立法會
Legislative Council

LC Paper No. CB(1) 1242/09-10

Ref : CB1/BC/6/08

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

Purpose

This paper reports on the deliberations of the Bills Committee on Genetically Modified Organisms (Control of Release) Bill (the Bills Committee).

Background

2. Genetically modified organism (GMO) refers to any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology. The Cartagena Protocol on Biosafety (the Protocol) under the Convention on Biological Diversity (the Convention) was adopted in 2000 to provide for the safe transfer, handling and use of GMOs that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health. There are currently over 190 Parties to the Convention, including China, but the Convention has yet to be extended to Hong Kong. According to the Convention, a party may not participate in a protocol unless it is, or becomes at the same time, a party to the Convention. Hence, the Protocol cannot be extended to Hong Kong unless the Convention is applicable to Hong Kong.

3. According to Article 153 of the Basic Law, the application of international agreements, to which the People's Republic of China is or becomes a party, to the Hong Kong Special Administrative Region (HKSAR) shall be decided by the Central People's Government (CPG) in accordance with the circumstances and needs of HKSAR, and after seeking the views of the HKSAR Government. The Convention and the Protocol are important international agreements on protection of biological diversity and global sustainable development. Their extension to Hong Kong can reinforce Hong Kong's commitment in cooperating with the international community to protect the natural environment. Moreover, as an international city, Hong Kong is expected to share similar international obligations relating to the protection and sustainable use of biological diversity. It also needs to follow the Protocol's requirements where its trading partners have joined the Protocol. Hence, the Administration has obtained the agreement-in-principle of CPG to extend the

application of both the Convention and the Protocol to Hong Kong, subject to the passage of the proposed legislation

4. According to the Administration, the existing nature conservation policy and measures are generally in line with the objectives and requirements of the Convention. The only major area in the Convention on which further measures have to be developed is the regulation, management and control of the risks associated with the use and release of GMOs into the environment. The Convention and the Protocol cannot be extended to Hong Kong unless these measures are put in place. Therefore, a new piece of legislation is required to provide the legal basis for the requirements set out in the Protocol in relation to the regulation of GMOs. Subject to the passage of the proposed legislation, and upon completion of other necessary preparatory work, the Administration will request CPG to complete the formalities on the extension.

The Bill

5. The object of the Bill is to give effect to the Protocol, control the release of GMOs into the environment, control the import and export of GMOs, as well as provide for incidental and related matters.

The Bills Committee

6. At the House Committee meeting held on 5 June 2009, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Audrey EU Yuet-mee, the Bills Committee has held 11 meetings. The membership list of the Bills Committee is in **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the trade and related sectors. Eight groups have made written and/or oral representation to the Bills Committee. A list of these groups is in **Appendix II**.

Deliberations of the Bills Committee

7. The Bills Committee generally supports the policy intent of the Bill. In the course of deliberation, members have examined issues relating to reference to international conventions in long titles of bills, prevalence of GMOs in Hong Kong, adventitious presence of GMOs, restrictions on release of GMOs into the environment, approval of GMOs, entry of information and decisions on GMO approval applications and variation requests in register, register, enforcement, disposal and forfeiture of thing seized, miscellaneous provisions, transitional provisions and schedules.

Reference to international conventions in long titles of bills

8. The Bills Committee has noted that the object to give effect to the Protocol is clearly spelt out in the long title of the Bill. However, this may not be the case in other bills that relate to international conventions, such as the Bunker Oil Pollution (Liability and Compensation) Bill. Some members have enquired about the criteria for making reference to international conventions in long titles of bills. According to the Administration, there is no hard and fast rule in making reference to international conventions in long titles of bills. Factors, including the extent to which the bills are related to the international conventions, whether the international conventions are to be implemented by "direct approach" (i.e. the local legislation will declare the convention text to have the force of law), whether the conventions only set out broad principles, and whether a lot of adaptations are required in local legislation, will be taken into account. While acknowledging the Administration's explanation, the Bills Committee remains of the view that there is a need for consistency in making reference to international conventions in long titles of bills. The subject has been subsequently referred to the Panel on Administration of Justice and Legal Services for follow up.

