REGULATING EDIBLE BIRD'S NEST (EBN) INDUSTRY IN MALAYSIA: AN EVALUATION OF THE CURRENT LEGAL FRAMEWORK

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1 ETP	1 Economic Transformation Programme - A Roadmap for Malaysia
1 GP :	Garis Panduan Industri Burung Walit (1GP) Januari 2010 or Swiftlets Industry Development Guidelines (1GP) January 2010
ASEAN	Association of Southeast Asia Nations consisting of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.
BH	Birds' House
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
Edn.	Edition
DPP	Deputy Public Prosecutor
DVS	Department of Veterinary Services, Malaysia
DWL	Department of Wildlife, West Malaysia
EBN	Edible Bird's Nests
EPP	Entry Points Projects under 1 Economic Transformation Programme – A Roadmap for Malaysia
GAHP	Good Animals Husbandry Practice
Ibid.	Ibidem, in the same place
Id.	Idem, the same
i.e.	that is

J	Justice or judge of the High Court
LGA 1976	Local Government Act 1976
loc. cit.	loco citato, in the place cited
MCMC	Malaysian Communications and Multimedia Commission
MLJ	Malayan Law Journal
MOA	Ministry of Agriculture and Agro-based Industries
MOH	Ministry of Health
NGOs	Non Governmental Organisations
NKEA	National Key Economic Area
op. cit.	The work has been cited fully earlier in the text and the present footnote refers to the same source but a different page
PEMANDU	Pengurusan Prestasi dan Perlaksanaan
POWLA 1976	Protection of Wildlife Act 1976
SIRIM	SIRIM Berhad
UNESCO	United Nations Educational, Scientific and Cultural Organization
WCA 2010	Wildlife Conversation Act 2010
WCE 1977	Sabah Wildlife Enactment 1977
WPO	Sarawak Wildlife Protection Ordinance

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3. *Animal Welfare Bill 2012*
4. *Wildlife Conservation Act 2010*
5. *Protection of Wild Life Act 1972 (Act 76)*
6. *Wildlife Protection Ordinance 1998, Sarawak*
7. *Wildlife Protection (Edible Bird-Nests) Rules 1998 , Sarawak*
8. *Wildlife Protection Rules 1998, Sarawak*
9. *Public Health Ordinance 1999, Sarawak*
10. *Uniform Building Bylaws 1986,*
11. *Destruction of Disease Bearing Insects Act 1975*
12. Health Department regulations.
13. Collection of birds nest license and a trading of birds nest license from the Department of Wildlife and National Parks
14. *Forests Ordinance (Sarawak Cap 126)* ss 18(1), 68(1), 80, 86(1), 92A
15. *Penal Code (FMS Cap 45)*
16. Regulation for the Importation of Bird's Nest made under Section 8 of the Animals Rules 1962

(B) Department of Veterinary Services

a) *Animals Act 1953 (Revised 2006) [Act 647]*
b) *Veterinary Doctors 1974 [Act 147]*
c) *Animal Feeds Act 2009 [Act 698]*
d) MS 11785: 2003, Radio Frequency identification of Animals-Code Structure
e) MS 2027: 2003, Radio Frequency Identification of Animals-Technical Concept
f) MS2027: 2007, Good Animal Husbandry Practice (GAHP)
g) MS 2273: 2009, Good Animal Husbandry Practice - Edible - Birdnest Swiftlets Ranching and Its Premises,
h) MS 2333: 2010, Good Manufacturing Practices (GMP) for processing raw-clean and ran unclean EBN
i) MS 2334L 2010 (P), Edible Bird-nest (EBN)-Specification
j) Sijil Amalan Ladang Ternakan 2003 (SALT)
k) Veterinary Health Mark (VHMN)
l) Kaedah-kaedah Binatang (Pendaftaran Premis Bagi Burung Walit) 2010

(C) Ministry of Housing and Local Government

a) *Town Planning and Rural Act 1976 [Act 172]* subs-section 19 and Section 22 (A) for the planning approval.
b) *Local Government Act 1976 [Act 171]* Section 107 and 110 for licensing and enforcement,
c) *Streets, Drainage and Buildings Act (Act 133),* Section 70 for the requirement of building plan.
d) *Uniform Buildings Bye Laws 1988,* to be used by local government to regulate any changes and renovation of the existing buildings into BH;
e) Trade, Business and Industry regulation enforce by the local government.
f) Local Government Ordinance 1961 (Sarawak No. 11 of 1996)
g) Local Government Ordinance 1996 (Chapter 20) of Sabah.

(D) Ministry of Health Malaysia

a) *Food Act 1983 [Act 281]*
b) Peraturan –Peraturan Makanan 1985 / Food Regulations 1985 [P.U. (A) 437]
c) Peraturan-peraturan Kebersihan Makanan 2009 [P.U.(A) 85/2009]

(E) Jabatan Warisan Negara / National World Heritage Department

a) *National Heritage Act [Act 645]*

(F) Jabatan Kemajuan Islam Malaysia (JAKIM)

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2. *Protection of Wild Life Act 1972 (India)*
3. *Protection of Aboriginal Tribes Act 1957 (India)*
4. *Town and Country Planning Act 1990 (UK)*
5. *National Health Service Act 1977 (UK)*
6. *Social Security Contributions and Benefits Act 1992 (UK)*

INTERNATIONAL CONVENTION

- CITES - the Convention on International Trade in Endangered Species of Wild Fauna and Flora

WORKSHOP PAPER

- Technical Workshop on Conservation Priorities and Actions for the Sustainability of Harvesting of and Trade in Nests of Swiftlets of the Genus *Collocalia* that Feature Prominently in the Bird-nest Trade (*Collocalia fuciphaga*, *Collocalia maxima* and *Collocalia germani*) Surabaya (Indonesia), 4-7 November 1996 http://www.cites.org/eng/cop/10/doc/E10-50.pdf - accessed on 15th April 2011

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APPENDIX:

The appendixes annexed are:

ABSTRAK

Penyelidikan ini menumpukan kajian keatas sejarah industri sarang burung walit di Malaysia, burung walit dan keluarga sejenisnya, sarang burung walit, isu kesihatan awam, tapak-tapak Warisan Dunia, kandungan nitrite dalam sarang burung walit, garis-garis panduan yang dikeluarkan dari masa ke masa serta perbagai statut khususnya *Protection of Wild Life Act 1972, Animals Act 1953* dengan penumpuan khusus ke atas *Wildlife Conservation Act 2020 (WCA 2020)* dan *Garis Panduan Pembangunan Industri Burung Walit, Januari 2010* (*1 GP*). *Animal Welfare Bill 2012* yang dijangka akan diluluskan pada tahun 2013 juga dibincang.

Projek penyelidikan ini telah mengkaji and menilai industri sarang burung walit dan perundangan yang berkenaan secara extensifnya. Ia juga menyelidik setakat mana 1GP dan WCA 2010 boleh mengatasi masalah yang dihadapi oleh industri sarang burung walit dan pihak orang awam. Yang lebih pentingnya, penyelidikan ini merupakan satu projek pengajian printis mengenai perundangan serta garis-garis panduan berdasar kepada perangkaan undang-undang sediada berkenaan dengan perladangan sarang burung walit di Malaysia dengan tujuan untuk mengenalpasti kekuatan , kekurangan dan kelemahan perundangan semasa dalam usaha melindungi dan mengalakkan industri sarang burung walit dan perlindungan burung walit.

Terdapat lapan bab dalam projek pengajian ini. Setiap bab memberi penekanan keatas sabjek yang khusus. Projek penyelidikan ini terdiri dari dan merangkumi isikandungan yang setakat hanya memberi maklumat, pernyataan dan fakta serta amalan industri sarang burung walit hingga ke tahap membuat kajian kritikal keatas bidang perundangan yang luas mengenai sarang burung walit ini.

ABSTRACT

This research project discussed the history of Edible Birds' Nests (EBN) industry in Malaysia, the swift and its family, EBN, fake nest, problems involving nuisance caused by the swifts, public health concerns, World Heritage Sites, nitrite contents in EBN, the guidelines issued over the years and the various statutes mainly the repealed Protection of Wild Life Act,[1] *Animals Act 1953* with a specific focus on Wildlife Conservation Act[2] and the *Garis Panduan Pembangunan Industri Burung Walit, Januari 2010* (*1 GP*).[3] Animal Welfare Bill 2012 which is pending approval in the year 2013 is also discussed.

It comprehensively studied and evaluated the EBN Industry and the relevant legislation in Malaysia. It also examined to what extent the *1GP* and *WCA 2010* are capable of addressing and overcoming the problems faced by EBN industry and the public. More importantly, the primary aim of this pioneer research project is to evaluate the available legislation and guidelines within the current legal framework relating to the EBN swifts farming in Malaysia with a view to identifying the strengths, inadequacies and weaknesses of the current legislation in protecting and promoting edible birds' nests industry and the conservation of the edible-nest swifts. It also surveyed and the relevant federal and state laws and thereafter made suggestions and proposals to overcome and improve the areas of weaknesses identified.

There are eight (8) chapters in this research project. Each chapter is devoted to a specific subject matter. The contents varied and ranged from merely providing information, statements, facts and practice involving EBN industry to carrying out a critical study of a wide range of legislation applicable to EBN.

[1] POWLA 1972.
[2] WCA 2010.
[3] The *Swifts Industry Development Guidelines, January 2010.*

ACKNOWLEDGEMENTS

The idea of conducting this research was proposed by Associate Professor Dr. Gan Ching Chuan of the Law Faculty of University Malaya in January 2010. He shared his grave concerns over the unsastisfactory state of the EBN related regulations and the noise pollution by the public and the problems of the presence BH in World Heritage Sites. These pressing issues have prompted him to encourage me to conduct a serious study on this subject.

There are no specific statutes that regulate EBN industry in Malaysia and the study of laws regulating EBN industry is not available as no one has undertaken this task before. The problems face by the public are the noise pollution and nuisance emanating from loud speakers playing birds' music at the Birds' Houses (BH). These issues can be easily and adequately resolved through law of torts. The local governments has adequate authority to act under Local Goverment Act 1976 if the nuisance is public nuisance.[4]

There are also protests from NGOs against BH being built within Penang and Malacca World Heritage Sites. These issues in my opinion are better left to the local governments and the federal goverment to address. Therefore, initially I politely declined Dr. Gan's proposal to conduct a research on the so called 'birds' law' in December 2009. I was then of the view that there are no substantive legal materials and no specifc statute dealing with EBN industry that deserved further study and reseach.

Being a true passionate enthusiast of the development EBN industry regulations in Malaysia, Dr. Gan did not give up. He passionately shared his views again and highlighted several areas that deserved further study, in particular the effect of the guidelines on EBN from the administartive law perspective .

[4] See sections 80 and 81 of Local Government Act 1976

By March 2010, I began to see Dr. Gan's overall vision about EBN industry. I took up the challenge and began researching about it. After conducting preliminary reseach, I found that there are indeed many legal issues and problems deserving further serious study.

In the course of preparing this research, I benefited from my profession as a lawyer and my experience as a BH owner. My earlier involvement as honorary legal adviser to the pro tem commitee of the Malaysia Birds' Nest House Owner Association[5] in early 2001 and 2002 also exposed me to complaints by the public and the constant harrassment by the local governments agaisnt BH owners.[6]

In this research, the main legal materials available on EBN industry are federal statute, state ordinances and regulations. The bulk of the materials are guidlelines issued by Department of Veterinary Services (DVS) Malaysia over the years. A note of thank also goes to the librarians at MOA Putra Jaya who were helpful for making the relevant reading materials available to me. Other materials provided by DVS Malaysia are also immensely helpful in shaping and forming the conceptual framework of this research .

A key professional whom I wish to record my deepest appreciations to is Dr. Fadzhilah A'ini binti Abdul Kadir from DVS Malaysia, the key authour of the *1 GP* and the earlier guidelines on EBN issued by DVS whom I have interviewed on numeorus occasions. She had also geneorusly supplied the above materials to me and had also appointed me as a committee member of Research and Development Commitee of EBN Industry under the National Key Economic Areas.

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[5] Persatuan Pemilik Rumah Sarang Burung Malaysia

[6] See the article by David Lim Y.C in 2002 , revised and updated in 2005 and 2008 together with Committee member of the Pro-Tem Persatuan Pemilik Rumah Sarang Burung Malaysia (The Malaysia Birds' Nest House Owners Association). (Nov 2008 updated) David Lim: 012-4850778, http://yongkangbirdnest.blogspot.com/2009/02/new-issue-from-swiflet-industry.html accessed 30th July 2011) . David Lim Y.C acknowledged this writer's contribution in his article above.

A note of appreciation is also extended to a senior microbiologist Hajah Azizon binti Abdullah from Regional Veterinery Lab, Kota Bharu, Kelantan for sharing her expertise on microbiological parameters of EBN.

The professional inputs and scientific presentations by the committee members of the Research and Development Commitee of EBN Industry under the National Key Economic Areas meeting No 3 /2011 held on 1st March 2011 at DVS Putra Jaya were of great assistance in forming and expanding the scope of this research.

The legal sources of this research are the results of extensive research conducted by me over the last two years but the writing on the swifts, EBN, operations, marketing and others practical aspects are based on reference books, personal experience and the knowledge shared by other BH operators within the industry itself. Therefore, this research is able to provide a deeper insight study of both the legal and practical aspects of EBN industry.

CHAPTER 1: EDIBLE BIRDS' NESTS INDUSTRY IN MALAYSIA AND ITS' PROBLEMS

1.0 BACKGROUND OF RESEARCH

Introduction

Edible birds' nests **(EBN)** industry in Malaysia does not receive much attention of the public in the past two decades. Similarly, there are no reported articles , journals or research papers on the study of the legislation relating EBN industry in Malaysia.

