For information
On 27 October 2009

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

List of Follow-up Actions Arising from the Discussion
at the Meeting on 8 October 2009

This paper provides the information as required in Appendix I to the letter dated 8 October 2009 from the Secretariat of the Bills Committee on the Genetically Modified Organisms (Control of Release) Bill :

	Information requested	Response
(1)	To provide a written response (in tabular form) to the views of deputations as set out in their submissions.	**Annex A**
(2)	To advise how local institutions could ensure that a genetically modified organism (GMO) involved in an operation is in "contained use".	**Annex B**
(3)	To provide a paper setting out the Administration's stance on the need for a threshold on adventitious presence of GMO.	**Annex C**
(4)	To provide a paper setting out the studies conducted before formulation of the Bill, policy intent of the enforcement provisions and the plan to enforce these provisions, as well as efforts being contemplated to promote public awareness of the Bill. To illustrate the application of the enforcement regime with practical examples, including papaya, tomato, cantaloupe, pumpkin, soya bean, peanut, mango, potato and yam.	**Annex D**
(5)	To explain the difference between proposed sections 29 and 30. To also advise the circumstances under which a dwelling house is "used exclusively as a dwelling house", and whether a dwelling house with the presence of a GMO will still be considered as a dwelling house under	**Annex E**

proposed section 29(2). To further advise whether an authorized officer is empowered not only to enter and inspect any place or premises without notice, but also seize, remove and detain things without notice. If so, this may be a cause of concern for institutions, such as laboratories and academies, where the presence of GMOs is not uncommon.

Environmental Protection Department
Agriculture, Fisheries and Conservation Department
October 2009

Annex A

3rd Bills Committee Meeting on the
Genetically Modified Organisms (Control of Release) Bill

The Administration's Response to the
Views of the Deputations set out in their Submissions

The following deputations made written submissions to the Bills Committee Secretariat –

1. Hai Kang Life Corporation Limited
2. Greenpeace
3. World Wide Fund for Nature Hong Kong (WWF)
4. Produce Green Foundation
5. Clover Seed Company Limited / Hong Kong Seed Trade Co. Ltd.
6. Hong Kong Biotechnology Organization Limited

2. The written submission from the deputations and the responses from the Administration are as follows:

Views/Suggestions	The Administration's Responses
Hai Kang Life Corporation	
1) Enquired on how the term 'contained use' would be applied to reference standards and materials that a testing laboratory uses for analyses and research purpose.	The meaning of "contained use" is set out in Clause 3(2) of the Bill. A GMO is in contained use if it is involved in an operation that is undertaken within a facility, installation or other physical barrier; and it is controlled by specific measures that effectively limit its contact with, and its impact on, the environment. Reference standards and materials that a testing laboratory uses for analyses and research purposes, if undertaken within a facility with effective measures to limit its contact with the environment, would fall within the meaning of "contained use" as defined under the Bill.
2) Enquired on how the Government would ordain the importation of reference	Prior approval is not required if the reference materials are imported for "contained use". The Administration, however, will follow the Protocol's

Views/Suggestions	The Administration's Responses
materials that are required by use for GMO testing; and what the Government's approach would be towards the approval of GM standards and reference materials for laboratory testing use.	requirement to require the importer to provide documentation containing specified information relating to the GMO (including the identity and relevant traits and/or characteristics of the GMO such as event of transformation and any unique identification as a key to assessing information in the Biosafety Clearing-house) during import. The information would allow the Government or its appointed agent to identify the GMO in question.
3) Enquired whether the Government would have authority to share and provide relevant background information such as sequence data of GMO trait varieties in order for accredited testing laboratories to establish new and relevant tests under the Bill. Enquired on the steps that the Government would take to ensure necessary rights are obtained from the makers of the GMO for the Government lab and or appointed lab to carry out legitimate tests.	The applicant of a GMO approval application will be required to provide a risk assessment report on the possible adverse biosafety effect of the GMO. The report will contain, among others, information on the introduced genes, which will be uploaded to the AFCD's website for public browsing. The applicant may want to keep the information confidential because of commercial interest. Under Clauses 14 and 15 of the Bill, the applicant may make a non-disclosure request and the Director must decide on the request. If we need to carry out or develop tests for a particular GMO, we could ask the applicants to disclose a small fragment of the sequence, which could allow for the precise detection without compromising the applicant's commercial interest.
4) Enquired whether the Government considered the implications concerning the role of patents and intellectual property rights owned by the developers and/or manufacturers of the GMOs, and the steps that the Government would take	For GMOs for food, feed or for processing (FFP), information of the introduced genes will not be required in the import and export documentation. However, according to AFCD's research, production of GMOs requires the use of selectable markers. The sequences of these selectable markers are well known and could be utilized for detection by Polymerase Chain Reaction. Furthermore, they could be used as the starting point for sequencing to obtain

