

立法會
Legislative Council

LC Paper No. CB(1) 641/05-06
(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 sixth meeting
held on Tuesday, 20 December 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon CHOY So-yuk, JP (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon SIN Chung-kai, 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 WONG Yung-kan, JP
Hon Tommy CHEUNG Yu-yan, JP

Public officers attending : Environmental Protection Department

Mr Roy TANG
Deputy Director of Environmental Protection (3)

Mr Eric CHAN
Assistant Director (Conservation)

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

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| (LC Paper No. CB(1) 489/05-06 | -- | Minutes of the meeting held on 22 November 2005 |
| LC Paper No. CB(1) 520/05-06 | -- | Minutes of the meeting held on 29 November 2005) |

The minutes of the meetings held on 22 and 29 November 2005 were confirmed.

II Meeting with the Administration

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| (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) 563/05-06(01) | -- | List of follow-up actions arising from the discussion on 29 November 2005 |
| LC Paper No. CB(1) 563/05-06(02) | -- | Administration's response to LC Paper No. CB(1) 563/05-06(01)) |

2. As the Chairman was late for the meeting, Mr WONG Ting-kwong was elected by members present to chair the meeting. Mr WONG ordered that the meeting be adjourned for five minutes. The Chairman arrived at 8:40 am and took over the chair.

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

4. The Administration was requested to -
 - (a) consider specifying in clause 26 that a licence would remain valid, except for the purpose of export, during the appeal against the Director's decision relating to the cancellation of the relevant licence. To protect the interest of innocent third parties, there should be clear indication on the licence that it was being subject to appeal;
 - (b) advise the composition, functions and modus operandi of the Administrative Appeal Board as well as the average time taken for an appeal to be handled by the Board;
 - (c) liaise with the trades to ensure that they were aware of and had no difficulties in providing the scientific names for specimens of scheduled species in their possession or under their control. To also consider replacing the word "state" with "provide" in clause 29(1); and
 - (d) review clause 41 to ensure that the things seized would not be forfeited to the Government on the ground that an offence was prosecuted under section 38.

5. The next meeting would be held on Monday, 9 January 2006, at 2:30 pm.

III Any other business

6. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
4 January 2006

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

**Meeting on Tuesday, 20 December 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000458	Mr WONG Ting-kwong Mr Martin LEE Mr Andrew LEUNG	Election of Chairman As the Chairman was late for the meeting, Mr WONG Ting-kwong was elected by members present to chair the meeting Mr WONG ordered that the meeting be adjourned for five minutes	
000459 - 000547	Chairman	The Chairman arrived at 8:40 am and took over the chair Confirmation of minutes of the meetings held on 22 and 29 November 2005 (LC Paper Nos. CB(1) 489 and 520/05-06)	
000548 - 001341	Chairman Administration	Administration's response to follow-up actions arising from the discussion at the meeting on 29 November 2005 (LC Paper No. CB(1) 520/05-06(02))	
001342 - 001509	Mr WONG Ting-kwong Administration	Streamlining of licensing procedure Member's concerns - (a) whether the licensee would be notified about the expiry of possession licence; and (b) whether the licensee needed to notify the Director of Agriculture, Fisheries and Conservation (DAFC) about changes in the number of scheduled species in his possession resulting from birth, death or trading of species Administration's explanation - (a) the licensee would be notified by mail one month before the expiry of the possession licence;	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) a registered mail would be sent to the licensee two weeks before the expiry date if he had not responded to (a);</p> <p>(c) if the licensee had not responded to both mails, it would be assumed that the possession licence was no longer required; and</p> <p>(d) the licensee would need to notify DAFC about changes in the number of scheduled species in his possession resulting from birth or death. Trading was not included because the new buyer was required to apply a new possession licence with DAFC</p>	
001510 - 001659	Chairman Administration	Chairman's suggestion of replacing the word “後” with “時” in the Chinese version of clause 22(2)(b)(iii)	
001700 - 003628	ALA7 Administration Chairman Mr WONG Ting-kwong Mrs Selina CHOW	<p><u>Clause-by-clause examination of the Bill</u></p> <p><u>Clause 23 – Issue of licence</u></p> <p>Administration's clarification on licences for import, export and re-export -</p> <p>(a) transit arrangements under clause 22 would apply to scheduled species which were not destined for Hong Kong;</p> <p>(b) licence would be required for export of scheduled species which were caught or propagated in Hong Kong. Such a requirement was also applicable for re-export of imported scheduled species from Hong Kong; and</p> <p>(c) in cases where scheduled species in transit become stranded in Hong Kong, consideration would be given to either returning the species to the country of origin or allowing the species to be imported, whichever appropriate</p>	