From the year 1990s, there was a steady and healthy growth in the EBN industry in Malaysia. For many years, Malaysia was the third largest world exporters of edible birds' nests **(EBN)** up to the year 2009. Malaysia has contributed 7% gross in supply value to the world annual production, while Indonesia contributed 60% and Thailand contributed 20%.

But by the year 2010, Malaysia emerged as the second largest world exporters of EBN. Malaysian government aims to produce RM4.5 billion sale of EBN by 2020 and to create 20,800 jobs in Malaysia. The potential of EBN industry in generating huge incomes to our country is high. The number of birds' houses (BHs) keeps growing . The unregulated buildings of new BHS soon became both social and legal problems to BH operators, their neigbours and the government.

In order to understand and effectively evaluate the current legal framework of the legislation relating to EBN industry, it is vital that we need to know the background of EBN industry in Malaysia , how EBN industry became integral part of our national economic policy under '1 Economic Transformation Programme - A Roadmap for

Malaysia' [7] (hereinfater called '1 ETP') and how *Garis Panduan Pembangunan Industri Burung Walit (1GP) Januari 2010 (Swifts Industry Development Guidelines - January 2010)* (hereinafter referred to as "*1GP*") was introduced to overcome the problems face by the industry.

Therefore in this chapter dicusses the background of EBN industry whereas Chapter 2 and 3 of this research will discuss about swifts and EBN respectively . Chapter 5 to chapter 8 will focuss on the study of EBN industry related legislations and regulations.

1.01 Back ground of EBN Industry in Malaysia

There are no proper records of when and how EBN industry began in Malaysia. However, harvesting EBN was dated back to more than 130 years ago. The record of the first harvest of EBN in Niah caves in Sarawak was dated as early as 1878. [8]

Due to high demands of EBN in the global market, pioneered by Indonesian BH operators and some Southern Thailand BH operators, their Malaysian counterparts also began to invest in building BH aggressively in the last 20 years or more.

The practice of collections fof EBN from natural caves has been in operation for more than 100 years in Sabah (formerly North Borneo) and Sarawak. As a result of that the rights of collecting EBN from natural caves became their ancestrorial and customary rights that are duly recognised by Sabah and Sarawak which under section 86(1) of *Sabah's Wildlife Conservation Enactment 1997* (Sabah WCE 1997) states that:

[7] 1 ETP is Malaysia national economic policy aims at transforming Malaysian enconomy focussing in 12 National Key Economic , published by Performance Management and Delivery Unit (PEMANDU) Malaysia of Prime Minister's Department in 2010

[8] Dr. Fadzhilah A'ini Binti Abdul Kadir, *Amalan Baik Haiwan Untuk Perternakan Walit*, January 2005 2nd Edn. Department of Veterinary Services, Ministry of Agriculture and Agro-based Industry, Malaysia, see page 5

' All disputes connected with the ownership of including the right of succession to any cave enumerated in Part 1 of Schedule 4 or share of deceased person therein shall be referred to a Native Court for settlement.' [9]

A report says that ' swifts farming industry in Malaysia only started to gather momentum after the Asian Economic Crisis of 1997-1998...due to the fact that no other businesses had sprung up to take their place as a result of the depressed economic environment at that time' [10] many business premises were left vacant and the building were converted into BH.

The said report also states that 'At that time, there was only one research and development company specializing in the establishment of swift farms in Malaysia and had almost single-handedly aided and helped grow the industry into becoming what it is today.' [11]

BH has existed in some smaller towns in Perak and Selangor that are close to the Malacca straits for more than 50 years. In Kota Bharu, Kelantan BHs may have existed since 1940's. But the meaning of BH then differs from the meaning of BH today. The BH then are the ordinary unmodified shophouses, stores, certain part of temples, vacant houses that swift has chosen to occupy. In West Malaysia, there were insufficient natural habitat such as natural caves that are suitable for the swifts to make their nests there. Therefore, the swifts had started buildings nests in vacant houses or vacant buildings with no human inteference.

BH today bears different meaning and currently , BH means structure , buildings or premises specially made or converted for the swift to build nests and reproduce. The ceilings of the building are carefully designed and rows of wooden planks are affixed to the ceiling or the higher part of the wall in order for swifts to make nests. The temperature , humidity and darkness of the BH are regularly controlled and monitored. BH are equiped with modern security measures to prevent break in and theft of the EBN.

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[9] see Jaya bin Asahak v Munggau anak Lawai & Ors[2008] 4 MLJ 605

[10] See Hameed Sultan Merican, the 2007 Malaysian Swifts Farming Industry Report (Summary and Synopsis), Publication date 1st June 2007. http://www.smipepang. Com/ 20065SwfiletFarmingREport.html. accessed on 5th October 2010.

[11] ibid

The fast growiing economy in China in the last two decades had accelarated the rapid growth of EBN Industry in South East Asia and in particular Malaysia. China is now the world second largest economy after United States. Internet sources stated that:

> *'...It is the world's fastest-growing major economy, with average growth rates of 10% for the past 30 years. China is also the largest exporter and second largest importer of goods in the world. China became the world's top manufacturer in 2011, surpassing the United States. For 2010, inbound foreign direct investment into China surpassed $100bn for the first time, and investment overseas by Chinese companies in non-financial sectors totalled $59 billion. The country's per capita GDP (PPP) is$7,518 (IMF, 93rd in the world) in 2010. The provinces in the coastal China tend to be more industrialized, while regions in the hinterland are less developed. As China's economic importance has grown, so has attention to the structure and health of that economy.'*[12]

The rapid and massive growth in China's economy means better and higher purchasing power. Hong Kong and Taiwan also benefitted from the growth of China and thus the consumptions, demands and imports of EBN produced by South East Asia nations has grown tremendously.

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[12] See Economy of the People's Republic of China, http://en.wikipedia.org/wiki/Economy_of_the_People's_Republic_of_China#1949.E2.80.931978 - accessed on 20th May 2011. Among others, wikipedia made the following details reports on the People's Republic Of China economy :

A report by UBS in 2009 concluded that China has experienced total factor productivity growth of 4 per cent per year since 1990, one of the fastest improvements in world economic history. China's increasing integration with the international economy and its growing efforts to use market forces to govern the domestic allocation of goods has exacerbated this problem.

Continue note 19 ....China's economy grew at an average rate of 10% per year during the period 1990–2004, the highest growth rate in the world. China's GDP grew 10.0% in 2003, 10.1%, in 2004, and even faster 10.4% in 2005 despite attempts by the government to cool the economy. China's total trade in 2010 surpassed $2.97 trillion, making China the world's second-largest trading nation after the U.S. Such high growth is necessary if China is to generate the 15 million jobs needed annually—roughly the size of Ecuador or Cambodia—to employ new entrants into the national job market.

On January 14, 2009, as confirmed by the bank the NBS published the revised figures for 2007 fiscal year in which growth happened at 13 percent instead of 11.9 percent (provisional figures). China's gross domestic product stood at US$3.38 trillion while Germany's GDP was USD $3.32 trillion for 2007. This made China the world's third largest economy by gross domestic product. Based on these figures, in 2007 China recorded its fastest growth since 1994 when the GDP grew by 13.1 percent.

China launched its Economic Stimulus Plan to specifically deal with the Global financial crisis of 2008–2009. It has primarily focused on increasing affordable housing, easing credit restrictions for mortgage and SMEs, lower taxes such as those on real estate sales and commodities, pumping more public investment into infrastructure development, such as the rail network, roads and ports. By the end of 2009 it appeared that the Chinese economy was showing signs of recovery. At the 2009 Economic Work Conference in December 'managing inflation expectations' was added to the list of economic objectives, suggesting a strong economic upturn and a desire to take steps to manage it.

... In 2010, China's GDP was valued at $5.87 trillion, surpassed Japan's $5.47 trillion, and became the world's second largest economy after the U.S. China could become the world's largest economy (by nominal GDP) sometime as early as 2020.

China is the largest creditor nation in the world and owns approximately 20.8% of all foreign-owned US Treasury securities.

'The main export markets for edible birds' nests are Hong Kong (50% of world trade), China (8%), Taiwan (4%) and Macau (3%) with a consumption weight value of approximately 160 tons for 2006. The total consumption value of edible birds' nests throughout the world in 2006 was estimated to be in the vicinity of RM8 billion to RM12 billion.'[13]

Traditionally Indonesia Thailand Malaysia and the Philipines are the main sources of EBN supply. Natural caves EBN harvesting activities by the gypsies and EBN collectors in the caves along islands in Andaman Sea and Borneos had been recorded and documented by National Geographic and Discovery television proggrames. EBN farming in houses and buildings received relatively more attention in Malaysia in the recent two decades.

In comparison while there are records and studies on the EBN harvesting in natural caves in Indonesia there has been no previous study on the breeding ecology of EBN swifts in Indonesia either in natural caves or in man-made nesting habitats.[14]

Collecting EBN from man-made nesting habitats in Malaya in the form of cottage–style operation was practiced in a small scale. The productions were however, negligible as it was mainly for local consumption and medicinal purposes.

1.02 What is Swifts Farming?

Swifts farming is the conservation activities of providing suitable habitat for EBN swifts to build nests breed and reproduce, harvesting and sale of raw EBN. These man-made swifts habitat are commonly known as 'bird's house' (BH). The BH operators are not the owner of the swifts.

[13] See note 7

[14] Ani Mardiastuti, Yeni A Mulyani, and Tiurmaida A.C.Gultom, *Breeding sucess of edible-nest swifts in a man-made habitat (Kebersihan Berbiak pada Walet Sarang Putih Dala Habitan Buatan)*, Media Konservasi Vol,V, 2, September 1997 , p 81-83, see introduction at p 81-83.)

In Sabah the swifts belongs to the Sabah state government. The swifts are not under the care and control of the BH operators. Other than providing suitable habitat for the swifts to nest , breed and reproduce, the swifts are free to fly around or abandon the BH at any time deem fit by the swifts without any restriction.

In the 2007 Malaysian Swift Farming Industry Report, it states that:-

> *'Currently, the business of swifts farming essentially involves the conversion of people-centric buildings into buildings used to house and protect a certain species of swifts (i.e. the white edible birds' nests swifts or the Aerodramus Fuciphagus species of swifts) that can only be found in the South East Asian region as well as the design and construction of purpose-build buildings for the purposes of accommodating such swifts populations as well.*
>
> *A continuous vocalization of swifts chirps and mating sounds are played throughout each and every day using speakers and audio systems installed within such buildings in order to lure the swifts that are flying overhead to fly into the said buildings to mate and makes the buildings their new home.*
>
> *Almost 99% of all swift farms in Malaysia are geared towards the production of white edible birds' nests.'* [15]

1.03 Factors Contributing to growth in EBN industry.

Before 1998, it was estimated that there were about 900 over units of BH.[16] In a short span between 1998 to 2006, the total number of swiflets farms in Malaysia has grown close to 36,000.00 and this growth recorded a good and healthy annual growth of 35% per year

[15] See note 7

[16] See note 7

within the last five years.[17] By end of 2008, it was reported that BH in Malaysia has grown to almost 50,000 units and still growing.[18]

The transformation of Malaysian swifts' cottage industry into Small and Medium Size industry is mainly due to the rising and surging of China consumers' purchasing power. EBN is one of the delicacies well sought after by them. The surge of demands of EBN from globally (not only limited to Malaysia) was also due to the increase regional demands from Hong Kong, Macau and Taiwan. The occasional haze caused by burning jungles in Sumatra in recent years could have resulted in drops in the EBN production in Indonesia and thus benefitted Malaysia.

The price ranged of raw-clean EBN in 2011 varies from RM3, 500.00 to RM5, 000.00 per kilo depends on the grade of the EBN. The prices also suffered a sudden drop below the market price in mid-2011 after China imposed strict import control due to the excessive nitrite contents in EBN. Grading is based on the quality of the raw EBN collected from the BH. If the nest collected is broken into pieces or contains high contents of impurities, the nest is considered to be lower grade.

From the writer's personal survey in the market in Kuala Lumpur and Petaling Jaya in 2011, the raw-clean EBN is sold at the price ranging from RM330.00 per 38 gram (per nest) to RM830.00 per 38 gram per nest depends on the species and quality of the nest. When converted into kilogram, the price ranged from RM8, 600.00 to RM22, 800.00 per kg. It was reported that:

> *'A kilogram of processed white edible birds' nests is able to fetch retail level prices of RM$15, 000 to RM$25,000 in 2006 in Hong Kong and China.'* [19]

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[17] See note 7

[18] See Speech by YB Dato' Sri Liow Tiong Lai, Minister of Health Malaysia, at the opening ceremony of B-Nes Sdn Bhd , Bandar Puteri , Puchong on 7th February 2010, see also 'Malaysia is third largest bird's nest exporter ' http://www.smecorp..gov.my/node/1345, SME Corp Malaysia , February 9, 2010.

Therefore, the prime key factors contributed to the steady growth of EBN industry in Malaysia are the good price of the EBN itself.

Other supporting factors that contribute to the growth of EBN industry globally are:-

1. consumption of edible birds' nests is considered as luxurious food and a status symbol;
2. the health giving properties of consuming edible bird's nest;
3. strong economic growth rates experienced by China , Hong Kong and Taiwan; and
4. potential of edible birds' nest as a base mineral to be used in the production of herbal and vitamin supplements the international market for edible birds' nests will continue to grow at double-digit rates for the next 2 decades or so.'[20]

In 2011, reportedly China has become the world second largest economic country taking over from Japan. Therefore, the goal to achieve the production of 40% world exports of EBN by Malaysia is a goal that is achievable with proper planning and regulations.

