>	The Administration to review the licensing mechanism with a view to streamlining the procedures while maintaining the control over the import, re-export and possession or control of endangered species
020916 - 021058	Chairman	Schedule of meetings	