Time marker	Speaker	Subject(s)	Action required
003629 - 003845	Administration	<p><u>Clause 24 – Extension, renewal and variation of licences</u></p> <p><u>Clause 25 – Refusal of application made under section 23 or 24</u></p>	
003846 - 005825	Administration ALA7 Mrs Selina CHOW Chairman	<p><u>Clause 26 – Cancellation of licence</u></p> <p>Administration’s explanation on licences under appeal -</p> <p>(a) condition already incorporated in the licence requiring the licensee to obtain an authorized officer’s prior endorsement before the time of exportation to ensure that relevant requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora were fulfilled;</p> <p>(b) the licence holder could not use a licence under appeal for export because the authorized officer would not endorse the licence under such circumstances; and</p> <p>(c) a licence without export or re-export endorsement would not be accepted by the importing country</p> <p>Given that a licence under appeal was considered valid except for export purpose, Mrs Selina CHOW requested to specify such a policy intent in clause 26 to clear any ambiguity</p> <p>Members’ concern that innocent parties might be misled into trading of scheduled species, the licences of which were under appeal</p>	<p>The Administration to consider specifying in clause 26 that a licence would remain valid, except for the purpose of export, during the appeal against DAFC’s decision relating to the cancellation of the relevant licence. To protect the interest of innocent third parties, there should be clear indication on the licence that it was being subject to appeal</p>
005826 - 005954	Mr SIN Chung-kai Administration	<p>Member’s enquiry on the composition, functions and modus operandi of the Administrative Appeal Board</p>	<p>The Administration to advise the composition, functions and modus operandi of the Administrative Appeal Board as well as the average time taken for an appeal to be handled by the Board</p>

Time marker	Speaker	Subject(s)	Action required
005955 - 010028	Administration	<p><u>Clause 27 – Authorized officers</u></p> <p><u>Clause 28 – Power to require production of document or other evidence to show compliance with this Ordinance</u></p>	
010029 - 012558	<p>Administration</p> <p>Mrs Selina CHOW ALA7</p> <p>Mr Vincent FANG</p> <p>Mr WONG Ting-kwong</p> <p>Mr SIN Chung-kai</p>	<p><u>Clause 29 – Power to require scientific names and common names</u></p> <p>ALA7’s concern that the drafting of clause 29 might extend the scope of the provision beyond what was revealed by the policy intent as set out in CB(1) 243/05-06(03) that “it is not the purpose of the provision to require a person to state the common name and scientific name of a scheduled species for mere possession. Nor is it the purpose to require a retail trader who is trading on scheduled species on the street to provide the scientific name of that species”</p> <p>Mrs Selina CHOW’s concern -</p> <p>(a) difficulties of the trades in complying with the requirement on provision of scientific names for specimens of scheduled species in their possession;</p> <p>(b) it would suffice for the trades to provide either scientific names <u>or</u> common names; and</p> <p>(c) should consider replacing the word “state” with “provide” in clause 29(1)</p> <p>Mr SIN Chung-kai views -</p> <p>(a) scientific names were necessary as these were unique for each species; and</p> <p>(b) trades should learn to adapt to changes and comply with the requirements</p>	<p>The Administration to liaise with the trades to ensure that they were aware of and had no difficulties in providing the scientific names for specimens of scheduled species in their possession or under their control. To also consider replacing the word “state” with “provide” in clause 29(1)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Mr WONG Ting-kwong considered that the provision of scientific names should be mandatory, while common names should be optional</p> <p>Administration's explanation -</p> <p>(a) the trades should have no difficulty in complying with the requirement as scientific names were already provided in the supporting convention documents;</p> <p>(b) assistance would be provided where necessary to facilitate the trades to comply with the requirement; and</p> <p>(c) there would be no offence if there were reasonable excuses for non-compliance</p>	
012559 - 013014	Administration Chairman	<p><u>Clause 30 – Power to require production of things for inspection</u></p> <p><u>Clause 31 – Power to inspect place or premises</u></p> <p><u>Clause 32 – Power of search and detention</u></p> <p><u>Clause 33 – Power of entry into place or premises</u></p>	
013015 - 013328	Administration ALA7 Chairman	<p><u>Clause 34 – Power of seizure</u></p> <p>Administration's explanation on clause 34(3) regarding civil liability of authorized officers</p>	
013329 - 013756	Administration Chairman	<p><u>Clause 35 – Disposal of seized things</u></p> <p>Administration's explanation on the means of disposal of seized things</p>	
013757 - 014055	Administration	<p><u>Clause 36 – Power to require identification</u></p> <p><u>Clause 37 – Power of arrest</u></p> <p><u>Clause 38 – Obstruction</u></p> <p><u>Clause 39 – Interpretation of Part 7</u></p>	

Time marker	Speaker	Subject(s)	Action required
014056 - 014603	Administration Chairman	<u>Clause 40 – Return or forfeiture of things seized in respect of offence charged under Part 2 or 3</u>	
014604 - 020152	Administration ALA7 Chairman Mr SIN Chung-kai Mr WONG Ting-kwong	<u>Clause 41 – Return or forfeiture of things seized on prosecution of offences under section 29, 38 or 44</u> Members’ concern that things seized would be forfeited on grounds that an offence was prosecuted under section 38 Administration’s explanation - (a) an authorized officer would not make an application to the court or magistrate for indiscriminate forfeiture; and (b) the Judiciary could be relied upon to make a fair and reasonable judgment on whether it was appropriate to order the forfeiture or return of thing seized based on the particular facts and circumstances of the case concerned	The Administration to review clause 41 to ensure that the things seized would not be forfeited to the Government on the ground that an offence was prosecuted under section 38
020153 - 020309	Chairman	Schedule of meetings	