Views/Suggestions	The Administration's Responses
to ensure necessary rights are obtained from the "makers" of GMOs for the Government laboratory and/or the appointed /tendered accredited laboratories to carry out legitimate tests.	the identity of the introduced functional genes.
Greenpeace	
5) Concerned that the proposed legislation may not reflect the precautionary principle of the Cartagena Protocol on Biosafety (the Protocol).	The operation of the precautionary principle is specified in Articles 10(6) and 11(8) of the Protocol, which provide that scientific uncertainty regarding the potential adverse biosafety effects of a GMO shall not prevent decision making on whether or not to approve a GMO, in order to avoid or minimize those effects. The Bill reflects the requirements of the Protocol in the sense that a GMO application will not be approved unless the possible adverse biosafety effect of the GMO is considered to be acceptable or manageable. The decision making process will be conducted according to precautionary considerations.
6) Concerned that the legislation proposes to restrict the risk assessment to direct effects on biodiversity, e.g. excluding water.	The requirements on risk assessment in the Bill follow those in the Protocol. A risk assessment on the adverse effects of a GMO on biological diversity has to be considered in the context of the likely potential receiving environment. The requirements do not specify any receiving environments nor impose any restriction. The potential adverse effects of the GMO on the aquatic ecosystem, if any, would be considered in the risk assessment under the proposed legislation.
7) Concerned that the legislation excludes the human health risk assessment from the scope of the legislation. GMOs can have adverse effect on	The Protocol requires that the risk to human health should be taken into account of the risk assessment. However, according to "An Explanatory Guide to the Cartagena Protocol on Biosafety" published by the World Conservation Union (IUCN), it was generally accepted by the Parties of the Protocol that the risk to

Views/Suggestions	The Administration's Responses
human through direct exposure e.g. respiratory tract exposure to pollen from GE crops.	human health refers to the indirect risks of GMOs on human health resulting from the effects of the GMOs on biological diversity, and not the direct effects on human health caused by consuming GMO food and pharmaceuticals or through direct exposure (e.g. allergy due to pollen from GM plants). In addition, issues concerning human health are being dealt with under other relevant international organizations (e.g. Food and Agriculture Organisation, World Health Organisation and Codex Alimentarius), and is under the purview of other policy bureaux. Therefore, in line with international practice, assessment on direct risk on human health is excluded from the Bill.
8) Concerned that the legislation does not specify what information cannot be kept confidential.	Clause 14 (3) of the Bill specifies the information relating to a GMO approval application that cannot be kept confidential; which includes (a) the name and address of the applicant; (b) a general description of the GMO; (c) a summary of the risk assessment on the possible adverse biosafety effect of the GMO; and (d) any proposed methods and plans for dealing with the possible adverse biosafety effect of the GMO in emergency circumstances. The clause reflects Article 21(6) of the Protocol.
9) Concerned that the legislation does not provide any adventitious threshold for non-GMO-FFP, as well as non-GMO for release into the environment.	The adventitious threshold of approved GMO in shipments of non-GMOs intended to be used as FFP will be provided in the Regulations to be made under the Bill (i.e. 5% or below). The proposed 5% threshold reflected a pragmatic and realistic level that the trade could achieve and had similarly been adopted in some overseas countries such as Japan and Thailand. As the local agricultural industry is small, the risk of extensive planting of GM crops in the environment is not high and thus the 5% level is considered appropriate. Regarding the adventitious threshold for non-GMO for release into the environment, it should be noted that adventitious presence usually occurs in