1.04 The Number of Swifts' Farms in Malaysia

There are no up to date records of the total farm houses in Malaysia as at 2012 though it was reported that by 2008, there almost 50,000 units of BHs in Malaysia. It was estimated that 'before 1998, there was an estimate of 900 plus swifts farms throughout the country'.

> *'By the end of 2006, swifts' farms throughout the country number close to 36,000 units, with an average annualized growth rate of 35% per year (for the last 5 years).'* [21]

[19] see note 7, the learned author was quoting from Kuan, H. & Lee, and J.
[20] see note 7.
[21] see note 7

However, according to the Minister of MOA Dato' Sri Noh Omar, up to August 2010 the DVS noted only 1,462 bird nest buildings were licensed while 4,586 were operating illegally'.[22] The remaining BH may not have registered with the Department of Veterinary Services at all.

1.05 Major EBN Farming Areas in Malaysia

Swifts live on insects. Insects come from both urban and rural areas. Rubbish dumping grounds, clotted drains and food waste produced by restaurants are commons sources of insects' supplies in town.

In rural areas rotten fruits bunches from plantations, decomposing leaves and tree trunks, stagnant water from ponds and drains and perennial rubbish dumping grounds located far out of the cities are also good sources of insect's supplies to the swifts.

It was reported that *'...The major swifts farming areas are located mostly in secondary and tertiary townships where food source is in abundance and pollution levels are at their relative minimum'.* [23]

Obviously, the list of major swifts' areas keeps growing.

1.06 The Profile of Participants of Malaysian Swifts Farming Industry

The profiles of the participants of swifts farming industry or BH operators in Malaysia at the end of 2006 as stated in *The 2007 Malaysian Swifts Farming Industry Report* were:

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[22] see The Star, 15th January 2011 page N 29

[23] See note 7. Hameed Sultan was of the view that ' These secondary and tertiary townships include Kampong Tebing, Kampong Tasoh, Kampong Banat Bawah, Jampong Bakan, Kuala Nerang, Pokok Sena, Kampong Tanjung Radin, Kuala Ketil, Lunas, Kulim, Sungai Petani, Jitra, Bukit Mertajam, Nibong Tebal, Kepala Batas, Cangkat Kledang, Legong, Jelai, Cangkat Jering, Bruas, Pantai Remis, Lumut, Teluk Intan, Setiawan, Bagan Serai, Parit Buntar, Selama, Tanjung Malim, Kuala Kubu Bahru, Rawang, Kepong, Cheras, Slim River, Kulai, Kanpong Bahru Paroi, Alor Gajah, Ayer Pasir, Durian Tunggal, Tangkok, Pagoh, Bukit Pasir, Kampong Machap, Ulu Tiram, Tai Hong Village, Senai, Pontian Kecil, Jemaluang, Kampong Seri Pantai, Mersing, Kampong Sawah Datuk, Kampong Air Papan, Kuala Besut, Tok Soboh, Kampong Pinang, Rompin, Pekan, Kuala Terengganu and Pasir Mas.'

1. The self-build, self-own, self-trained and self-operated BH owners and operators. They consist of the estimated 67% of the industry, yet around 92% of them failed in the ventures due to their lack of expertise, knowledge and funds.

2. The Swifts farming consultants, advisors and contractors who assisted the BH owners. These groups consist of approximately 28% of the industry.

3. The third groups are the well-funded companies, mainly invested in EBN industry as diversification of their core business. They represented about 5% of the EBN industry. [24]

With such profiles, almost all of the BH operators in Malaysia can be classified under Small and Medium size Industry (SMI) players. More fund and training supports to be given to them in order to achieve the targets set by ETP.

1.07 EBN Processing Centres

EBN Processing Centres are centres that clean and process raw un-clean EBN collected from natural caves or BH into raw-clean EBN that are ready for sale to the consumer. The clean raw EBN is still raw and must be cook before consumption.

ETP estimated a total cumulative investment RM1.8 billion until 2020 to build EBN processing centres, process plants and associated structures, with public funding requirement of RM64.million to facilitate R&D, enforcement and traceability. Therefore, government still has a big role to play to facilitate the targeted 70 more new EBN processing centers to be set up in order to achieve the RM4.5 billion sale of EBN by 2020 and to generates 20,800 jobs in Malaysia .

[24] See note 7

As stated earlier, 1ETP recognised the serious needs by Malaysians to establish additional 70 Malaysian EBN processing facilities. As in 2010 only 30% of local swifts nest were processed domestically. ETP targeted 50% of all local EBN products would be processed by Malaysian firms by 2020. Therefore, Malaysia needs more process centres to compete in the global market.

1.08 EBN industry under ETP

As a policy to further strengthen our national goal to achieve high income country status in the year 2020, Malaysian government has in the year 2010 launched a book '1 Economic Transformation Programme- A Roadmap for Malaysia' [25] ('1 ETP). This is a national economic policy that has outlined twelve (12) National Key Economic Area (NKEA) as principal driving force to improve Malaysian economy. This economic policy is known as Economic Transformation Programme (ETP) and EBN industry is given specific focus under this programme.

Under these 12 NKEA, the government had indentified 131 entry point project (EPPs) that could contribute assists and stimulate the growth of Malaysian economy. Realising the great potential of our EBN industry , EBN has been included as one of 131 EPPs under 1 ETP.

ETP is a strategy to achieve high income-status for our country[26]. The prime objectives of ETP as stated in the executive summary of ETP is *'Malaysia gross national income (GNI)*

[25] 1 ETP is Malaysia national economic policy aims at transforming Malaysian enconomy focussing in 12 National Key Economic Area, published by Performance Management and Delivery Unit (PEMANDU) Malaysia of Prime Minister's Department in 2010

[26] See page 2 of 1 Economic Transformation Programme- A Roadmap for Malaysia, note 22

per capita from USD6,700 or RM23,700 in 2009 to more than USD156,000 or RM48,000 in 2020' :[27]

The ETP outlined 12 NKEAs.

> *'The NKEAs are at the core of the ETP. A NKEA is defined as a driver of economic activity that has the potential to directly and materially contribute a quantifiable amount of economic growth to the Malaysian economy'* [28]

Under agriculture sector, the ETP aims to expand the production of EBN. Despite the annual global market for Malaysian swifts nest is RM10.2 billion and Malaysia is now the second largest producers of EBN with RM1.5 billion in sales by 2010, the future prospects are said to be '*dim due to insufficient regulation, a depleting wildlife population and lack of research in productivity improvement and downstream uses*'[29]

The caution give in the 1ETP soon became a reality when Malaysian EBN exporters face possible ban by China due to excess nitrite contents in EBN in 2011.[30]

Malaysia aims to capture 40% of the global market by 2020 by increasing production from 290 tonnes to 870 tonnes and increasing domestic processing into downstream uses. To achieve this noble goal, 1ETP identified the urgent needs for us to '*develop comprehensive legislation and guideline to ensure sustainability of harvesting EBN, animal welfare, consumer health and safety and regulated premises'* as top priority.

ETP stated that 'by December 2010, the MOA via DVS will table detail proposals and amendments to current laws as well as promote the industry's best practices.[31] The law

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[27] Ibid page 5 of ETP , see note 22, the full text are :-

'Propelling Malaysia Towards Becoming a High Income, Developed Nation'

The Economic Transformation Programme (ETP) is a comprehensive effort that will transform Malaysia into a high-income nation by 2020. It will lift Malaysia gross national income (GNI) per capita from USD6,700 or RM23,700 in 2009 to more than USD156,000 or RM48,000 in 2020, propelling the nation to the level of other high-income nation. This GNI growth of 6 percent per annum will allow us to achieve the targets set under Vision 2020.'

[28] Ibid page 5 of ETP , see note 22

[29] Ibid page 528 of ETP , see note 22

[30] please see discussion on nitrite in Para 3.5 below

referred to are the Wildlife Conservation Act 2010 and the practice referred to is the 1GP. In so doing, Malaysia may become the first country to comprehensively regulate the products of EBN.[32]

Apart from strengthening our domestic EBN productions, ETP also focuses on establishing additional 70 Malaysian EBN owners processing facilities. In 2010 only 30% of local swifts nest were processed domestically. ETP targeted 50% of all local EBN products to be processed by Malaysian firms by 2020.[33]

Accordingly ETP encourages establishment of direct market-to-consumer link between local entrepreneurs and the export destinations primarily China and Taiwan. Currently 80% of all swifts nest trading and consolidation are conducted in Hong Kong.

In order to better market Malaysian EBN, ETP proposes that a comprehensive traceability programme that traces the origin of the EBN products to distinguish Malaysian EBN products from other countries. With that, Malaysian government targeted 50% of all local products will be sold direct to the common consumers by Malaysian firms by 2020 to enable a higher margin to be captured.

In term of funding, ETP estimated a total cumulative investment of RM1.8 billion until 2020 to build process plants and associated structures, with public funding requirement of RM64 million to facilitate R&D, enforcement and traceability. The impact of this programme will result in RM4.5 billion sale of EBN by 2020, and in return creates 20,800 jobs in Malaysia as the primary recognized supplier and certifier of raw and processed EBN globally.

[31] See page 528 , note 22

[32] Ibid p 528, note 22

[33] Ibid p 529, note 22

The impact of this EPP is summarized as follows: [34]

> *' The targeted GNI impact is RM4.5 billion by 2020.This will generate 20,800 jobs and establish Malaysia as the primary recognised supplier and certifier of raw and process swifts nests globally'.*

1.09 *Garis Panduan Pembangunan Industri Burung Walit (1GP) Januari 2010 (Swifts Industry Development Guidelines - January 2010)*

Malaysian government is commited to regulate EBN industry and to overcome the problems faced by the BHs operators, the public, the NGOs , the regulating and enforcement agencies and the relevant departments.

After the DVS published the 1GP In January 2010, the Cabinet approved it on 9th July 2010. On 21st September 2010, the 63th *Majlis Negara Bagi Kerajaan Tempatan* formally adopted the 1 GP and thereafter, the Chief Secretary of MOA then issued circulars to notify all the local governments in West Malaysia that 1GP shall be applied to EBN industry.

Within the year 2010 itself, the Parliament has passed WCA 2010 that came into force on 4th November 2010. Nonetheless, 1GP was only officially launched on 19th January 2011 by the MOA. [35]

With these two latest important statutes and guidelines, namely WCA 2010 and 1GP, it adds the urgency for a detail study on current legislation and legal framework relating to EBN industry inclusive of WCA 2010 and 1GP to compliment the noble objectives of ETP. The timing and objectives of this research is further neccesitated by this economic policy adopted by Malaysia.

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[34] Ibid page 529 ETP, note 2

[35] See note 22

1.1 RESEARCH OBJECTIVES

The objectives of this research project are :

(1) to evaluate all the available legislation and guidelines relating to the EBN swifts farming in Malaysia within the current legal framework;

(2) to assess and identify the strengths, inadequacies and weaknesses of current legislation, if any, in developing, promoting and protecting EBN industry and the conservation of the swift,

(3) to study the current regulations relating to the health requirement, import and export of raw clean EBN and raw unclean EBN, traceability of the products, genetic study of swift species and other industry friendly and consumer friendly regulations to keep Malaysian EBN industries and exporters competitive in the international market;

(4) to make an overall proposals and suggestions to address the inadequacies, loopholes and other weaknesses within the current legal framework and;

(5) to address the jurisdictional issues within Malaysia and making other proposals regarding regulating EBN industry for ASEAN.[36]

In order to meet the above objectives, this research made an extensive study on the the Apodidae swift family that produces the EBN, the anatomical aspect of swift, the properties and therapeutical effects of the EBN and threat of fake nest within the industry. The study of these areas are important for better understanding of the legal issues discussed in this research.

[36] I may be over ambitious to extend this study to cover the prospective ASEAN regulation. But justifications for this extension may always be found.

1.2 STATEMENT OF THE PROBLEMS

There are 3 problematic areas in EBN industry that requires immediate attention :-

1. The problelms face by both the local , the state and the federal government over the overlapping ministerial and departmental jurisdictional in regulating, licensing and governing the EBN industry in Malaysia.

2. The problems face by the public and NGOs that includes nuisance, noise pollution of birds' song played from BHs, public health issues and the effect of the presence of BHs within the World Heritage Sites. The publics are not satisfied with the current position of EBN industry regulations in particular on nuisance and hygienic aspects of the BHs.

3. The problems face by the BH operators and EBN Processing Centres regarding the licensing and exporting requirements of EBN in particular relating to the control of nitrite contenst in EBN, the requirement to use Radio Frequency Identification (RFID) to exports EBN and opposing attempts by certain authorities to monoploise the EBN exporting business.

At the federal government level, there are three departments from three different ministries that their functions and responsbilities are related to EBN industry. They are the DVS from Ministry of Agriculture and Agro-based Industries (MOA), the Department of Wildlife and National Parks Peninsular Malaysia from Ministry of Natural Resources and Environment and the Ministry of Health. At the state govermenet level, BHs and control of public nuisance falls under the jurisdiction of local government.

The crux of the problems lies in the overlapping deparmental jurisdictional over EBN industry and regulating and control of EBN industry. This involved licensing of the industry. Which minstry or department should be charged with the authority to regulate and license the trade? Should licensing come under the local gorvernment or the relevant

ministry? Would a single department charged with regulating licensing is competent and capable of enforceing the laws and regualtions? These are keys problems this research attempts to study and to come up with practical proposals and solutions.