Prevalence of GMOs in Hong Kong

9. The Bills Committee has enquired if the Administration has conducted any research to ascertain the presence of GMOs in Hong Kong before formulating the Bill. According to the Administration, a preliminary survey for the presence of GMOs in various imported and locally grown crops from local markets and farm has been conducted during the period from December 2008 to February 2009. Over 200 samples of 23 types of crops representing different brands and sources have been collected from local markets to test for the presence of GM traits. The outcome of the survey has revealed that only some papayas and a small amount of soybeans are tested positive as genetically modified. For papaya fruits, about half of the samples and 70% home-grown papaya plants are genetically modified. All GM soybeans are intended to be used as food, feed or processing (FFP) only. It is also found that there are some GMOs produced/used in laboratories of local research institutes but they are mostly for contained use. Overall, except for home-grown papaya, GMO is not considered to be of widespread presence in Hong Kong. Since the outcome of the survey is quite different from the public perception that GMOs are quite common in Hong Kong nowadays, the Administration is requested to set out in the speech to be delivered by the Secretary for the Environment (SEN) at the resumption of Second Reading debate on the Bill the research done so far.

Adventitious presence of GMOs

10. In view of the seed trade's concern about possible contamination of traditional seeds for growing with GM seeds through 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.), the Bills Committee has enquired about the need for a threshold on adventitious presence of GMOs.

11. According to the Administration, mixing of products from different sources, including GM varieties, is inevitable in commercial agricultural production, storage and transportation of agriculture produces. Therefore, adventitious thresholds are set for non-GMO-FFP in some countries, such as European Union (0.9%), South Korea (3%), Thailand (5%) and Japan (5%). Taking into account the small scale of local agricultural industry and the fact that most non-GMO-FFP are not grown in Hong Kong, it is recommended that the adventitious threshold for non-GMO-FFP to be set at 5%. In other words, if the percentage of GMOs in a shipment of agricultural produces for FFP exceeds 5%, the shipment must be accompanied by documents identifying the presence of GMOs. The proposed threshold reflects a pragmatic and realistic level for the Administration to manage the possible risks to biological diversity, and the trade to comply with. The same level has also been adopted in some overseas countries, such as Japan and Thailand. However, a zero tolerance of adventitious presence of GMOs is recommended for seeds intended to be released to the environment. This is because if seeds have GMOs mixed with them and are released into the environment, they may have potential adverse impacts on the local biodiversity. The zero tolerance level is also adopted by the Mainland and other countries, including European Union and South Korea. Notwithstanding, the Administration will keep in view the latest development in the international arena to ensure that the relevant requirements are in line with those of the Protocol and standards recommended by the International Seed Federation.

Restrictions on release of GMOs into the environment

Meanings of "released into environment" and "contained use"

12. Clause 3 of the Bill provides that a GMO is released into the environment if it is not in contained use, and it is exposed to a condition in which it may grow or reproduce. 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 limits its contact with and impact on the environment.

13. According to the Administration, 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. The Bills Committee has questioned how local institutions can ensure that a GMO involved in an operation is in contained use. The Administration's explanation is that the level of containment required varies according to the risk and the type of GMOs involved. 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 undertaken in laboratories with appropriate biosafety/containment measures would generally be considered as contained uses. Growing of GM plants inside growth

chambers 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. GM plants growing inside greenhouses 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.

Notification to Director of certain releases of GMOs

14. Clause 6 of the Bill requires a person who has control of a GMO (other than one that is pharmaceutical product for use by human beings) to report to the Director if the person knows that the GMO concerned has been released into the environment under certain prescribed circumstances.

15. The Bills Committee has sought elaboration on the situations where a person is deemed to have control of a GMO. According to the Administration, "control" would mean "exercising power or influence over". A person would be deemed to have control of a GMO if he has actual possession, ownership or right to possess/own a GMO, and could exercise power or influence over the GMO concerned. Some members have expressed concern that the provision as drafted might imply that all persons who have control of a GMO would need to notify the Director of the release of the GMO. In the light of members' concern, the Administration would move a Committee Stage amendment (CSA) to the effect that a person is not required to inform the Director of the release if another person who also has the control of the GMO concerned has informed the Director of the release.

Restrictions on import of GMOs intended for release into environment

16. Clause 7 of the Bill sets out the conditions that must be met before GMOs which are intended for release into the environment may be imported. However, the restrictions on import do not apply to GMOs that are in transit or transshipment, intended for direct consumption as FFP, or pharmaceutical products for use by human beings.