Views/Suggestions	The Administration's Responses
	agricultural production industry such as seed production. As reflected in the Bill, we would adopt a zero tolerance for the adventitious presence of GM materials in non-GM seeds. Seeds are generally used for release into environment and thus contamination sources may have potential adverse impact on the local biodiversity. The zero tolerance level was also adopted in Mainland China and other countries such as the European Union and South Korea.
10) It is suggested that the legislation should allow the review of decisions.	Clause 11 of the Bill allows an applicant to request the Director to consider and vary a prior decision on the ground that (a) a change in circumstances that influences the Director's assessment on the possible adverse biosafety effect of the GMO has occurred; or (b) additional scientific or technical information that influences the Director's assessment on the possible adverse biosafety effect of the GMO has become available. Clause 12 allows the Director to vary a prior decision on the Director's initiative on any of the above grounds or if the Director considers it in the public interest to do so.
11) Suggested that the transitional period should be granted only to the export parts of the legislation.	The transitional period is provided to minimize the impacts on concerned stakeholders, including local importers. It could also allow applicants of GMO approval applications to prepare the documentation for approval applications if necessary.
WWF	
12) Concerned that the proposed legislation may not reflect the precautionary principle of the Cartagena Protocol on Biosafety.	See response to the same comment under item (5) above.
13) Recommended the Government to extend the consultation process to the wider public so as to allow	An expert group comprising members from different sectors including green groups, academics, organic farming, biotechnology and relevant traders will be formed under the Bill to advise the Director on

Views/Suggestions	The Administration's Responses
the Director to make reference to citizens' comments in, for instance, deciding whether the application for import of a GMO for release to the environment should be approved.	questions concerning the administration of the Bill, for example, on the approval application of GMOs. Due to the highly technical nature of the risk assessment for GMOs, it is considered more appropriate to consult expert representatives of relevant public sectors rather than the general public in the approval process.
14) Encouraged the Government to enhance the efforts in preserving the biodiversity in Hong Kong after the extension of the Convention on Biological Diversity (the Convention) to Hong Kong.	The Convention provides a comprehensive approach to the conservation of biological diversity, and sets overall goals and general obligations. Our existing nature conservation policy and measures are generally in line with the objectives and requirements of the Convention. The Government will continue its work in nature conservation after the extension of the Convention to Hong Kong.
Produce Green Foundation	
15) Suggested that AFCD to conduct a research on the variety of GM crops which are now available on markets for sale and the result should be published so that farmers can avoid keeping seeds from fruits of these potential GM species for sowing.	AFCD conducted a preliminary survey for the presence of GMOs in various imported and locally grown crops available from local markets and farms in the year 2008-2009. Over 200 samples of 23 kinds of agricultural commodities including fresh foods, plants and seeds with potential GM varieties and available from the market (such as potato, soybean, tomato, egg plants and papaya) were tested. The collected samples have included the majority of different sources and brands available from the market. According to the survey, only papaya and soybean were tested positive as genetically modified. The GM soybean was intended to be used as food only. For papaya, it was found that most of the home-grown papayas are genetically modified and they are mostly grown from seeds collected from fruits after consumption. Besides, AFCD is conducting a further survey on the updated prevalence of GM crops in 2009-10. The

Views/Suggestions	The Administration's Responses
	information of the surveys would be made available to the public (through the online register and pamphlets). Besides, the information of crop plants of different GM varieties can be obtained from the Biosafety Clearing-house which provides relevant information on the GMOs.
16) Suggested that the Administration should help locate sources of non-GM papaya seeds, provide non-GM papaya plants to exchange for suspected GM plants and introduce to farmers practical ways of fighting papaya ringspot virus disease.	AFCD would consider assisting organic growers to locate non-GM papaya sources and provide technical advice in carrying out all the necessary precautionary measures for pest and disease control and avoiding GM contamination.
17) Suggestion in relation to granting exemptions to GM papayas.	AFCD will assess the potential impacts of GM papaya on the local biodiversity and make a recommendation to the treatment of GM papaya in Hong Kong, taking into account social impact and the risk to the environment. AFCD will also step up public awareness on the Bill so as to prevent the public from growing non-approved GMOs.
18) Suggested to mandate the labelling of GM food.	The scope of the Protocol concerns conservation and biological diversity, and does not concern food safety and food labeling issues. The food safety aspect of genetically modified food is being dealt with under another international organization, the Codex Alimentarius Commission. According to the Food and Health Bureau, there is at present no international consensus on the labeling of GM food. The findings from the evaluation exercise of the Guidelines on Voluntary Labelling of GM Food illustrated that there was no pressing need for mandatory labelling, as measured by the level of use of GM material in the samples. The Administration will keep in view the international development in

