

## **Protection of Endangered Species of Animals and Plants Bill**

### **The Administration's Response to Questions and Comments raised at the Bills Committee Meeting on 22 November 2005**

#### **Clause 21 on possession of Appendix II species**

We prepared for the Bills Committee's consideration the proposed amendments to clause 21 to address Members' concern that the phrase "to the satisfaction of the Director" did not provide clear indication as to what a person may provide to the Director in order to fulfill the requirements in clause 21. At the Bills Committee meeting on 22 November 2005, some Members further commented that the proposed wording did not clearly indicate the need for a person to provide evidence to the Director. In response to Members' concern, we propose to further revise clause 21 to the effect that a person would be required to provide documentary evidence or other evidence to the Director. The revised clause 21 is set out at Annex I.

#### **Clause 55 on transitional provision**

2. Some Members expressed concern that a grace period of three months after the commencement of the new Ordinance for the possession of species currently not under the control of the existing Animals and Plants (Protection of Endangered Species) Ordinance would not be sufficient as traders would require more time to acquire the required documents. We had consulted the trades and they generally accepted the length of the grace period. However, given Members' view that some trades might still favour a longer grace period for the newly controlled species, we will amend clause 55 so that a grace period of six months will be allowed in respect of the requirements under clauses 9 and 15 for the possession of newly controlled species after the commencement of the new Ordinance.

#### **Schedule 3 concerning the definition of "Commercial Purposes"**

3. The Convention on International Trade in Endangered Species of

Wild Fauna and Flora (CITES) contains 25 articles which lay down the principles of the Convention. In addition to these articles, there are resolutions, decisions or notifications adopted or made by the Conference of the Parties, or issued by the Secretariat of the CITES, which aim to complement those basic principles with interpretative guidance, and additional rules and procedures. While the basic framework laid down by the text proper of CITES is to be provided in the main body of the Bill, these decisions, resolutions and notifications are grouped as “Convention instruments” in the Bill and set out in Schedule 3. These instruments cover mostly guidelines that are technical in nature and will not affect the principles of CITES that are incorporated in the main body of the Bill. Under the Convention, CITES instruments adopted by the Conference of the Parties shall enter into effect 90 days after the meeting at which they are adopted. We are obliged to comply with the CITES requirements as soon as practicable. As the contents of these instruments may need to be amended from time to time by the Conference of Parties to cope with the changes in the latest developments in new technology, business practices and other varying situations, it is more appropriate to set out these elaborate guidelines in Schedule 3 of the Bill which can be amended through a negative vetting process by the Legislative Council so as to ensure timely incorporation of the relevant changes into our domestic law.

4. The Bills Committee discussed at its meeting on 22 November 2005 the definition of “commercial purposes” as set out in Schedule 3. The basic principle of the CITES on the protection of endangered species against over-exploitation through international trade is reflected in the clauses that impose heavier penalties on offences committed for commercial purposes. While the term “commercial purposes” is not defined in the CITES articles, the Conference of the Parties has passed a resolution (Conf. 5.10) giving guidelines on what kind of activities can be regarded as “commercial purposes”. We consider the meaning of “commercial purposes” deriving from this resolution should be incorporated in the Schedule because the Conference of the Parties may revise the relevant instrument from time to time in order to keep pace with fast emergence of new commercial practices.

## **Definition of Convention export permit**

5. At the Bills Committee meeting on 22 November 2005, some Members expressed concern that the term “Convention export permit” might cause confusion as this kind of permit could be used for both export and re-export of the relevant Appendix species but only the word “export” was used in the defined term. In fact, the definition of “Convention export permit” covers all the permits, certificates and other documents that conform to the provisions in Part 2 of Schedule 3, which include export permits and re-export certificates, pre-Convention certificates, certificates of origin, phytosanitary certificates, etc. Taken into account Members’ concern, we propose to change the term “Convention export permit” to “Convention certifying document”.

## **Definition of in-transit**

6. In view of Members’ concern that the present definition of the term “in transit” might not be sufficiently explicit to cover a person carrying a luggage containing controlled species on foot through the land control points, we suggest to revise the definition of in transit in clause 3 to as follows:

“For the purposes of this Ordinance, a thing is in transit if –

- a) it is brought into Hong Kong from a place outside Hong Kong;
- b) it is in the process of being taken to another place outside Hong Kong; and
- c) it remains, in accordance with any requirement under the Convention relating to the transit or transshipment of specimens, under the control of the Director or an authorized officer from the time it is brought into Hong Kong up to the time it is taken outside Hong Kong.”