17. The Bills Committee has enquired whether approval is required for the import of a GMO intended for release into the environment. According to the Administration, the Bill provides that a person must not knowingly import a GMO that is intended for release into the environment unless the GMO concerned is an approved GMO. "Approved GMO" is defined in the Bill as a GMO that is approved for release into the environment by a decision of the Director or the Administrative Appeal Board (AAB) as appropriate. The Bill also sets out in detail the requirements on an application for approval. Therefore, it is clear that a GMO that is intended for release into the environment must have been approved. To facilitate traders to

understand the application requirements, the Administration will set out these requirements in clear and laymen terms in the guidelines on the legislative requirements of the Bill for stakeholders.

18. Some members have also enquired about the need to report to the Director in the event that a GMO is lost in transit or transshipment. According to the Administration, the main concern in the case where a GMO is lost in transit or transshipment is the unintentional release of the GMO concerned into the environment. While the restrictions on import of GMOs intended for release into the environment do not apply to a GMO that is in transit or transshipment in accordance with the Protocol, the Bill requires a person who has control of a GMO to report to the Director if the person knows that the GMO concerned has been released into the environment under certain prescribed circumstances. In case the lost GMO is found to be released under such circumstances, the person has to report to the Director of the release so that the Director can either direct an authorized officer or the person to properly dispose of the GMO concerned.

Approval of GMOs

Acknowledgement of receipt of GMO approval applications and approval of GMOs

19. Clause 9 of the Bill provides that the Director must issue a written acknowledgment to the applicant within 90 days after receiving a GMO approval application, and clause 10 provides that the Director must decide whether the GMO concerned is approved for release into the environment, and give a written notice of the decision to the applicant within 270 days after receiving the GMO approval application.

20. Some members have expressed concern about the long lead time for approval of GMO applications, particularly the 90-day period for acknowledging receipt of an application. The Administration has explained that the different time frames under the Bill are set according to the Protocol. In practice, written acknowledgment would be issued to applicants in an expeditious manner and in any case less than 90 days as specified in the Bill. A performance pledge to this effect would be spelt out in the guidelines as well as in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill. At members' request, the Administration has provided two flow charts illustrating the regulations on GMOs in Hong Kong and the approval application process (Annex A and B to LC Paper No. CB(1) 583/09-10(02)).

Variation of decisions on GMO approval applications or variation requests on Director's own initiative

21. Clause 12 of the Bill empowers the Director to vary his/her prior decision on a GMO approval application or variation request if there is a change in circumstances, or additional scientific or technical information, that may influence the Director's assessment on the possible adverse biosafety effect of the GMO concerned, or if the

Director considers it in the public interest to do so. If the approval of a GMO has been revoked and the GMO concerned has been released under the approval, the applicant under the GMO approval application must inform the Director of the release. The Bill also empowers the Director to give directions on the safekeeping or disposal of a GMO or any container containing the GMO concerned if the approval of which has been revoked.

22. Some members have opined that there may be a need to provide specifications for containers of GMOs to prevent inadvertent release into the environment. According to the Administration, it will provide in the guidelines recommended requirements for storing GMOs, particularly for GMOs intended for FFP, with a view to reducing their risk of being inadvertently released into the environment. It is also worth noting that when applying for approval of a GMO for release into the environment, the applicant needs to submit, inter alia, suggested method for storage of the GMO concerned. When approving a GMO for release into the environment, the Director may also attach specific conditions on how the GMO concerned should be stored or contained taking into account the need of each case.

Entry of information and decisions on GMO approval applications and variation requests in register

23. Clauses 13, 17 and 18 of the Bill set out the time frame within which the information received from a GMO approval application or variation request, and the Director's decision on the application or request should be entered in the register. Clauses 14 to 16 provide for a mechanism under which an applicant under a GMO approval application or variation request may request the Director not to enter certain information on the application or request in the register (non-disclosure request).