Views/Suggestions	The Administration's Responses
	GM technology and GM food labeling standards, in deciding the future course of action.
19) Enquired whether the Government has made any estimation on the number or the percentage of products to be sampled annually, and whether the Government has sufficient resources for implementation of the Bill.	AFCD will conduct random samplings to check for non-compliance. The sampling protocol will be prepared according to ISO or other relevant standards with supports from consultants experienced in designing sampling regimes. AFCD will also conduct surveys from time to time on local farms and food markets, to monitor the situation of GMOs in Hong Kong. The financial support, manpower and other resources will be arranged accordingly.
20) Suggested the Government to consult stakeholders before the enactment of the Regulation to the Bill.	We are preparing the Regulation to be made under the Bill. The stakeholders will be consulted in due course.
Clover Seed Co Ltd. / Hong Kong Seed Trade Association Co Ltd.	
21) Enquired on the adventitious threshold for non-GM seeds.	Please see item (9) above.
22) Enquired whether representatives from local seed traders be invited to the upcoming Expert Group.	Members of the expert group will be appointed by the Secretary for the Environment and comprise experts from different sectors including green groups, academics, organic farming, biotechnology and relevant traders.

Annex B

3rd Bills Committee Meeting on the Genetically Modified Organisms (Control of Release) Bill

Contained Use of GMOs

This paper seeks to advise the Bills Committee on how local institutions could ensure that a genetically modified organism (GMO) involved in an operation is in "contained use".

2. According to Clause 3 of the Bill, a GMO is in contained use if it is involved in an operation that is undertaken within a facility, installation or other physical barrier; and it is controlled by specific measures that effectively limit its contact with, and its impact on, the environment.

3. Examples of contained use of GMOs include the culture of GM micro-organisms in sealed vessels, storage and use of GMOs in laboratories or warehouses, keeping of GM animals inside cages in a laboratory, rearing of aquarium fish in an indoor aquarium and the growing of GM plants in greenhouses, etc.

4. Under normal circumstances, the routine operation and biosafety/containment measures (e.g. inside sealed containers) being adopted in laboratories of local institutions could effectively limit the contact of the experimenting organisms with the external environment. Therefore, researches involving the culture of GM micro-organisms, storage and use of GMOs and keeping of GM animals undertaken in laboratories with appropriate biosafety/containment measures would generally be considered as contained uses. Growing of GM plants inside growth chamber would also be considered as contained use if the growth chamber could act as an effective physical barrier to prevent the GM plants growing inside from coming into contact with the external environment.

5. For GM plants growing inside greenhouse, the greenhouse should be equipped with effective physical barriers to prevent insect pollinators from visiting the GM plants growing inside if the GM plants are insect-pollinated. For this purpose, the institution may cover the greenhouse with nets or cover

the whole plant or the flowers with nets/plastic bags. A filtering system in the ventilation system may also be necessary to prevent any pollen from escaping into the external environment in case wind-pollinated GM plants are grown in an enclosed greenhouse.

6. The level of containment required varies according to the risk and the type of GMOs involved. The essence of such containment is that it should effectively limit the contact of the GMOs intended for contained use with, and the impact of such GMOs on, the external environment.

Annex C

3rd Bills Committee Meeting on the Genetically Modified Organisms (Control of Release) Bill

Threshold on Adventitious Presence of GMO

This paper seeks to set out the Administration's stance on the need for a threshold on adventitious presence of GMO

Adventitious Presence

2. In the agricultural production industry, it is widely accepted that 100% purity is unlikely to be achieved in the production of food, feed and seed as there are many sources of unintentional mixing such as cross-pollination of GM crops with non-GM crops, seed spillages during harvesting and grain residues left in a harvester etc. Thus, it is inevitable that agricultural commodities with various components would become inter-mixed to a certain extent in the course of production, and adventitious presence of impurities in agricultural commodities could reasonably be expected especially when generally accepted agricultural and manufacturing practices are being adopted. Deviations from the generally accepted practices to avoid such mixing, such as adopting spatial separation or using dedicated machinery, equipment and infrastructure, are costly. Even so, 100% purity cannot be guaranteed. When used in the context of GM material, the term adventitious presence refers to the incidental presence of GM material in food, feed or grain at levels that are consistent with generally accepted agricultural and manufacturing practices.

Adventitious Threshold for non-GMO-FFP

3. In commercial agricultural production, storage and transportation of agriculture produces, mixing of products from different sources, including GM varieties, is inevitable. Therefore, adventitious thresholds are set for non-GMO intended to be used as food, feed or for processing (non-GMO-FFP) in some countries such as European Union (0.9%), South Korea (3%), Thailand (5%) and Japan (5%).