The failure of the state and local goverment to action against a neighbouring BH from creating noise pollution and causing nuisance to the neighbours has resulted in the BH neighbour suing the Terengganu State and local government in *Kuala Terengganu High Court Suit No. 22-155-2010 Ong Pok Kok v Datuk Bandar Majlis Bandaraya Kuala Terengganu and Kerajaan Negeri Terengganu* in the year 2010. The Plaintif has claimed millions ringgit of damages against the defendants for breaching their statutory duty in not taking action against the plaintiff's neighbouring BH operator. Unfortunately, the Plaintiff in that case had passed away in 2012 before the completion of the trial and the case was eventually withdrawn.

Despite the efforts taken by DVS to make earlier regulations and rules to regulate EBN, the problems still remained unsolved. On 1st of April 2009, the Malaysian government has entrusted the Department of Veterinery Services (DVS) of the Ministry of MOA to totally resume the task of planning of developing our country's EBN industry, in particular to develop comprehensive legislation and guidelines to ensure the sustainability in EBN harvesting, animal welfare, consumer health and satefty and regulating EBN premises by the end of December 2010.[37] But there are still growing new challenges face by the public , the government , EBN consumers and and the EBN importers from China.

From 2010 to 2012, Malaysian EBN was banned by China due to the presence of high nitrite contents. High nitrite contents in EBN expoerted to China is another problem to be resolved but the Malaysian government already took steps to remedy the situation . In

[37] see the Press Statement issued by the Minister of Ministry of Agriculture and Agro-based Industries YB Datuk Seri Non Bin Omar on 19th January 2011 (Wednesday) at the launching and hand over of the ' Garis Panduan Industri Burung Walit (1GP) Januari 2010 ' (Swifts Industry Development Guidelines (1GP) January 2010).

October 2012, the Malaysian Minister of Agriculture and Agro-based Industries signed the protocol in Nanning with China's General Administration of Quality Supervision, Inspection and Quarantine Minister Zhi Shuping to allow the export of birds nest products into China.[38]

After China banned the import of Malaysian EBN due to exccessive nitrite contents in 2011, Malaysian EBN producers faced another problems whereby, China had allegedly imposed a mandatory the mandatory use of costly radio frequency identification (RFID) tags on bird's nests

Did China impose RFID requirement onto the Malaysian EBN exporters?

Malaysian government says the requirement to use Radio Frequency Identification (RFID) to export swiftlets' nests from the country of origin was not set by Malaysian Government, but imposed by China.[39]

This RFID requirement had immediately caused hardship top EBN exporters. After imposing the ban and the mandatory RFID requirement, the EBN price in Malaysia had drastically plumped from RM3,5000.00 per kilogram to RM1,0000.00 or RM1,500.00 per kilogram. This had adversely affected thousands of EBN suppliers in Malaysia.

The MOA claimed that this import protocol was fixed by China but China sources revealed that this protocol of mandatory usage of RFID was indeed proposed by MOA. This immediately raised the anger and dissatisfaction of the EBN exporters.

[38] See http://swiflet.blogspot.com/ accessed on 13th November 2012

[39] see http://www.dailyexpress.com.my/news.cfm?NewsID=82180 accessed on 30th July 2012. On 25h July 2012 Sabah Daily Express reported that " The requirement to use Radio Frequency Identification (RFID) to export swiftlets' nests from the country of origin was not set by Malaysian Government, but imposed by China, said Agriculture and Agro-based Industry Deputy Minister Datuk Chua Tee Yong. He said as China was the importing country, all parties must respect the decision to use RFID, to enable the authorities to trace where the products came from. "We respect the feedback of the industry players. Some which are against the RFID but we must respect the requirement of the China government," he told reporters here Tuesday when responding to swiftlet's nest operators who are reluctant to abide by the requirement."

Further, there is a move by MOA to appoint only a few authorised companies in Malaysia to buy and collects all the EBN from Malaysia suppliers and only these few companied are allowed to directly export EBN to China.

In other words, Malaysian government is creating monopoly or oligarchy within Malaysian EBN industry that will eventually benefit a handful of parties.

A former Malaysian Minister had aptly noted that '*History had shown that greedy middlemen, backed by those in power, would zoom into multi-billion-ringgit industries to grab a slice of the cake. They usually achieve this through devious ways, like introducing regulations that restrict free trade and measures that create opportunities for economic monopoly.*[40]

With the recent removal of the mandatory use of RFID in October 2012, EBN suppliers now have the freedom to use any of three traceability systems recognised by the Government namely, RFID, barcode and quick response or QR code. [41]

This clearly shows that whenever government agency abused its power in any trade or industry to create opportunities for economic monopoly for certain interested quarters, this will eventually kill the industry.

1.3 RESEARCH QUESTIONS

The key research questions in this reseach are:

1. If based on the current state of the legislation relating to EBN industry, is the current legislation adequate to regulate the EBN industry, to cover and to address the

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[40] See *Inefficient handling in solving bird's nest ban* http://www.freemalaysiatoday.com/category/opinion/2012/09/20/inefficient-handling-in-solving-birds-nest-ban/ accessed on 13-11-2012

[41] see http://swiflet.blogspot.com/ accessed on 13th November 2012

problems faced by the BHs operators, EBN Process Centres, the public, NGOs and the state and federal government?

2. If there are weaknesses in the current state of the legislation and if the current legislation are inadequate to adress those problems as discussed above, what are the possible suggestions and proposals that can be made to resolve these issues?

1.4 SIGNIFICANCE OF THE STUDY

There are no known publication or research on the similar subject of this research. This research is a pioneer research on the legislations relating to EBN industry in Malaysia. This research will serve as a base and foundation of future studies on the same subject.

The disticnt significance of this study is, this research has conducted serious studies on the swifts, EBN and the background of EBN industry in Malaysia as a base and thereafter this research studied and discussed a wide range of laws , regulations and other practices rerlating to EBN industry. This research also provides a detail historical development and changes of the relevant legislations affecting EBN industry.

More importantly, this research revealed the weaknesses of the relevant legislation and the problem of overlapping that contributed to regulating and enforcement by the relevant department agencies.

1.5 SCOPE AND LIMITATION OF STUDY

The main scope of study in this research is limited to the evaluation of the current legislations that are applicable to EBN industry both in East and West Malaysia.

Our Federal Constitutions does not expressly confer any jurisdiction on the federal government or the state governement to make any laws relating to wildlife protection and wildlife conservation . Like wise, wildlife protection and wildlife conservation are not expressly listed in the both the Federal Lists , the State List, the Concurrent Lists , Supplemnets to State Lists of Sabah and Sarawak or the Supplemnt to Concurrent List for Sabah and Sarawak in the Ninth Schedule.

But Article 77 of the Federal Constitution provides that the Legislature of a State shall have power to make laws respect to any matters not enumerated in the list in the Ninth Schedule.

That is the reason why Malaysian parliament does not have the juridisction to promulgate laws relating to wildlife in Sabah and Sarawak as the parliament does not have the express power to do so and the power lies in the legilatures of Sabah and Sarawak respective.

However,it is ineviatble that the study of legislation affecting EBN industry must invoved the study of swifts and EBN and EBN industry as a base. Therefore, Chapter 2 and Chapter 3 spefically covers those subjects.

1.6 LITERATURE REVIEW

This research involved reviews of the relevant statutes and regulations relating to EBN industry, international conventions and treatises , decided authorities by courts, enclyclopedias, books, journals, magazines, articles, workshop papers, newspapers reports and web articles.

The list of these literatures reviewed are as stated in the bibliography, index of cases, list of statues and regulations, list of treatise, workshop papers, workcited and internet sources in this research.

1.7 RESEARCH METHODOLOGY

This research evaluates the available legislation, guidelines relating to the EBN swifts farming in Malaysia ; to assess and identify any inadequacies, strengths and weaknesses of current legislationin promoting and protecting edible birds'nests industry and conservation of the edible-nests swifts.

This research does not require any quantitative study, statistics, collection of data about the EBN. This research concentrates on study of the relevant statutes and guidelines. The main focus is on the evalaution of the available legislation and by laws . Any statics given herein are based the available reports and articles referred to in this research .

The research and study on the swifts and EBN producing swift family are from encyclopadia , books, magazines and materials from both University of Malaya library and the library in the Ministry of Agriculture and Agro-based Industry (MOA) at Putrajaya that provides sources of information on birds houses (BH) and edible nest producing swifts.

The key information relating to the practical aspects of BH and swift ranching are collected from interviews with Dr. Fadzhilah A'ini Binti Abdul Kadir , BH operators and BH building contractors and the personal knowledge and experience of the writer who also own a BH.

As to the contemporary market feed backs and problems relating to fake nests, nitrite contents in the EBN and other problems faced by Malaysian exporters, the sources mainly come from media and internet sources.

1.8 SOME TERMINOLOGIES

There are two terminlogies that are commonly used in this research. They are EBN and BH. EBN means Edible Birds' Nest. EBN is used to distinguish other birds' nests that are not edible or those nest not produced by swifts. BH means birds' houses, they are the man-made swifts habitat. EBN and BH are two commons terms used in EBN industry.

The other terminologies and their abbreviations are as stated in the index of abbreviations in this research.

CHAPTER 2 : THE SWIFTS

In order to effectively regulate EBN farming and industry it is pertinent that any licensing and regulating body must have adequate knowledge and information about the swifts, their habitat, food, possible disease affecting the swifts, their nests and the harvesting processing of EBN, licensing of harvesting and collecting of EBN, exporting, compliance health, custom and the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) requirements etc.

Regulating the EBN industry without fully understanding of swifts' industrial practice may end up in making bad or inappropriate regulations that may harm frustrate and adversely inhibit the development and growth of the industry. The regulating body must consider feedback and responses from the industry players and the public from time to time so as not to over regulate the industry. Over regulating may stunt the growth of an industry, if not it will eventually kill the industry.

This chapter will give a general introduction of the swifts.

2.1 Where are swifts found?

Swifts are commonly found in most regions of the world. They are found almost everywhere in the world except in the extreme cold polar region and some oceanic islands. [42]

Swifts are not found in polar region or anywhere with extreme cold climate. Swifts need to maintain the metabolism rate and they need to constantly maintain their body temperature. The ideal temperature for swifts ranged from 26 to 31 degree Celsius. [43]

[42] Compton's By Britannica Volume 3 B: 2008- Encyclopedia Inc USA. Page 734

[43] John Farndon, 1000 Things you should know about Birds, Miles Kelly Publishing Ltd, Bartfield Centre, Great Bardfield, Essex CM& 4SL

2.2 The Apodidae family

Swifts family is known as Apodidae. There are approximately 75 swift species that make up the swifts family. But not all swifts produce EBN. Generally, they are categorised into four species as follows: [44]

(a) The chimney swifts (chaetura pelagia) of North and South America;

(b) The common swifts (Apus apus) of Eurasia;

(c) The white collared swifts (streptoprocne zonaris) of South America and the Carribean;

(d) White –throated swifts (Aeronautes saxatalis) of Canada and North America.

2.3 Physical appearance

The colour of their feathers ranged from grey, brown, black and mixed black and white. As their plumage is grey, brown or black, sometimes with pale or white markings, it is not easy to distinguish these species from the sky. Their tails are generally short and may be stiff and spine tipped or deeply forked. [45] Swifts eats drinks, courts and even mates while flying.

Superficially the physical appearance of swifts is like the swallows. But swifts are actually more closely related to the hummingbird family than the swallow.[46]

2.4 EBN producing swifts

Though the swifts' family consists of 70-80 species, not all swifts in the world produce edible bird's nests. The species of swifts that produce edible bird's nests are only found in South East

[44] See note 42. P 734

[45] Ibid note 42, p 734

[46] see Glenn D. Considine- Editor in Chief, Peter H Kulik- Associate Editor, 2008 *Van Nostrandis Scientific Encyclopaedia* . 10th EBN Volume 3, John Wiley & Sons , Inc, Hoboken, New Jersey USA p 5313

Asia region. These species of swifts are not found elsewhere in the world. Other swifts' species used dry grasses and leaves to build nets therefore their nests are not edible.

There are four known species of swifts that produces edible bird's nests in the South East Asia countries:[47]

1. Collocalia fuciphaga;
2. Collocalia germanis,
3. Collocalia maxima; and
4. Collocalia unicolor.

2.5 Swiftlets in Indonesia, Malaysia and Thailand

EBN producing swifts are mainly found in South East Asia and they are primarily come from Indonesia, Thailand and Malaysia. In Indonesia, Java and Sumatra are two key EBN producing islands. Indonesia, Malaysia and Thailand share similar swifts' species.

Indonesia shares a longer historical record of EBN production from manmade bird houses than Malaysia. Indonesians are more advance in knowledge, techniques and technical know-how of building and operating BH than Malaysia.