24. The Bills Committee has enquired about the criteria which the Director will adopt in assessing non-disclosure requests. The Administration has explained that when submitting an approval application, an applicant is required to provide to the Director all the information required under the Bill. All information submitted by an applicant on a GMO approval application or variation request will be entered in the register which is available for inspection by the public. If the applicant does not want any of the submitted information to be entered in the register, he/she may submit a written request to the Director and provide justifications for the request. However, key information, such as a general description and summary of the risk assessment on the possible adverse biosafety effect of the GMO concerned, cannot be withheld. The Director may, upon receipt of a non-disclosure request, decide that none, only some, or all of the information specified in the non-disclosure request is to be entered in the register. However, the Director may decide not to enter any of such specified information in the register only if he/she is satisfied that not disclosing the information to the public would not be contrary to the public interest. In view of members' concern, the Administration has undertaken to set out the criteria for assessing non-disclosure requests in the Bill, and will move CSAs to this effect.

25. While agreeing that non-disclosure of information, such as trade secret or sensitive commercial information, is essential to respecting the intellectual property rights of the producer or designer of a GMO, some members have pointed out the need to maintain a record of such non-disclosed information to facilitate future reference, given that some GMOs may have long-term effects on the environment. In this connection, the Administration has been requested to include in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill that the Administration will retain information in relation to non-disclosure requests for record purpose.

Withdrawal of GMO approval applications/variation requests or information/document provided

26. Clauses 20 and 21 of the Bill provide that if a GMO approval application/variation request or any information/document provided therein is withdrawn, the Director must return to the applicant any record/document or part of the record/document in relation to the application/request that contains any confidential information. Confidential information under the Bill is defined as information that is not to be entered in the register according to the decision of the Director or AAB.

27. Some members have enquired if the requirement for the return of information/document containing confidential information in relation to a withdrawn application is modelled after the Protocol, given that there may be a need to retain certain confidential information for future reference. The Administration has explained that while the Protocol has specified the need to respect the confidentiality of information, it does not have any requirement for the return of confidential information to applicants. Having considered members' view, the Administration has advised that so long as it keeps the information submitted by applicants properly, not returning the confidential information to applicants upon withdrawal of their applications would still be consistent with the Protocol. A CSA will be moved to dispense with the requirement on return of confidential information to applicants.

<u>Register</u>

28. Clause 26 of the Bill provides that the register must not contain any confidential information in relation to a GMO approval application or variation request.

29. Some members have expressed concern that the provision may pre-empt future amendments to the confidentiality of information. According to the Administration, the provision aims to clarify that the register would not contain confidential information. The provision would not change the decision on the confidentiality of the information and should be retained for the sake of clarity. The Administration will also move a CSA to clarify that the register would not contain GMO approval applications, variation requests and information that have been withdrawn before they are to be entered in the register.

Enforcement

30. As the Bill only aims to control GMOs, the Bills Committee generally considers that the enforcement powers under the Bill are overly excessive and the penalties for contravention too heavy, and that persons who have inadvertently grown or kept GMOs might be unnecessarily caught under the Bill. According to the Administration, the enforcement provisions of the Bill are in line with other existing ordinances of similar nature, including the Wild Animals Protection Ordinance (Cap. 170) and the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586). Considering that growing of GM crops in Hong Kong may have adverse impacts on the local biodiversity, sufficient power is required to enforce the provisions in the Bill. As GM 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. Persons who might have inadvertently grown or kept GMOs would not be the target. Instead, the Administration will promote public awareness of GMOs and protection of local biodiversity to educate the public on and seek their support for the implementation of the Protocol. At members' request, the Administration has undertaken to state clearly the policy intent in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill.

Appointment of authorized officers

31. Clause 27 of the Bill provides that the Director may, in writing, appoint any public officer or class of public officer to be an authorized officer.

32. Given that authorized officers are vested with extensive powers to board and search vessels, vehicles, trains or aircraft, search persons, inspect and search places or premises etc, the Bills Committee has emphasized the need to specify in the Bill the rank of officers to be appointed as authorized officers to ensure that such powers are properly used. Some members have also asked if authorized officers are required to wear uniforms when carrying out the enforcement duties.

33. The Administration has taken on board members' view and will move CSAs to make it clear that only public officers not below the rank of Field Officer II will be appointed as authorized officers. Though not uniformed staff, the authorized officers will carry warrant cards and wear vests with the logo of the Agriculture, and Fisheries and Conservation Department (AFCD) for identification purpose. To ensure proper use of powers, an operation manual is being drafted to provide guidelines for authorized officers to discharge enforcement duties under the Bill with reference to the established procedures in the Operation Manual for Enforcement Officers being used for Cap. 586. At members' request, the Administration has undertaken to include in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill that the gist of the operation manual will be made available for public inspection.