4. Taking into consideration the small scale of local agricultural industry

and that most non-GMO-FFP are not grown in Hong Kong, AFCD recommends to set the adventitious presence of GMOs at the 5% threshold for non-GMO-FFP. That is, the percentage of GMOs in a shipment of agricultural produces for food, feed or for processing must not exceed 5%. The proposed threshold reflects a pragmatic and realistic level for the Administration to manage the possible risks to biological diversity, which at the same time is a level that the trade will be able to comply with. This level has equally been adopted in some overseas countries such as Japan and Thailand.

Adventitious Presence of GMO in Seeds

5. For shipments of seeds intended to be released to the environment, a zero tolerance of adventitious presence of GMOs is recommended as reflected in the Bill. The Administration is aware of the possible adventitious presence of GM seeds in lots of traditional seeds. However, adventitious presence of GM seeds in lots of traditional seeds may lead to the release of non-approved GM plants and subsequently result in potential adverse impacts on the local biodiversity. Therefore, adventitious presence of GM seeds is not allowed. A zero tolerance is also being adopted by most of the parties to the Cartagena Protocol on Biosafety, such as China, European Union and South Korea. Many overseas seed suppliers have been following the requirement for several years.

6. On the other hand, we note that the international communities such as the European Union are considering adopting adventitious threshold for GM seeds. The Administration will keep in view the most recent development and ensure that the relevant requirements are in line with those of the Protocol and standards recommended by the International Seed Federation.

Annex D

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Enforcement Plan and Promotion of Public Awareness

This paper seeks to set out the studies in relation to the presence of genetically modified organisms (GMOs) in Hong Kong that AFCD conducted before formulation of the Bill, the policy intent of the enforcement provisions, the plan to enforce these provisions, and the efforts being contemplated to promote public awareness of the Bill. It also seeks to illustrate the application of the enforcement regime with practical examples, including papaya, tomato, cantaloupe, pumpkin, soya bean, peanut, mango, potato and yam.

Objective of the Bill

2. The objective of the Cartagena Protocol on Biosafety is to ensure an adequate level of protection in the field of the safe transfer, handling and use of GMOs resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, and specifically focusing on transboundary movements.

3. To be in line with the Protocol's main focus to regulate the transboundary movements of GMOs, the Bill intends to control the release into the environment, and the import and export of GMOs.

Prevalence of GMOs in Hong Kong

4. In order to assess the prevalence of GMOs in Hong Kong for formulating the enforcement regime of the Bill, a preliminary survey for the presence of GMOs in various imported and locally grown crops from local markets and farms was conducted during the period from December 2008 to February 2009. Over 200 samples of 23 types of crops representing different brands and sources were collected from local markets to test for the presence of GM traits. According to the survey, only some papayas and a small amount of soybeans were tested positive as genetically modified. All GM soybeans were intended to be used as food, feed or processing only. For papaya fruits, about

half of the samples were genetically modified. About 70% home-grown papaya plants are genetically modified. It was also found that there were some GMOs produced/used in laboratories of local research institutes but they were mostly for contained use. Overall, except for home-grown papaya, GMO is not considered to be of widespread presence in Hong Kong.

Public Consultation

5. Between December 2008 and August 2009, public consultation sessions were held with the major stakeholders and the public. A number of consultation meetings were held with 33 parties from 10 sectors of major stakeholders including green groups, academics, biotechnology companies, veterinary vaccine traders, food and beverage traders, local chain stores and trade associations, seed traders, flower and aquarium fish traders and organic farms. Besides, advisory bodies and relevant overseas authorities were also consulted. The consulted parties in general supported the extension of the Protocol to Hong Kong, and had no objection to the proposed legislation. Comments from the consulted parties were taken into account during the drafting of the Bill.

Enforcement Intent and Regime

6. Considering that growing of GM crops in Hong Kong may have adverse impacts on the local biodiversity and that such crops are mainly produced by overseas biotechnology companies, it is expected that enforcement would mainly focus on the control of import of GMOs and target at large enterprises producing or using GMOs. The general public who might have inadvertently grown or kept GMOs would not be our target group of enforcement. Instead, the Administration will promote public awareness of GMOs and protection of local biodiversity so as to educate the public and to seek their support on the implementation of the Protocol.