In Indonesia, the body of the Swifts (Collacalia fuciphaga) is about 12 cm long. It produces nests that are whitish in colour and commonly known as 'white nests' or 'sarang perak' in Indonesian language. Such specie is also found in Phangha, Phuket Island in Southern

[47] See Lau, A.S.M. & Melville, D.S.(1994) International Trade in Swifts Nests with Special reference to Hong Kong (Traffic Inter-national , Cambridge, U.K) as quoted by Shuh Wan Chan, Review of Scientific Research on Edible Bird's Nests , Department of Applied Biology and Chemical technology, The Hong Kong Polytechnic University, www.hkfsta/com.hk, http://swallow-nests .com/article/index.php?s=Shun +wan+chan . Compare with Malaysian Black-nests Swifts (Aerodramus maximus) and Edible-best Swifts (Aerodramus fuciphagus)

Thailand and in the caves of North Sumatra. [48] There are 22 known swifts' species in Indonesia.[49]

2.6 Swifts in India

Swifts in India are mainly found in the islands around Indian Ocean and Andaman seas. The worsening position of the swifts' population in Andaman and Nicobar islands received the attention of an Indian scientist R Sankaran from the Division of Avian Ecology. He published his research in 1998 entitled '*The impact of Next Collection in the Edible-nests Swiftslet Collocalia fuciphaga in the Andaman and Nocobar Islands*' [50]

Sankaran studied 385 caves and took population data from 137 caves in March and May 1995, March 1996 and February to April 1997. His study concluded that the population of swifts' colonies in the natural caves in Andaman and Nicobar has dropped drastically due to indiscriminate and uncontrolled collections.[51]

Thus Sankaran then called upon the Indian government to categorise the EBN producing swifts under protected wild birds or totally protected wild birds under the Indian *Protection of*

[48] see Budi Daya Walet- Pengenalan Para Pakar dan Praktisi- Siri 2, Penyusun- Redaksi T rubus, Cet 3, Jakarta, Penerbar Swadaya 2002 page 123

[49] see Merumahkan Walet, Redaksi Agromuda, Penyunting, Tanudi, Cet 1- Jakarta, Agromedia Pustaka 2002. Among the additional species found in Indonesia are:-

1. Moluccan Swifts (Aerodramus infuscate)
2. Mountain Swifts (Aerodramus hirundinacea)
3. Mossy-nests Swifts (Aerodramus salangamus)
4. Vulcano Swifts (Aerodramus Vulcanorum)
5. Bare-legged Swifts (Aerodramus nuditarsus)
6. Uniform Swifts (Aerodramus vanikeorensis)
7. Papuan Swifts (Aerodramus papuensis)
8. House Swifts (Aerodramus nipalensis)

[50] R Sankaran, *The impact of Next Collection in the Edible-nests Swiftslet Collocalia fuciphaga in the Andaman and Nocobar Islands*" Salim Ali Centre for Ornithology and Natural History, Comibatore 611010 India, 1998.

[51] Ibid page 4

Wildlife Act 1972. Since trade in EBN is not prohibited under the Indian *Protection of Wildlife Act 1972*, therefore there are no rules to regulate collections of EBN in India.[52]

Indian legislative is further worsened by their *Protection of Aboriginal Tribes Act 1957* of India that exempted scheduled tribes in Andaman and Nicobar islands from the Indian *Protection of Wildlife Act 1972.* [53] Therefore, these exempted tribes are free to collect and trade in the EBN collected from the natural caves in those areas.

Having realised that some countries does not regulate collection of EBN from natural caves and there is no international trade law that regulates trading of EBN, it was mooted that in order to conserve and sustain the EBN harvesting, such action can be taken by the Conference of Parties to *CITES*. The Conference of Parties of *CITES* did instruct the *CITES* secretariat to hold a conference to discuss the conservation issues.

Later a 'Technical workshop on conservation priorities and actions for Edible-nests Swifts' was held at Surabaya, Indonesia on 4th to 7th November 1996. However, the workshop did not recommend the inclusion of swifts in the *CITES* appendixes.[54]

2.7 The Birds' Songs

Swifts used birds' song to communicate, give certain distress warning and generate certain sounds in mating process. The swifts' parents attending to their young birds will generate certain sounds.

Birds' song is relevant to our study in three (3) aspects:-

[52] Ibid page 4

[53] Ibid page 4

[54] Ibid page 4

(i) Territorial Claim

Generally animal, mammals, birds, reptiles and living beings all have their own territorial behaviors.

Swifts live in colony. Most of the adult swifts live as couple. Swifts only lives with one mate at any one time. Swifts couples live together for life. Swifts will only look for another mate after the original mate died or went missing. They mate and lay eggs every 3 to 4 months, normally two eggs at one time. Once their young birds are capable of looking after themselves, the young birds will leave their parents and look for suitable mates.

The life cycle is repeated. Normally young swifts fly back to the same colony to build their new nests. Swifts mark their territory by producing chirping sounds. This can be easily seen in town where swifts swirl around their BH. They also claim the territory that supplies insects and food for the swifts. Territory relates to sources of food and place of abode. That is why swifts are competitive in claiming their territory.

(ii) Courtship[55]

Courtship is very important for the reproduction, continuation and development of a swift's colony. Without courtship, swifts' population is unable to sustain or grow. It is believed that swifts of the same colony will court not only with swifts of the same colony but also court swifts from other colony. Some newly courting swifts may opt to start their new homes in other BH elsewhere away from their parents.

Male swifts will perch on some prominent places and attracts female swifts through their lusty songs. In addition to attracting female swifts, the songs are to inform other male swifts of the

[55] see Sandy Podulka, Ronald W Rohrbaugh Jr and Rick Bonney, Editors. *Handbook of Bird Biology* 2nd EBN. Published by the Cornell Lab of Ornithology in Association with Princeton University Press, New York, USA. 2004 page 246

same species or within the same colony that certain territory belongs to him. This behavior is common among other species of birds.

(iii) Birds' song used to attract swifts into BH

In order to maintain and develop the population growth of an existing colony in their BH, BH operators play bird songs using loud speakers continuously. Indiscriminate playing of bird songs all day long, inconsiderate positioning of loud speakers and uncontrolled volume of amplified birds song soon became main source of nuisance to their neighbours and public.

The timing and positioning of loud speakers and the volume of such birds' song played are matters to be controlled and regulated.

2.8 The birds' year

The study of birds' year is less important in the Malaysian context. Unlike swifts in Europe, North America and other countries with distinct four seasons, in winter they will fly southward to avoid the cold weather in the north, the swifts In Malaysia and other South East Asia countries do not face four seasons' problems.

The common phenomena of mass migration is common in Europe and North America where the swifts there will fly long distance between their winter and summer homes. After resting and raising their young, most North American birds travel southwards in the fall to spend the winter there. [56]

But swifts in South East Asia region enjoy warm and humid equatorial climax throughout the year. However, disaster and catastrophe such as tsunami, eruption of volcanoes and haze caused by uncontrolled jungle burning may cause vast destruction of vegetation areas and thus

[56] ibid

drastically reduced the insect supplies within that region. These incidents may cause mass migration of swifts from one country to another. This could be the reasons why the countries in South East Asia share the similar swifts' species.

2.9 Anatomical Aspect of Swifts

Like most birds with smaller sizes, the swifts' fly like a flying jet plane with its slender body and tapering; but proportionally they are lighter than plane. [57]

Swifts has been described as:

> *'flying aces of avian word, swifts feed, drink , bathe, court and sometimes mate on the wing; they often spend the entire night flying and are the fastest small birds. Their strong claws are used to cling to vertical surfaces but their legs are small and weak. Consequently, if a swifts land on flat ground, it may have great difficulties taking flight again...'* [58]

To an untrained eye swallows and swifts look quite alike from a distance and it is not easy to distinguish them in the sky. Though superficially both these species look quite similar, the Swifts is said to be more closely related to the hummingbird than the swallows.[59]

Locally, swallow is known as 'Burung layang-layang' in Bahasa Melayu while 'the Swifts' is known as 'Burung Walit' in Malaysia or 'Walet' in Indonesia.

The swifts in South East Asia region have the average size of 6.5 cm. The largest swifts are about 25 cm long and weigh 175 gm, about the weight of a lemon. Once young swifts left its

[57] see note 55 , p 244

[58] See note 55, p 734

[59] see note 46

original nests it may not come to land again until it is 2 years old and ready to breed, in this time it may fly 500,000 km. [60]

2.10 The Foot

Examination of birds' foot can tell us a lot of things about the birds. From the foot of the birds, we can know whether the birds can fly, walk on the ground, or hang at what kind of trees and branches. It will go further to tell us what kind of food such birds feed on, whether they feed on insects, fish, animals or other smaller birds or bats.

The foot will suggest to us whether such birds will have close contacts with other birds, animals or humans. Their associations with others birds, animals and humans may expose them to contagious disease. As swifts cannot walk or grasp branches, that also explain why the shape of their nests must be bracket like shape to allow them to cling vertically to their nests.

Though swifts and swallow are similar in appearance, they are different anatomically. Swifts have feet with four toes forward. Swallows have feet with three toes forward and one toe backward.[61] Therefore, swallow is capable of using the backward toe to grasp on something like a rope, small branch or even electric wire on the street whereas swifts are not capable to do so.

As swifts cannot stand on the ground, they have to rely on flying insects as foods. Swifts do not stop and stand on the ground next to a pond, river, lake, or water container to drink water, eat earth worms or fish. Their four forward toes do not allow them to land on the flat ground. Therefore, their source of water supply comes from the body of the insects they take and also collect moisture in the air. Swifts are easily seen during drizzling day and they are swirling

[60] see note 43, p 28

[61] See note 55 para 1.40

around as though they are playing in the rain. But actually, they drink rain water as source of water and thus, swifts are also known as 'rain chaser'.

This will later explain why swifts have no physical contacts with other birds, animals or ground. Therefore, any contentions that swifts maybe the agents of any contagious disease that are harmful to human could not stand. By not having any physical contact with other birds, animals or human, it is very unlikely for swifts to contract any contagious disease that may be harmful to human. Anyone who makes such claim shows that he is either ignorant about swifts or argued with certain motive to gain control over swifts and ultimately control the EBN industry.

3.1 The Properties of EBN

In the EBN industry it is the nests and not the swifts that matters. Swifts made their nests purely using their secreted salivas. The shape of the nests are like half bowl shape bracket attached to the wall. The nests of some species may contain feathers and dried grasses but the edible parts of the nests are the saliva of the swifts.

Records shows that Chinese began consuming EBN as food or traditional Chinese medicine dated back in 17th century. [62] EBN contains protein, vitamins A & E, glycoprotein and anti-cancer elements. EBN has certain therapeutical effect especially for woman. It has been eaten for:

> *' recuperative purposes after consumptive disease such as tuberculosis, or for treating disability' , 'Swifts' nests are believed to reinforce body fluids, nourish blood and moisten the respiratory tract and skin; they are believed to replenish the vital energy of life, build up health and aid metabolism, digestion and absorption of nutrients... ' These are also claims that the birds' nests can prolong life and slow down ageing' 'Traditionally bird's nests are regarded as a powerful aphrodisiac.. '* [63]

As to whether EBN has the properties as claimed, it was observed in 1987 reports that :

> *' There is a paucity of scientific research on the medicinal properties of birds nests , and whether there is in reality any medicinal value is still open to question'* [64]

But the medicinal properties of EBN had been properly documented through various studies in recent years. Sources from the Malaysia namely Cardiovascular, Diabetes & Nutritional Research Centre, Institute of Medical Research and Biodiversity Conservation Division,

[62] Kong, Y.C., Keung, W.M., Yip, T.T., Ko, K.M., Tsao, S.W & Ng, M.H.(1987) evidence that epidermal growth factor is present in swifts (Collocalia) nests . Comp Biochem Physical B. 87.221(226).

[63] See note 50 , Chapter 1, page 1

[64] ibid

Department of Wildlife & National Park, Kuala Lumpur in 2010 [65] and Hong Kong, namely the Department of Applied Biology and Chemical Technology, Hong Kong Polytechnic University had confirmed there are medicinal values in EBN.[66]

Among others, the medicinal properties of EBN includes enhances the rebirth of cells and tissues (Epidermal growth factor); enhances the body's immune system through promotion of cell division ; strengthens the body's self-regulating actions and resistance to disease; improving heart functions and to reducing blood pressure ; assists in the prevention of cancer through rich antioxidants; aides in the regeneration and growth of cells; aides in the treatment of cancer patients ; regulates blood supply all around the body; improves the skin complexion and reducing fatigue. [67]

3.2 Raw–unclean EBN and Raw-clean EBN

What are the differences between Raw–unclean EBN and Raw-clean EBN?

In the *Garis Panduan Pembangunan Industri Burung Walit (1GP) Januari 2010 (Swifts Industry Development Guidelines - January 2010)* (*1GP*) divided raw nests into two categories namely 'Raw–unclean EBN' and 'Raw-clean. The full definitions were given in rules 2.13 and 2.14 of 1GP.

[65] See Norhayati MK, Azman O2 & Wan Nazaimoon WM, *Preliminary Study of the Nutritional Contents of Malaysian Edible Birds Nests '* , Cardiovascular, Diabetes & Nutritional Research Centre, Institute of Medical Research and Biodiversity Conservation Division, Department of Wildlife & National Park, Kuala Lumpur, Mal Journal of Nutrition 16(3): 389-396, 2010, http://nutriweb.org.my/publications/mjn0016_3/WanNazaimoon257(edSP)389-396(pr)RV7.pdf a, accessed on 15th April 2011.

[66] Shuh Wan Chan , *Review of scientific Research on Edible Bird's Nests* , Department of Applied Biology and Chemical Technology, Hong Kong Polytechnic University, gave details nutritional contents and medicinal use of EBN. According to Shuh Wan Chan , EBN contains mainly carbohydrates, amino acids and mineral salts. The major ingredients of EBN are glycoprotein. The exogenous source of sialic acid may contribute to neurological and intellectual advantages in infants. Amino acid and minerals are part of EBN. The presence of non-essential amino acids and 2 essential amino acids could facilitate normal body function such as repairing and immunity. Other details of the contents of EBN please refer to the full text of the article.

[67] See *Edible Bird's Nests Facts* http://myjeff.hubpages.com/hub/Edible-Birds-Nests -Facts accessed on 15th November 2012

The **raw–unclean EBN** are raw nests collected from natural caves or BH that are not clean and processed yet. They are the unprocessed raw nests. On the other hand, the **raw-clean EBN** are nests that have been cleansed, processed and dried. The strands of nests are re-arranged into the shape of the natural nests or any the desired shapes determined by the EBN process centres.