Circumstances under which an authorized officer may board and search vessels, vehicles, trains or aircraft, search persons, inspect and search places or premises, and require persons to produce proof of identity

34. Clause 28 of the Bill provides that an authorized officer may stop, board and search any transport means if he has reason to suspect that a prescribed offence has been, is being or is about to be committed on the transport means. An authorized officer may also stop, search, and detain a person for a reasonable period without warrant if he has reason to suspect that the person has committed, is committing or is about to commit a prescribed offence. Clause 29 provides that 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. However, the powers of entry and inspection are not exercisable in relation to any premises used exclusively as a dwelling house.

35. The Bills Committee has asked the Administration to justify the need for the power to search without warrant or notice under clauses 28 and 29. According to the Administration, the power to search any transport means under clause 28 is necessary to enable an authorized officer to take appropriate enforcement action under circumstances that would require an immediate search of the transport means containing suspected GMOs that would pose adverse biosafety effects on the natural environment. Before exercising the power, an authorized officer must seek the consent from a senior officer. The authorized officer will show his warrant card and explain the purposes of the search. A seizure receipt will be issued if any specimens or things are seized. A personal data note will also be issued to the person concerned if any personal particulars are collected. When an operation is completed, the authorized officer will ask the person concerned if he has any complaint. All these procedures and requirements will be set out in the operation manual to ensure that the authorized officer will discharge his duties in a proper and lawful manner. As regards the power under clause 29, the Administration has advised it only allows the officer to inspect premises, require production of things suspected to be GMOs and documentation for the purpose of verifying compliance with the provisions of the Bill. Before exercising the powers under clause 29, an authorized officer will show his warrant card and state the purpose of the visit to the owner or responsible person before entering and inspecting the place or premises where GMOs are suspected to be present. The authorized officer will also inform the person before collecting samples for purposes of verifying compliance with the Bill.

36. Some members have suggested replacing the word "reason" with "reasonable grounds" or phrases to this effect to more accurately reflect the legislative intention. They have also pointed out the difficulties in defining premises used exclusively as a dwelling house. To address members' concern, the Administration will move CSAs to amend the relevant clauses such that an authorized officer may only exercise the power when he "reasonably suspects" that offences have been, are being or are about to be committed. A CSA will also be moved to replace the phrase "exclusively as a dwelling house" with "wholly or principally for dwelling purposes" in clause 29. At

members' request, SEN will clarify the powers of entry and inspection in relation to premises wholly or principally for dwelling purposes during the resumption of Second Reading debate on the Bill.

37. Clause 30 of the Bill provides that a warrant continues in force until the purposes for which the entry is necessary have been satisfied. Some members have expressed concern about the extensive power of authorized officers with a warrant who could enter and search any premises at any time using necessary force. The clause as drafted will also pre-empt the magistrate to specify the duration of, time and/or date for the execution of a search warrant. The Administration has taken on board the Bills Committee's view and will move a CSA to allow the magistrate to specify the duration of, time and/or date for the execution of a search warrant.

Disposal and forfeiture of thing seized

Director's power to sell or dispose of certain things immediately after seizure

38. Clause 34 of the Bill provides that the Director may sell or dispose of the things seized immediately after the seizure.

39. Some members have questioned the rationale for empowering the Director to sell certain things immediately after seizure as this might run contrary to the object of the Bill to control release of GMOs into the environment. The seized thing should be returned to the owner if its release would not affect the environment. In any case, the Director should not sell the seized thing as this would not be fair to the owner. According to the Administration, arrangements would be made to sell or dispose of the seized things if it was not practicable for the Director to keep them. Besides, it would be for the court or magistrate to decide on the manners in which the seized things should be handled. Since the situation necessitating the Director to sell the seized things will rarely arise, the Administration has decided to delete this power from the Bill and will move CSAs to that effect. SEN will also state in his speech to be delivered at the resumption of Second Reading debate on the Bill that all necessary care will be taken to keep the seized GMOs prior to its return to owner or forfeiture to the Government, unless it is not practicable to keep or it is perishable.