7. Under the provisions of the Bill, prior approval must be sought from the Director of Agriculture, Fisheries and Conservation (Director) for GMOs intended to be imported for release into the environment and appropriate documentation must accompany the import shipments of the GMOs. On the other hand, GMOs-FFP and GMOs for contained use do not require prior approval but the import shipments must be accompanied by appropriate

documentation.

8. Under the Bill, authorized officers are vested with necessary powers to discharge the enforcement duties. For example, an authorized officer may stop, board and search any vessel, vehicle, train or aircraft if he has reason to suspect that certain offences under the Bill have been, are being, or are to be committed. He may also enter and inspect premises and, on issue of a warrant, search premises. An authorized officer may also seize, remove and detain things or take samples to carry out tests for compliance with the Bill. Such powers are necessary for the authorized officers to carry out the enforcement duties under the Bill.

9. In order to ensure that such powers are properly used, authorized officers (i.e. at the rank of Field Officer II or above) from AFCD will follow established operating procedures to discharge the enforcement duties under the Bill. An operation manual for enforcement officers is being drafted to provide guidelines for the authorized officers in this regard. The manual will adopt the well established procedures detailed in the Operation Manual for Enforcement Officers being used by the authorized officers of AFCD responsible for enforcing the Protection of Endangered Species of Animals and Plants Ordinance (Cap.586). Though not uniformed staff, the authorized officers will carry warrant card and wear vest with AFCD's logo for identification purpose when carrying out enforcement duties under the Bill.

10. The Operation Manual for Cap.586 provides detailed operating procedures and guidelines for AFCD's authorized officers to discharge their enforcement duties, including inspection of target premises, case investigation, search operation, exercise of power of arrest, handling exhibit, consignment inspection and disposal of specimens etc. All authorized officers have to closely follow the procedures and guidelines in carrying out the enforcement duties under Cap.586.

11. On the import control aspect, AFCD may randomly check shipments of GMOs for compliance with the relevant documentation requirements for GMOs intended for release, contained use or FFP. Authorized officers from AFCD will randomly check the documentation of the shipments arriving at the airport cargo centre/borders/container terminals for compliance with the proposed legislation. For example, a shipment of GM papaya imported into

Hong Kong as food must be accompanied by the required documentation containing such information as the identity of the GM papaya and the contact details of the importer or exporter. AFCD authorized officers would inspect the documentation of the GM papaya shipment for compliance with the requirements of the proposed legislation. Samples of the GM papaya may also be collected for laboratory testing as to whether the GM papaya is of the type mentioned in the documentation. On the other hand, if the shipment of papaya does not indicate that it contains GM papaya, AFCD may also collect a sample of papaya from the shipment if it is suspected otherwise. The shipment of GM/non-GM papaya will not be detained after sample collection. If test result indicates any non-compliance afterwards, prosecution may be initiated against the importer.

12. Besides, regular surveys will be conducted on local farms and food markets so as to monitor the situation of GMOs in Hong Kong. Local laboratories in private companies and institutions may also be inspected for their compliance with the requirements of the Bill. Under clause 29, an authorized officer may inspect any place or premises (other than those used exclusively as a dwelling house) if he has the reason to suspect that a GMO is being kept in the place or premises. Clause 30 provides that an authorized officer may enter and search any place or premises on issue of a warrant by a magistrate if there are reasonable grounds to suspect that an offence has been, is being, or is to be committed.

13. Under normal circumstances, an authorized officer from AFCD would identify themselves by showing warrant card and state the purpose of the visit to the land owners or responsible persons before entering and inspecting the place or premises in which GMOs are suspected to be present. For example, AFCD will carry out surveys in local farms to check if unapproved GM crops are grown. If some papaya plants are found in an agricultural field/backyard and suspected to be an unapproved GM variety during the survey, the authorized officer would identify himself and state the purpose of the visit to the farmer/landowner before entering the field/backyard and he will inform the farmer/landowner before collecting some leaf samples for laboratory testing. On the other hand, if it is suspected that some unapproved GM plants are grown in a greenhouse of a local institute, the authorized officer would also identify himself to the responsible person of the institute before entering the greenhouse to inspect the plants and inform the person before collecting

samples from the plants for testing purpose.