3.3 Nests Processing and Bleaching

The cleaning of raw-unclean EBN is done manually. It takes many man hours to complete the meticulous cleansing process. Though the work is not difficult it is tedious, taxing on the eyes and also time consuming. Removing tiny feathers and impurities from the raw nests requires concentration and focus. It is a slow and time consuming manual process. Currently, there is no mechanical process that can replace manual cleaning and inspection process yet.

In terms of costs the faster the cleaning process of the raw nests the faster would be the production. Some unethical and unscrupulous EBN process centres had resorted to using bleaching agent when processing raw-unclean EBN.

The process is simple, in order to expedite the removing of feathers and cleansing of raw bird's nests, workers mixed cleaning water with some bleaching agent in order to bleach the smaller feathers that are not easily removed manually. Once the smaller feathers are bleached white, the feathers will blend in with the nests and they will not be spotted easily by naked eyes.

They are two types of raw nests been processed by EBN Processing Centres, commonly known as the black nests and the white nests.

3.3.1 Black Nests

The black nests are produced by Apodidae maximus specie and these nests may be mixed with impurities such as bird's feathers, guano, dried grasses or even dust mixed up with the saliva of the swifts when the swifts were constructing their nests. The raw–unclean nests are dirty and not suitable for immediate human consumption.[68]

A kilogram of raw black nests can only yield 200 to 300 grams of pure nests. Therefore, black nests are much cheaper than the while nests.[69]

The standard cleaning steps for black nests involved soaking the nests, loosening the nests, feather removing, picking and moulding. The first step in the cleaning process is soaking raw nests in hot water. After some time, the nests will spread like jelly but the strands of the bird's saliva will not disintegrate or dissolve in the water. When the nests spread in the water, the lighter impurities such as feathers or any other impurities will float on the water while the dirt will sink to the bottom. After soaking, the soaked nests are loosen by hand or by using scissors. Feathers and impurities will start to float and this is also the stage where bleaching is done.

The next stage is the tedious job of picking fine feathers and careful removal of tiny impurities. The workers will repeatedly remove all the impurities from the nests and sieve the nests until the remaining substance are purely nests. After rearranging the cleaned nests into the desired bird nests shape, the processed EBN will be left to air dry. Once the raw-clean EBN dries up, it hardens and retains its original shape, colour and texture. These nests are still raw and they are now called the raw-clean EBN.

[68] see definition of Raw-unclean EBN under s 2.13 of 1 GP Guidelines , p 5

[69] see http://site.birdnests world.biz/main/3076/index.asp?pageid=14043, accessed on 20th January 2013

3.2.2. White Nests

White nests refer to raw nests collect from BH. They have less feather contents and whitish in colour. The cleaning process is much easier and under the normal circumstances it does not require bleaching. Relatively, the cleaning process is simpler. The cleaning steps of white nests are brushing, picking, shaping and air dry. [70]

However, some EBN Process Centres will still use bleaching method to enhance the colour of the nests from white to "super white". Super white nests look more superior to the white and thus fetch higher price. However, all nests are subject to oxidation and the result of oxidation is that the white nests will turn slightly yellowish after exposing to air for some time. [71]

The raw-clean EBN are either made into packages or sold in bulk. Currently, the bulk of the Malaysian exported EBN are unprocessed and unclean raw EBN. The numbers of the EBN processing centres in Malaysia are still relatively low in number.

Setting up new EBN processing centres creates new jobs and stimulates growth of EBN downstream industry such as bottled birds' nests added with other health food such as ginseng. The EBN exporters will also reap higher profits and benefits from exporting processed raw EBN.

Though occasional consumption of such bleached and processed EBN may not harm our health immediately, common sense will tell us that consuming nests with bleaching agents and un-removed bleached tiny feathers may not be harmful to consumers. However, there is no known reported case showing that consuming EBN had caused any negative health effect.

[70] ibid
[71] see http://site.birdnests world.biz/main/3076/index.asp?pageid=14043, accessed on 20th January 2013

The detail black nests bleaching process are shown in the photos in Appendix D.[72]

The white nests bleaching process are well illustrated in Rachel BB Blog at http://rachel1203.blogspot.com/2011/09/cleaning-method-of-bird-nests -revealed.html

3.4 Fake Nests

One alarming area in the EBN industry is the presence of fake nests in the market. Driven by the high price of EBN, fake EBN have over the years infiltrated the market. In order to protect consumers and the EBN industry, the government needs to place greater emphasis to reduce fake EBN in the market. Consumers must be taught about the method of verifying EBN.

3.4.1 What is a fake nest?

Fake nests are made of either totally or partly from non-genuine EBN contents. Genuine EBN are the hardened salivary excretions of the swifts. It is the contents of the swift's saliva that is valuable. The materials used to make fake EBN may come from fish skin, mushroom or plants origin that are jelly-like when processed.

But in situations where only small amount of egg-white contents are present in the processed nests, they are not considered as fake nests.

After cleaning the nests, the workers will rearrange strands of bird's saliva on the bird's nests mould in order to produce standard bird's nests shape and let the nests dry. There are times where the workers would need to do final touch ups on the processed EBN and they will use

[72] Appendixes D are photos reproduced from photos found in Marc's Macrocosm's blog http://pseudo-marc.blogspot.com/2008/05/birds-nests -processed-with-bleach.html.

small amount of egg-white as natural glue to glue the strands of saliva. Egg-white is the portion of eggs that turns white when cooked. Therefore, under such circumstances, the presence of small amount of egg-white in the processed EBN is not considered as fake nests.

Appendix E are photos showing the method to distinguish real and fake nest as provided by http://birdnests farm.wordpress.com/2009/03/20/how-to-differentiate-real-bird-nests-and-fake-bird-nests/ as accessed on 20th February 2013.

3.4.2 Authentication of EBN- BH operators and EBN Traders stage

There are two stages in the authentication of nests.

The first stage occurs at the time of the purchase of raw unclean EBN by EBN traders from BH owners or operators. The nests involved are raw unclean EBN. There is very likelihood that the BH operators would sell fake nests and there are no reported incidents of selling fake nests between BH operators and traders.

There are two reasons why it is unlikely that BH operators would sell fake nests to EBN traders. First, the EBN industry is a closed industry and reputation is important. No BH operators would risk their business by selling fake nests to established traders. Secondly, the EBN traders are experienced traders who know the contents of the EBN by sight. Thirdly, the nests are graded and the more there are impurities in the nests, the lower becomes the grade. Lower-grade nests fetched lower prices and thus it is not worth to tamper with raw unclean EBN.

Though the likelihood of BH operators selling fake raw EBN is very low, the raw EBN traders must be constantly on guard against unethical BH operators who may increase the weight of the EBN by increasing the moisture contents of the raw EBN.

EBN is sold based on grade and weight of the nests. The accepted moisture content of raw EBN in the industry is about 4% of water. In order for strands of swifts' saliva to hold its shape as a nest the saliva can only be cohesive if there are water contents in the saliva.

If the price of a kilogramme of raw EBN is RM4, 000.00, that means every gramme costs RM40.00. If a BH operator increased the moisture contents of the raw EBN from 4% to 10%, the difference of the extra 6% of water contents costs the buyer RM240.00 in a kilogramme.

To increase the moisture contents of raw EBN, the BH operators will increase the humidity in the BH by spraying more water through mists sprayer in the BH shortly before harvesting. The nests will absorb the water's moisture and thus increase the water contents in each nest. Once the nests reach the desired moisture contents, the BH will harvest the nests and sell the higher moisture content EBN to the traders or to un-noticing individual consumers.

This may also take place when EBN traders sells the unclean nests to the EBN Process Centres; the EBN traders may also increase the moisture contents of the EBN by spraying water directly on the raw nests before the arrival of EBN purchasers.

Therefore, the tricks of the trade is not to sell fake nests to the traders but to increase the weight of the raw EBN by increasing the water contents in the nests as explained.

3.4.3. Authentication of EBN- end consumer stage

The second stage of authentication takes place at the end consumer stage.

Most consumers are ignorant about the tricks of the trade. Consumers either buy the raw-clean EBN that they can cook or they buy the ready-made bird's nests products in bottles that are ready for consumption.

While it is almost impossible and impracticable for consumer to authenticate the contents of bottled EBN products before, there are steps that can be taken to authenticate the raw-clean EBN in the market.

Basic authentication of raw-clean EBN can be performed by physical and visual inspection. If the EBN are pre-packed in such a manner that will prevent or hinder a consumer from carrying out physical and visual verification, caution must be exercised before purchasing such EBN unless the sellers are reliable persons. In the event of doubt, a consumer ought to choose not to buy the products and purchase the products from other suppliers.

3.4.4. Authentication Guides

Some basic physical and visual authentication guides that can be helpful are:-

Step 1:- **External appearance**

Purchasing raw-unclean EBN has lesser risk than the raw-clean EBN. Raw-unclean EBN normally comes with mixtures of nests, feathers or other impurities such as wood grains and wall paints attached to the nests. The shapes of the raw unclean EBN are not uniform and it is easier to distinguish from the raw clean EBN. The only consideration is the moisture content factor of the nests as discussed earlier.

Purchasing raw-clean EBN requires more knowledge and experience. Normally after the cleaning process the strands of the swifts' saliva will be arranged manually by the cleaning workers and would be left to dry. They will use standard moulds in order to produce uniformly arranged shape that are pleasing to the eyes of consumer.

If the cleansed nests are not bleached, the nests will retain its natural whitish look with a silvery colour. If the nests are bleached with chemicals, the appearance will look overly white and shiny.

Step 2:- **Smell**

There is no special smell or scent for raw unclean EBN. The smell is the natural smell of the nests. But there are situations where the shapes of the processed nests are not satisfactory and the workers may do some touch ups to the nests by adding extra strands of swifts' saliva dipped and mixed with egg-white and paste on the processed nests.

Consumers prefers to buy a uniformly shape nests than the irregular shape nests. Therefore, the presence of egg-white smell is not a matter to be considered in authentication of processed raw-clean EBN.

However, if the smells of the nests are mouldy it suggests that probably the suppliers must have sprayed the nests with unclean water that resulted in the unpleasant mouldy smell. Swifts do not make nests at the spot where their nests will be exposed to rain or water. There are no wet EBN nests for sale in the market.

Mouldy smell nests may be harmful to consumers.

3.4.5 Authentication of EBN Technology

Authentication method of EBN technology has been developed in early 1990s. Due to the high costs of such equipment testing is limited to laboratories. It is not cost effective to do such testing in the open market.

Among others, the method employed by scientists to test the authenticity of EBN is through 'electron microscopy, energy dispersive X-ray microanalysis, flame atomic emission spectroscopy, inductively coupled plasma-atomic emission spectroscopy, ultraviolet-visible spectroscopy and other physiochemical techniques'. [73]

[73] See note 62

Generally EBN traders still use the traditional method of verification of EBN by touching, sighting and smelling the products. Based on their experience and knowledge seasoned traders can distinguish fake and genuine EBN.

As stated earlier, it is unlikely for a BH operator to sell fake raw unclean EBN to EBN traders as the BH operators must maintain their reputation within the industry. Fake EBN normally came in the form of raw clean EBN, packed or bottled EBN products. When a fake EBN is properly packed in sealed boxes or bottled up as health food readily for sale to consumers, consumers are unable to smell, touch and feel the nests. The chance of been cheated into buying fake packed or bottled EBN is always there.

China has developed a technique to scan the fake EBN by way of spectrophotometry, a method to differentiate genuine EBN of saliva base with pig's skin and Tremella fucifomis. The method used is to test the presence of N-acetylneuraminic acid, a nine carbon sugar, which is one of the major components in edible EBN. The authentication process is as follows: [74]

> *'The first comprehensive report on authentication of the edible bird's nests can be traced by to the early 1990s. Sam et.al. (1991) demonstrated the possibility to use scanning electron microscopy, energy dispersive X-ray microanalysis, flame atomic emission spectroscopy, inductively coupled plasma-atomic emission spectroscopy, ultraviolet-visible spectroscopy and other physio-chemical techniques to ascertain the authenticity of edible bird's nests. Since they only made a comparison of some imitation bird's nests with substances from plant origins, it limited the generalising ability of the techniques to the other imitation materials. In addition they relied on sophisticated equipment.'*

[74] see note 62, see the chapter on Authenticity of Edible Birds' Nests .

It is costly and impractical to carry out commercial EBN testing in laboratories for every sale as it involved sophisticated equipment. China as the main consumer of EBN has developed a technology to test the contents of EBN. It is observed that: [75]

> *'Recently, a research team in China has developed a simply but accurate and reliable spectrophotometry method to determine edible bird's nests contents. It could also be used to differentiate genuine edible bird's nests with saliva, pig's skin and Tremella fucifomis. The method is based on the reaction between N-acetylneuraminic acid and ninhydrin in acid solution. The method evaluates the internal content of N- N-acetylneuraminic acid, a nine-carbon sugar, which is one of the major components in edible bird's nests.'*

There are two (2) main reasons why Malaysia should acquire good EBN authentication equipment and technology.

First, in order for Malaysia to stay competitive in the global market, the Malaysian government must invest in developing EBN testing technology. This can be easily carried out as EBN is one of the EPPs outlines in ETP.

Secondly, the testing equipment is essential in enforcing the laws relating to EBN. Government must try to stop the unethical EBN traders, merchants and suppliers from infiltrating the market to protect the consumers and also to protect Malaysians international standing in EBN global market.

The ability to produce better, more user friendly, cheaper and more costs effective equipment to test the authenticity of EBN in a cheap and economical way is thus another challenge to serious Malaysian scientists and engineers. This is also another task which should be considered and also undertaken by the government.

3.5 Nitrite contents in EBN

[75] see note 62, the chapter on Authenticity of Edible Birds' Nests .