Return and forfeiture of things seized if no prosecution for offences

40. Clause 37 of the Bill provides that in the case where no prosecution has been brought in respect of a seized thing, the court or magistrate must order the thing to be forfeited to the Government if the owner of the thing is unknown or cannot be found. However, the court or magistrate may, if satisfied as to the complainant's title to the thing concerned, order such amount of compensation to be paid to the complainant as the court or magistrate considers just.

41. The Bills Committee considers it unfair that claim for compensation is only allowed if no prosecution is brought. Some members have pointed out the need for compensation for seized things, particularly those which have limited or specified life span, to make up for the losses of owners as a result of the seizure. According to the Administration, authorized officers will strictly follow guidelines laid down in the operation manual in investigating any offence under the Bill, and no prosecution will be brought unless there is strong evidence indicating that an offence under the Bill is committed. As for things seized where prosecution is brought, the Administration has advised that no provision for compensation should be provided in the Bill to make specific statutory provisions for the defendant, whether or not convicted of an offence in the proceedings, to claim compensation. However, having considered members' views, the Administration is prepared to revise clause 37 and insert a new clause in the Bill. The new clause has the effect of allowing, under prescribed circumstances, the owner of a thing seized in the course of enforcement of the Bill, to claim for compensation from the Government in respect of the thing, irrespective of whether prosecution has been brought or not.

Miscellaneous provisions

Appeals

42. Clause 39 of the Bill provides that a person may appeal to AAB against decisions made by the Director regarding a GMO approval application/variation request/review of a non-disclosure request, and directions given by the Director regarding the safekeeping or disposal of GMOs or containers containing GMOs, or disposal of forfeited things through repatriation or destruction.

43. Some members have sought clarification on the applicability of clause 39 to a third party, other than an applicant under a GMO approval application/variation request, who is aggrieved by the decisions/directions of the Director. The Administration has explained that as a matter of administrative law, a third party who is not an eligible appellant under clause 39 may apply for judicial review if he has sufficient interest in the subject matter. Clause 39 does not affect the operation of section 21K(3) of the High Court Ordinance (Cap. 4), which provides that the Court shall not grant leave to make an application for judicial review unless it considers that an applicant has a sufficient interest in the matter to which the application relates. A CSA will be moved to clearly set out the policy intention.

Secretary's power to grant exemption

44. Clause 42 of the Bill empowers SEN to make notices to provide for exemptions from the provisions regulating the release of GMOs into the environment, maintenance of lives of GMOs that are in a state of being released, as well as import and export of GMOs that are intended for release into the environment.

45. The Bills Committee has enquired about the rationale for empowering SEN to grant exemptions. According to the Administration, the provision aims to allow SEN to exempt, for example, any GMO that is identified in a decision of the Protocol as being not likely to have adverse effects on the conservation and sustainable use of biological diversity, or any GMO that the Administration, after consultation with the expert group, considers as being unlikely to have adverse effects on local biological diversity when being released into the environment. There are also certain circumstances which necessitate the granting of exemptions. For example, a GM veterinary vaccine would be considered as being released into the environment if the vaccine is applied to animals. To cater for the genuine need of application of veterinary vaccines, particularly in emergency situation, an exemption may be granted to veterinary surgeons if the Director is satisfied that the possible adverse biosafety effect of the GM vaccines is acceptable. It is worth noting that an exemption granted by SEN will be a piece of subsidiary legislation subject to the negative vetting procedure. Notwithstanding, the Administration has taken on board members' suggestion and will move a CSA to set out the general factors which SEN may take into account in granting exemptions.

Expert group

46. Clause 43 of the Bill provides for the establishment of an expert group from which the Director may seek advice on questions in connection with the administration of the Bill.

47. According to the Administration, the expert group will comprise official and non-official members. Apart from representatives from AFCD, official representatives from the Environmental Protection Department and Department of Health will also be invited to attend the expert group meeting on a need basis. To ensure that the Director will be able to benefit from relevant expert advice when different areas of GMO issues emerge, the expert group should comprise a pool of experts from the farming, biotechnology, environmental protection, academic and trading sectors. The Bills Committee considers it necessary to spell out clearly in the Bill that apart from official representatives, all other members of the expert group are from non-governmental organizations. The Administration has agreed to move a CSA to this effect.