14. There are circumstances under which it is necessary to search specific place/premises and seize GMOs (e.g. it is known that an unapproved GM plant is being kept in a laboratory which refuses inspection by the authorized officers). The Operation Manual for Cap.586 also serves as a model for laying down the detailed procedures for conducting search operation and seizure of exhibits for the Bill. As an example, when an authorized officer is carrying out a search operation, the search warrant application must be approved by a senior officer (ranking of Senior Field Officer or above). For emergency searching of conveyance vessel, vehicle, train or aircraft under Section 32(1) of Cap.586 where no search warrant is required, the consent from a senior officer must be sought before conducting any search operation. A search team will be formed and police assistance will be sought as appropriate. In any case, the authorized officers will identify themselves by showing the warrant cards and explain the purposes of the visit and show the search warrant where appropriate. A seizure receipt will be issued in case any specimens or things are seized. A personal data note will also be issued to the person concerned in case any personal particulars were collected. When an operation is completed, the authorized officers will ask the person concerned if he has any complaint. All these procedures and requirements as set out in the operation manual help to make sure that the authorized officers will discharge their duties in a proper and lawful way.

15. Based on AFCD's experience with enforcing Cap.586, force was rarely used in the enforcement of the relevant provisions for inspecting or searching a place or premises. However, such provisions are necessary as sufficient power is required in order to enforce the provisions in the Bill under special circumstances (e.g. when the authorized officers encounter non-cooperation or obstruction to the investigation of the suspected presence of unapproved GMO).

Public Awareness

16. Other than the public consultation held earlier this year, we are planning to carry out a publicity programme in an effort to promote public awareness of the Bill prior to the enactment of the Bill. Pamphlets containing details of the Bill are being developed for distribution to the general members

of the public as well as specific categories of stakeholders in early 2010. We shall also conduct a public consultation exercise with the relevant stakeholders on the proposed subsidiary legislation detailing the documentation requirements of GMOs. An online register will also be launched before the enactment of the Bill to promote the Protocol and the Bill. The information of the regular surveys on GMOs would also be made available to the public through the online register and pamphlets.

Annex E

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Enforcement Powers

This paper seeks to explain the difference between Clauses 29 and 30 of the Bill. It also seeks to advise the circumstances under which a dwelling house is "used exclusively as a dwelling house", and whether a dwelling house with the presence of a GMO will still be considered as a dwelling house under Clause 29(2). It also advises whether an authorized officer may seize, remove and detain things without notice.

2. Under Clause 29 of the Bill, an authorized officer who has reason to suspect that a GMO is being kept in any place or premises, could enter and inspect the place or premises, without notice, for the purpose of verifying compliance with the Ordinance (when enacted). The powers of entry and inspection, however, are not exercisable in relation to any premises (or part of the premises) used exclusively as a dwelling house. The determining factor is whether the premises (or that part of the premises) are only used for dwelling purpose. Depending on the purpose for which the premises (or that part of the premises) are used, premises (or part of premises) in which a GMO is present may or may not be considered as premises (or part of premises) used exclusively as a dwelling house. For example, a house with an aquarium containing GM aquarium fish as pet would be considered as premises used exclusively as a dwelling house. On the other hand, a house used for both dwelling and growing of GM mushroom for sale to supermarkets may not be considered as premises used exclusively as a dwelling house. The provision is in line with that of similar ordinances such as section 31 of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586).

3. Clause 30 of the Bill empowers authorized officers to enter and search places or premises (including premises used exclusively as a dwelling house). The powers under this clause are more intrusive than those under Clause 29, and are only exercisable on a warrant issued by a magistrate. A warrant may be issued only if the magistrate is satisfied by information on oath that there are reasonable grounds to suspect that an offence under the Ordinance (when enacted) has been, is being or is to be committed in or on the

place or premises; or there is in or on the place or premises any thing that is or contains evidence of the commission of an offence under the Ordinance (when enacted). As explained in our letter to the Assistant Legal Advisor dated 14 August 2009, clause 30 gives comparatively intrusive powers to the authorized officer, and we consider it appropriate for a warrant to be applied before the authorized officer exercises such powers. The provision is in line with that of similar ordinances such as section 33 of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586).

4. Clause 31 of the Bill empowers an authorized officer to seize, remove and detain anything that appears to the officer to be or to contain evidence that an offence under the Ordinance (when enacted) has been committed. Whether the officer may seize, remove and detain a thing depends on whether the thing appears to be or to contain evidence of commission of an offence under the Ordinance, irrespective of whether prior notice has been given.