Over the years, the bulk of the birds' nests from ASEAN are imported into China through Hong Kong. The Hong Kong birds' nests merchants and traders are the middlemen who deal with their mainland China counter parts. These middlemen merchants have vast and established connections and contacts with both the importers from mainland China and their relevant governmental officials handling import and food safety.

However, there are reports in the year 2010 and 2011 that the Food Safety Department in China had banned importations of certain EBN from Indonesia and Malaysia on the ground that the nitrite contents in the EBN far exceeded the approved limit. It was reported that the contents of nitrite in the said EBN reached 6000 p.p.m. (parts per million) while the approved limit is 3000 p.p.m. China has started taking a cautious stand in checking the imported EBN from Indonesia and Malaysia.[76]

Sodium nitrite is used as a colour fixative. Sodium nitrite is used as a food additive and a preservative in meat and fish. The side effect of sodium nitrite is that it is carcinogenic in nature that will promote growth of cancer and thus is harmful to health. Consuming 0.3 to 0.5 gram of sodium nitrate may cause poisoning leading to death. The disapproval by the Food Safety Department in China resulted in reduced demands of EBN from the China market. The results are immediately felt both by Indonesian and Malaysian EBN exporters. Both the Ministry of Health (MOH) and Ministry of and Agro-based Industries (MOA) had liaised with the relevant ministry in China to resolve the issues.[77]

Sodium Nitrite is normally used for curing meat. '*Nitrite in meat greatly delays development of botulinal toxin (botulism), develops cured meat flavour and colour, retards development of*

[76] see Nanyang Siang Pao, a Chinese newspaper from Malaysia published on 22nd August 2010at page A4.

[77] see Sin Chew Jit Poh , Malaysian Chinese newspaper published on 13-10-2011 at page 11

rancidity and off-odours and off-flavours during storage, inhibits development of warmed-over flavour, and preserves flavours of spices, smoke, etc.' [78]

The types of processed EBN involved are those commonly known as 'xie yuan' or literally known as 'Blood Nests' that contained higher contents of sodium nitrate. The so called 'Blood Nests' derived the name from the reddish to brownish colour of the processed nests and it fetched much higher prices in compare with the normal colour EBN. Blood Nests colours are originally reddish and they are mainly harvested from natural caves.

The earlier myth within the EBN market claims that Blood Nests were produced by swifts using their blood. This is not true. A more recent proposition suggested that the reddish colour of the nests was produced by the swifts that consume seaweeds and the iron or iodine contents in the swifts saliva makes the nests reddish in colour.

Driven by the higher price of blood nests, there are some unscrupulous merchants which affect the ammonia gas that is permeated from swifts' faeces to react with the nests. The chemical reaction between ammonia gas and the nests makes the nests turned reddish. But, the colours of such nests are not truly reddish. The colour can be said to be 'rusty'.

[78] See Richard J. Epley, Paul B. Addis and Joseph J. Warthesen, Nitrite in Meat, University of Minnesota, http://www.extension.umn.edu/distribution/nutrition/DJ0974.html 1992. accessed on 23-2-2013 his article states:

What Nitrite Does in Meat

Nitrite in meat greatly delays development of botulinal toxin (botulism), develops cured meat flavor and color, retards development of rancidity and off-odors and off-flavors during storage, inhibits development of warmed-over flavor, and preserves flavors of spices, smoke, etc.

Adding nitrite to meat is only part of the curing process. Ordinary table salt (sodium chloride) is added because of its effect on flavor. Sugar is added to reduce the harshness of salt. Spices and other flavorings often are added to achieve a characteristic "brand" flavor. Most, but not all, cured meat products are smoked after the curing process to impart a smoked meat flavor.

Sodium nitrite, rather than sodium nitrate, is most commonly used for curing (although in some products, such as country ham, sodium nitrate is used because of the long aging period). In a series of normal reactions, nitrite is converted to nitric oxide. Nitric oxide combines with myoglobin, the pigment responsible for the natural red color of uncured meat. They form nitric oxide myoglobin, which is a deep red color (as in uncooked dry sausage) that changes to the characteristic bright pink normally associated with cured and smoked meat (such as wieners and ham) when heated during the smoking process.

A report in a newspaper states that irresponsible EBN exporters transform a natural EBN into a reddish colour by steaming the natural EBN together with birds' faeces.[79] The same chemical reaction as in the ammonia gas mixture described above applies here.

There are reports from Hong Kong that the colouring of the EBN was done at the request of unscrupulous China importers. The Indonesian exporters will colour the natural EBN according to the specification of the importers.[80]

Some claim that sodium nitrite will dissolve in water. The nests will be washed before cooking. Therefore it does not harm the health of the person consuming such coloured EBN. In the past, Indonesians and Malaysian EBN were imported by middlemen in Hong Kong. Lately the Malaysians EBN exporters had made active attempts to sell their EBN direct to China market without going through the middleman in Hong Kong. Such attempts had resulted in the displeasure of the middlemen.

The middlemen equate such by act of 'bypassing' as 'adding sands to their rice bows'. Thus they decided to flex their muscles through their close contacts with Chinese officials. The recent strict enforcement by China on nitrite contents are allegedly due to efforts made by such middlemen. These speculations however remained unconfirmed.

As at the date of this research, there is no final or complete report on the status of such problems. Nonetheless, if the issues of high sodium nitrite content in EBN are not handled properly by both the ASEAN's EBN exporters and the relevant government agencies, it will causes losses to BH operators in ASEAN and eventually will definitely drastically affect Malaysian EBN industry.

[79] See note 77

[80] See note 77

CHAPTER 4:- NUISANCE, PUBLIC HEALTH & WORLD HERITAGE SITES

4.1 Three Major Complaints

Generally there are three (3) major complaints regarding BH in Malaysia. They concerns issues involving:-

(a) nuisance ,

(b) public health, and

(c) world heritage sites

Nuisance is covered by the law of torts. Public health comes under the charge of MOH or Department of Veterinary Services (DVS), World Heritage site status is determined by the UNESCO. If all these matters are considered together they formed major complaints and issues faced by the public and the government. We shall consider each and every complaint separately.

4.2 NUISANCE

The most effective method to attract non-resident swifts into the new BH is to continuously broadcast birds' songs from the BH by using loud speakers. The ignorant BH owners have indiscriminately played loud birds' songs all day long regardless of whether their BH are located in the town areas, residential or rural areas.

The loud birds' chirping sounds soon became the main complaint against BH operators. Do we need separate legislation to regulate nuisance? The answer is in the negative. There are already existing laws that can be adequately employed to control nuisance.

4.2.1 Meaning of nuisance.

What is nuisance in law?

> *'The essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land.'* [81]

Nuisances are acts or omissions that are not warranted by law or they are omissions to perform legal duties which obstruct or cause inconvenience or damage to the public in the exercise of rights commons to all subjects. It also covers acts or omissions generally connected with the use or occupation of land or interference with a person's enjoyment of land or of some right in respect to the land. [82]

Generally there are many acts that may unduly interfere with the use or enjoyment of land that may constitute nuisance. Whether such acts are actionable under the law of torts concerning nuisance will depend on a variety of factors. The courts will generally balance the interests of the parties which are the BH owners and the interest of the neighbours living near the BH.

Broadcasting loud birds song from BHs affecting the neighbours' quiet and peaceful enjoyment of their land and property is certainly a nuisance.

4.2.2 Types of Nuisance

There are two types of nuisance. The first is private nuisance and the second is public nuisance. [83] However, certain modern writers classified nuisance into three categories by dividing nuisance into statutory nuisance, private nuisance and public nuisance. [84]

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[81] see Anthony M Dugdale, Michael A Jones, General Editors, *Clerk & Lindsell on Torts*, 2006 19th EBN Para 20.01 at page 1162

[82] see *Halsbury Laws of Malaysia* Volume 5 Tort para 80.258 page 263

[83] See note 82 , page 20.02 at p 1163

[84] see Vivienne Harpwood, *Modern Tort Law*, 6th EBN 2005. Cavendish Publication Ltd, Great Britain, page 239 Para 11.4. The author is a Professor of Law in Cardiff University, UK

i) Statutory Nuisance

Statutory nuisance are those nuisance actions created by statute. It is created by law to protect the public or a class of people. If any such nuisance is committed, the people may lodge complaint to the local governments against any statutory nuisance such as acts that are obnoxious, hazardous to health or offensive to the quite enjoyment of their lives.

Unlike criminal offences that are enforced by the Public Prosecutor, statutory nuisance is a quasi-criminal offence and can be enforced by local governments. [85] It is akin to public nuisance except that the 'offence' will be prosecuted by local governments and not by Public Prosecutors.

ii) Public Nuisance

Public nuisance affects a class of people though not all the people. Public nuisance is a criminal offence that can be prosecuted by the Attorney General or the office of the Public Prosecutor if necessary.

Public nuisance is one that inflicts damage, injury or inconvenience on all subjects of a State or on all members of a class who come within the sphere or neighbourhood of its operation, although it may affect some members to greater extent than others. [86]

Under Malaysian law, the law that empowered the public authority to enforce against nuisance only applies to public nuisance and not private nuisance. There are two sets of law namely the ***Penal Code*** and ***Local Government Act 1976*** *(LGA 1976)* that can be enforced against any person guilty of public nuisance.

[85] Ibid , page 240 Para 11.5.

[86] see note 82, page 265 Halsbury para 80.262

A person is guilty of public nuisance if he 'does any act or guilty of an illegal omission that causes common injury, danger or annoyance to the public, or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasioned to use any public right' [87] is punishable under Section 290 of *Penal Code* with fine which may extend to RM400.00.

On the other hand, sections 80, 81, 82 and 84 of the *LGA 1976* deals with public nuisance.

Section 80 provides that:

> *'The local authority shall take steps to remove, put down and abate all* ***nuisance of a public nature*** *within the local authority areas on public or private premises and may proceed at law against any person committing any such nuisance for the abatement thereof and for damages.'*

Under Section 81, there are 11 instances where nuisance can be dealt summarily under the *LGA 1976.* For the EBN industry, only 5 sub-provisions under Section 81 are applicable and yet, to what extent the effectiveness of such provisions against BH is questionable.

The relevant sub-provisions in Section 81 *LGA 1976* where by nuisance can be dealt summarily are as follows:

i) Any premises or part thereof of such a construction or in such a state as to be nuisance - s 81(a);

ii) Any animal kept in such place or manner or in such members as to be nuisance – s 81 (b);

iii) Any accumulation or deposit which is a nuisance or is or is like to become breeding place for mosquitoes or flies or any vermin- s 81 (c);

[87] see s 268 Penal Code

iv) Any tank, well, pool, water-course, ditch or low marshy ground which...is likely to become breeding place for mosquitoes- s 81 (g)

v) Any other matters declared by the State Authority to be a nuisance.

However, based on the complaints received by the local governments, the complaints are not against the indiscriminate building of BH. The complaints are made against the uncontrolled usages and amplified broadcasting of bird's song through loud speakers that cause nuisance to the neighbours and public.

Animals and birds are different. Animals are four legged beings and birds are two legged and with wings. Certainly swifts are not animal and therefore s 81 (b) of the *LGA 1976* that allows animal kept in such place or manner or in such members as to be nuisance to be dealt with summarily does not cover birds. Therefore, s 81(b) of *LGA 1976* is not applicable to swifts.

Unlike the *Animals Act 1953*, birds and animals are given different meaning but for the purpose of enforcing offence involving cruelty, the meanings of animal is extended to and include birds under Section 43 of *Animals Act 1953*. But under *LGA 1976* swifts cannot be defined as animal under *LGA 1976* as there is no such similar provision under the *LGA 1976*.

BH may keep some water or pool of water to regulate and reduce the room temperature within the BH. Certain quarters argued that the pool built in the BH will be a breeding ground of mosquitoes and flies. This argument does not hold water as mosquitoes and flies are food for swifts. Mosquitoes and flies cannot be found in BH because they will be eaten up by swifts living in the BH.

As at the time of writing of this research , there is no known declaration by any State Authority that BH is considered as nuisance under Section *81 (k) LGA 1976.*

Section 82 gives power to the local governments to issue notice requiring abatement of nuisance. The power include power to issue nuisance order in the form of abatement order or

closing order or combination of both under Section 82 (6) .The person who fails to comply with the nuisance order if found guilty is subjected to fine not exceeding RM100.00 per day under Section 82 (10).

If any person who has been served with the any closing order refused to comply with the closing order under Section 82 (12) *LGA 1976*, the local authority may with the assistance of the police eject the occupier of such premises.

Where a nuisance is committed outside the local authority areas, the local authority is empowered under Section 84 to take action against such person responsible for the nuisance as if the act was committed within the local authority. This 'extra territorial' jurisdiction power granted to the local governments is to cover any situation where a nuisance is wholly or partially committed wholly or partially outside the local authority areas. This provision is preventing the offender from using territorial jurisdiction to oust the jurisdiction of the local governments from prosecuting the offence against the offender.

Nonetheless, a note to be taken here is that the court is empowered to grant interim injunction against local governments in appropriate case. The detail discussion on this point is covered by Para 4.9 below.

iii) **Private Nuisance**

Private nuisance is a wrongful interference with a person's use or enjoyment of land or of some right connected with land. Private nuisance is a violation of a person's private rights. [88]

Private nuisance is explained as follows:-

> *'A private nuisance may be and usually is caused by a person doing, on his own land, something which he is lawfully entitled to do. His conduct only becomes a nuisance*

[88] See note 82 page 267 Para 80.264 of Halsbury

when the consequences of his act are not confined to his own land but extend to the land of his neighbour by:

(a) causing an encroachment on his neighbour's (property) it closely resemble trespass;

(b) causing physical damage to his neighbour's land or building or works or vegetation upon it, or

(c) unduly interfere with his neighbour in the comfortable and convenient enjoyment of his land. [89]

What if the original person responsible for the nuisance is no longer occupies or in control of the source of nuisance, would such a person be still liable to the nuisance? The answer is the affirmative. The BH owner may, after installing the loud speaker and broadcasting the birds chirping sounds through an amplifier, may not occupy the BH house or left it unattended for months, yet the person responsible for the nuisance will still be liable to that nuisance.