Secretary's power to make regulations

48. Clause 46 of the Bill empowers SEN to make regulations to, among others, provide for the requirements relating to the documents to be furnished for the import and export of a GMO intended for direct consumption as FFP.

49. The Bills Committee has questioned the legality of the provision since a GMO intended for direct consumption as FFP is not a subject of control under the Bill. The Administration has explained that according to Article 18 of the Protocol, each contracting party shall take measures to require documentation to accompany import

and export of GMOs intended for FFP, contained use and release into the environment. The purposes of the requirement are to enable easy identification of their GMO status, facilitate tracing of GMO shipments if necessary, and provide information which may help to contain the damage to the environment in the event of an accidental release during shipment. In view of members' concern, the Administration is prepared to add a new clause to provide for documentation requirements for import and export of GMOs intended for FFP, contained use and release into the environment. Separately, the Administration is preparing a piece of subsidiary legislation to set out the detailed requirements on the documentation, and stakeholders will be further consulted before the subsidiary legislation is laid before the Legislative Council for negative vetting.

50. Some members have enquired if the documentation requirements are strict liabilities and if so, whether a defence provision will be provided to ensure that no one will be unnecessarily caught. The Administration has advised that while the documentation requirements are strict liabilities, there are circumstances where the importers/exporters may not know that the shipments of goods are GMOs or contain GMOs, particularly for GMO-FFP, even if they have exercised due diligence in checking the contents of their shipments. To ensure that no one would be unnecessarily caught for contravention of the specified documentation requirements, the Administration will include a defence provision in the proposed new clause.

Transitional provisions

Notification of or application for approval of released GMOs during transitional period

51. Clause 50 of the Bill provides that a person must, during the transitional period, inform the Director if he caused a GMO to be released before the commencement date of the Bill (if enacted), or maintained the life of a released GMO that was in a state of being released into the environment before the commencement date.

52. As the Bill has no retrospective effect, the Bills Committee has questioned the need for the person to inform the Director of GMOs which were released or maintained before the commencement date. The Administration has taken on board members' views and will move CSAs in this regard. As regards members' concern about the transitional arrangements if no actions would be taken against non-compliance, the Administration will move a CSA to the effect that non-compliance with the requirements during the transitional period will be subject to a fine at level 1.

Schedules

53. Schedules 1, 2, 4 and 6 set out the different types of information to be provided under the Bill while Schedule 3 sets out the requirements on a risk assessment to be carried out on the possible adverse biosafety effect of a GMO.

54. The Bills Committee has requested the Administration to use GM papaya as an example to illustrate how the required information/risk assessment under the Schedules should be filled out in the specified form. The sample is given in Annex C to LC Paper No. CB(1)935/09-10(02).

55. The Bills Committee has also examined other technical aspects of the Bill.

Committee Stage amendments

56. The Bills Committee has no objection to the CSAs to be moved by the Administration, and will not move any CSAs in its name.

Recommendation

57. The Bills Committee supports the Administration's proposal to resume the Second Reading debate on the Bill on 10 March 2010.

Consultation with the House Committee

58. The House Committee at its meeting on 5 February 2010 supported the recommendation of the Bills Committee in paragraph 57.

Prepared by
Council Business Division 1
Legislative Council Secretariat
4 March 2010

Appendix I

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

Membership list

Chairman	Hon Audrey EU Yuet-mee, SC, JP
Members	Dr Hon Margaret NG Hon WONG Ting-kwong, BBS, JP Hon KAM Nai-wai, MH Hon Cyd HO Sau-lan Hon CHAN Hak-kan Hon Tanya CHAN (up to 28 January 2010) Dr Hon Priscilla LEUNG Mei-fun (up to 13 July 2009) Dr Hon LEUNG Ka-lau (Total : 7 Members)
Clerk	Miss Becky YU
Legal Adviser	Miss Kitty CHENG
Date	29 January 2010

Appendix II

List of organizations which have made written and/or oral representations to the Bills Committee

(a) Advisory Council on the Environment

(b) Clover Seed Company Limited

(c) Greenpeace

(d) Hai Kang Life Corporation Limited

(e) Hong Kong Biotechnology Organization Limited

(f) Produce Green Foundation

(g) Professor Si LOK, The University of Hong Kong

(h) World Wide Fund for Nature Hong Kong