7. Some Members also asked about the existing mechanism of controlling specimens in transit. The Agriculture, Fisheries and

Conservation Department (AFCD) officers would check the particulars of the specimens against the accompanying documents at the import and export control points. In addition, AFCD officers would also escort the consignment during the transportation of the specimens which are in transit if considered necessary after assessing the risk involved. From 2002 to October 2005, there were a total of about 2000 cases of endangered species transiting through Hong Kong. No discrepancies of the specimens concerned between import and export control points were detected in all these cases. However, taken into account Members' concern, AFCD will further improve the control mechanism by sealing consignments in transit to ensure that the content of the consignment will not be changed during transit.

### **Living animals/plants of wild origin**

8. Some Members expressed concern that it might be difficult to distinguish between living animals/plants of wild origin from artificial propagated plants and captive bred animals. They worried that members of the public might easily commit an offence (e.g. illegal possession of species) since they did not know the concerned species were from wild origin and suggested that the Administration should consider removing the differences in control of Appendix II animals and plants of wild and non-wild origins.

9. Clause 21 provides that possession of Appendix II species will not require a licence unless the species concerned are living animals and plants of wild origin. If the differences in control of wild and non-wild species are removed, all possession of living Appendix II species will be subject to licensing control. We have consulted 29 traders of the relevant trades and almost all of them opposed strongly against this arrangement as this would increase their operating cost. They also considered that with such changes will defeat one of the original purposes of the Bill, i.e. facilitating legitimate trade of species.

10. To address Members' concern, we will step up our publicity and education programmes to strengthen public's awareness of the protection of endangered species and to help them distinguish species that are under the control of the Bill. In fact, AFCD has published different types of

posters and leaflets for distribution to trade associations and shops and at various locations, including exhibition and competition venues and airline check-in counters. Photographs of some commonly traded species are available on AFCD's homepage as well as the website of CITES. While it is impracticable for us to provide pictures of all the 30,000 controlled species, many of which are not found trade in Hong Kong, we attach at Annex II photographs of some endangered species which are more commonly seen in Hong Kong for Members' reference.

**Clause 21 Possession or control of specimens of Appendix II species**





**(1)** A person may have in his possession or under his control a specimen of an Appendix II species if he proves the following to the satisfaction of the Director **by documentary evidence or otherwise-**






- (a) that the specimen is not a live animal or plant of wild origin, nor is it a live animal or plant that shall be treated as a specimen of an Appendix II species under section 2(2); and
- (b) that the species is not of a population included in Appendix I if the species is specified in both Appendix I and Appendix II.

**(2)** In subsection (1), "documentary evidence" includes but is not limited to a licence within the meaning of section 7 of the repealed Ordinance, a certificate in lieu or other Convention certifying document.





## Annex II

### Some endangered species more commonly seen in Hong Kong

	<p>Pangolin 穿山甲 CITES Appendix II 公約 附錄 II</p>
	<p>Owl 貓頭鷹 CITES Appendix I/II 公約 附錄 I/II</p>
	<p>Hill myna 鷓鴣 CITES Appendix II 公約 附錄 II</p>
	<p>Star tortoise 星龜 CITES Appendix II 公約 附錄 II</p>

	<p>Sea turtle 海龜 CITES Appendix I 公約 附錄 I</p>
	<p>Crocodile 鱷魚 CITES Appendix I/II 公約 附錄 I/II</p>
	<p>Python 蟒蛇 CITES Appendix I/II 公約 附錄 I/II</p>
	<p>Asiatic bony tongue 龍吐珠 CITES Appendix I 公約 附錄 I</p>
	<p>Sea horse 海馬 CITES Appendix II 公約 附錄 II</p>



	<p>Humphead wrasse 蘇眉 CITES Appendix II 公約 附錄 II</p>
	<p>Birdwing butterfly 鳳蝶 CITES Appendix I/II 公約 附錄 I/II</p>
	<p>Giant clam 巨蚌 CITES Appendix II 公約 附錄 II</p>
	<p>Stony coral 石珊瑚 CITES Appendix II 公約 附錄 II</p>