In fact, the law will hold an occupier liable for nuisance even though he is not the creator of the nuisance if he allows the nuisance to continue while in occupation of the land.[90] In other words, if a BH owner lets his BH operators to occupy or take control of the BH and broadcasting birds chirping sound exceeding the reasonable volume that became the source of nuisance to the neighbour, the BH operators can be liable for nuisance if he allows the nuisance to continue.

Common law imposes a duty on the occupier of a land to stop the source of nuisance emitting or originating from the land he occupies. The occupier has a common law duty to prevent such a nuisance from continuing to emit from the land he occupies. [91] Therefore, the new owner of a BH cannot be exonerated from his duty or liability for nuisance if he knows that the BH is the source of the nuisance to the members of the public.

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[89] See note 81, Para 20.07 at page 1165

[90] see noote 82 para 80.311 Halsbury.

[91] see AG v Tod Heatley [1897] 1 Ch 560 CA.

In *Attorney General v PYA Quarries*[92] Romer LJ defines public nuisance as an act 'which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects'. The accused in PYA Quarries case argued that the dust and vibrations caused by the quarry operations only affect a few people and thus, was a private nuisance and not public nuisance. The Court rejected this argument.

But, it will be a good defence for a person charged with public nuisance to plead statutory authority as authorizing the acts he did. If any there are any statutory provisions allowing the authority to carry out certain statutory duties or act that may amount to public nuisance, the party accused of committing nuisance may plead that such acts are authorised by statute.

If the law or regulation authorise BH owners to use loud speakers to play birds' songs, the law maker must carefully fixed the highest decibel allowable and the time allowed. The enforcement body must also strictly enforce the sound limit failing which the enforcement body can be sued for breaching their statutory duties. Likewise, BH owners may rely on the regulations that allow them to play the birds' songs as a valid defence against public nuisance prosecution.

Generally, the defence of Act of God, *volenti non fit injuria* (consent), contributory negligence, act of stranger and possibly accident are defence to private nuisance if the neighbours filed complaints against BH operators.[93]

[92] [1957] 2 QB 169,

[93] see note 84 page 261 para 11.11

4.2.3 Who can take action?

Nuisance is part of the law of torts. Any party who suffers from a nuisance may take action under private nuisance. But if the nuisance also affects members of the public, any individual who is a member of the public may sue for public nuisance.

There are EBN regulations i.e. *1GP* that prohibit broadcasting birds' songs beyond 40 dB (decibels) and if any BH operators play birds' songs beyond the limit then the local authority can act action against BH owners violating the rules. Further detail discussion on the loudness of bird song is discussed at Para 4.8 below.

4.2.4 Against whom should the action be taken against?

As for the BH in Malaysia, action can be taken against the BH owners, operators, and the person who occupies the BH. Action can also be taken against the licensing body who approved the license, not based on the ground that the licensing body was negligent in issuing the license, but due to the breach of duty or for been negligent in carrying out its statutory duties to ensure that the licensed acts do not create nuisance to the public or the neighbours of the BH.

In the Malaysian context, the authority who has the right to issue premises license is the local governments. The local governments may be held liable if they have caused nuisance when implementing their statutory duties.

In *Cheung v Southwark London Borough Council, Corporation of London, Provost and Chapter of Southwark Cathedral*[94], it was held that:-

[94] [2007] HCO6C 03292; [2008] LLR 34

(3) A private individual can bring a claim for ***public nuisance*** *only when he can show that he has suffered some particular foreseeable and substantial damage over and above that sustained by the public at large or when the interference with the public right involves a violation of some private right of his own.*

The judgement cited *Halsbury's Laws of England* (Lexis Nexis UK, 4th edn), on 'Nuisance', para 61 of vol 34 (reissue) of which states that:

'A private individual or a public authority may bring an action in his or its own name in respect of a public nuisance when, and only when, he or it can show that he or it has suffered some particular, foreseeable and substantial damage over and above that sustained by the public at large, or when the interference with the public right involves a violation of some private right of his or its own.'

There are principles that state that the policy maker cannot be held liable or be responsible for making certain policies where the implementation of such policies had resulted in nuisance. However, the law will not discharge the parties who implement or carry out the policy from liability under nuisance.

4.2.5 Balancing the interest of parties

The neighbours of any BH have the right to sue the BH operators for nuisance whether under public or private nuisance.

In a Federal Court case of *Syarikat Perniagaaan Selangor Sdn Bhd v Fahro Rozi Mohdi & Ors*[95] the appellant holds a lease over nearly 8½ acres of land which includes a lake. The conditions of land are expressly stated to be used as a tourist complex (skating rink, restaurant, drive-in cinema), and cannot be used for other purposes except with the consent of the State Authority.[96]

[95] [1981] 2 MLJ 16,

[96] Ibid. The express condition of the land stated that: "Syarat-syarat Nyata: Tanah yang dikeluarkan milik ini hanya boleh digunakan untuk Komplek Pelancongan (Skating ring, restaurant, drive-in-cinema), dan tidak boleh digunakan untuk lain-lain tujuan melainkan dengan mendapat kebenaran daripada Pihak Berkuasa Negeri."

In breach of the express land use condition, the appellant built an open-air stage on the lake on which a music band and sometimes two music bands operated with live singers. It also floated a used-junk structure as a discotheque where recorded music is amplified and played loudly. The sounds were greatly magnified and carried over a greater distance with the intention to attract customers, but alas, from the neighbours' point of view, that constitutes annoyance.

The neighbours had applied for an injunction to restrain the appellant from operating or permitting to operate music bands with singers from open air stages and to operate the generator for the discotheque on its land until the trial of the action. The High Court granted the injunction against the defendant and the defendant appealed.

In considering the interest of the neighbours in urban areas, the Federal Court observed that:-

> *'Noise in urban society there inevitably will be. Anyone living in town must expect to have to put up with a certain volume of noise from his neighbours and he, in turn, must have the right to make a certain amount of noise in the enjoyment of his property. But it is just as clear that no one has the right to create a volume of noise of such intensity and no one should be asked to put up with such a volume which by any reasonable standard becomes a nuisance'*

The Federal Court also cited what Lawton L.J. says in *Kennaway v Thompson*[97] that:

> *'Now nearly all of us living in these islands have to put up with a certain amount of annoyance from our neighbours. Those living in towns may be irritated by their neighbours' noisy radios or incompetent playing of musical instruments and they in turn may be inconvenienced by the noise created by our guests slamming car doors and chattering after a late party. Even in the country the lowing of a sick cow or the early morning crowing of a farmyard cock may interfere with sleep and comfort. Intervention by injunction is only justified when the irritating noise causes inconvenience beyond what other occupiers in the neighbourhood can be expected to bear. The neighbour who is complaining must remember, too, that the other man can use his property in a reasonable way and there must be a measure of give and take, live and let live.'*

[97] [1980] 3 WLR 361, 366 at page 366:

Based on the facts of *Syarikat Perniagaan Selangor Sdn Bhd* case, the Federal Court dismissed the appellant's appeal. If there cases involved nuisance is litigated, this case illustrates how the court will weight and balance the interest of the parties under law of torts.

4.2.6 Public Nuisance and Private Nuisance: Their differences

Private nuisance is a 'wrong' under the law of torts. The victim of the private nuisance can sue the person who committed the tortuous acts. It is not a criminal act though it may satisfy the elements that constitutes a public nuisance.

The differences between Public and Private Nuisance as summarised by Modern Tort Law are as follows: [98]

Public Nuisance	Private Nuisance
• Protects land and other interest	• Essentially protects land
• Primarily a crime	• Only a tort
• Claimed must prove special damage over and above that of public	• Claimant must prove damage
• Single act can be enough	• Single state of affairs is necessary
• No defence of prescription	• Prescription is a defence
• Exemplary damages are not available	• Exemplary damages may be available
• Strict liability for some forms of highways nuisance	• Fault must usually be proved, some exceptions.

If the nuisance has been continued for 20 years without interruption the defendant will escape liability by pleading prescriptive right to commit nuisance, calculated from the date the

[98] See note 84 , the learned authour had tabulated the above table at page 245 Para 11.9 of her book.

claimant becomes aware of the nuisance for the first time, even though the nuisance has been ongoing for many years before the claimant moved into the neighbourhood.[99]

4.2.7 The current Position

The government has taken action to regulate the loudness of birds song played from the BH. Section 4.5.3 of *1GP* has strictly provides that:-

a) The bird songs played shall not exceed 40 dB (decibel) calculated from 6 metres from the exterior wall of the BH;

b) The loud speaker should face 60 degree facing upward;

c) The time allowed for paying birds song is limited to between 7.00 a.m. to 10.00 a.m., 5.00 p.m. to 8.00 for West Malaysia; and 6.00 a.m. to 9.00 a.m. and 4.00 p.m. to 7.00 p.m. for East Malaysia.

Therefore, any BH operators who violated this section have committed a statutory nuisance and the local governments may take action to enforce these strict no-nuisance rules.

4.2.8 Interim Injunction against Local governments

In the event that a local government issues any directive or order that BH be closed or cease operation for whatever grounds and the BH operators is of the view that the local government's act or order was illegal, *ultra vires* or not does not comply with the rule of natural justice or did not comply with procedural fairness etc., can a BH operators apply to the court for interim injunction against the local governments?

This issue arose in *Tan Suan Choo v Majlis Perbandaran Pulau Pinang* [1983] 1 MLJ 323. The reports show that the plaintiff was given license to operate and 'carry on the business of

[99] see note page 261 para 11.11.1

liquefied petroleum gas by Jabatan Perkhidmatan Bomba in at certain premises in 1981; She incurred expenses to comply with the terms of the license. In 1982, Jabatan Perkhidmatan Bomba informed the plaintiff that her license was cancelled at the instruction of the local government Majlis Perbandaran Pulau Pinang (MPPP)'.

MPPP issued a notice to the plaintiff to cease using the premises as a place for the storage and sale of gas and to remove all gas cylinders, and required the plaintiff to vacate the premises within 30 days failing which the defendants might enter the said premises and remove any person or property found therein. The plaintiff sought for an interlocutory injunction restraining the defendants from demolishing their premises or causing the removal of all of any of the gas cylinders therein. The defendants raised a preliminary objection that the application should be dismissed *in limine* as it was barred by the provisions of the *Specific Relief Act 1950 (Revised 1974)*, Section 54(d).

Section 54(d) of the *Specific Relief Act 1950 (Revised 1974)* reads as follow:

> *'54. An injunction cannot be granted –*
>
> *(d) to interfere with the public duties of any department of any Government of Malaysia, or with the sovereign acts of a foreign Government;'*

There are two types of injunctions provides by the *Specific Relief Act 1950*. After careful examination of the provisions in *Specific Relief Act 1950* the High Court observed that Section 54 (d) falls under Chapter X which deals exclusively with perpetual injunctions. Section 51(1) under Chapter IX states categorically that:

> 'temporary injunctions may be granted for any period of a suit and are regulated by the law relating to civil procedure.'

Accordingly the court held that Section 54 of the *Specific Relief Act 1950* applies to applications for perpetual injunctions. It has no relevance to applications for a temporary

injunction as in *Tan Suan Choo* case therefore the court ruled that the said preliminary objection cannot be sustained.

As in the case of BH operators, in the event a local government make any orders, directions, issue any stop orders or even imposed any license on BH operators that may *ultra vires* the *LGA 1976*, the BH operators shall have the right to apply for interim injunction against the local governments.

4.3 PUBLIC HEALTH

One of the main concerns of the public towards the rapid growth in the EBN industry is the public health aspect that closely related to BH. The public fears that swifts may be an agent of epidemic disease. Animals and birds are common agents or source of spreading of epidemic or disease. After SARS, Avian Flu H5N1, Cryptococcus or other disease relating to birds were detected spreading from country to countries in the recent years, many birds and chickens were destroyed.

4.3.1. Spreading of Epidemic disease

In Penang, a member of the public called upon the Penang Chief Minister to take action against BHs constructed in Penang after highlighting the risk posed by swifts farming in George Town World Heritage Site on three grounds: [100]

(a) Health Concern

Cryptococcus is yeasts pore that may be found in dried birds' dropping. Inhalation of Cryptococcus spores can cause lung infections, cryptococcal meningitis and pneumonia in

[100] see *"Urgent action needed against Penang swifts farming"* a letter by Rebecca Duckett to the Penang Chief Minister , highlighting the risks posed by swifts farming in the George Town world heritage site - Aliran. Com in http://aliran.com/1235.html#more-1235 as at 18-9-2010

healthy children and adults, and is particularly dangerous to anyone who is immuno-compromised.[101]

(b) Avian Flu/ H5N1

Avian flu, or H5N1, is a rare but severe disease that can be fatal. According to the *World Health Organisation* (WHO) 'all birds are thought to be susceptible to infection with avian influenza viruses'. It is possible that the avian flu virus could be introduced to swifts in George Town are from the migratory waterfowl, which scientists believe are 'now carrying the H5N1 virus in its highly pathogenic form, sometimes over long distances.'

It was argued that 'swifts coming into contact with infected migratory birds from other parts of Asia may contract H5N1. Living in such close proximity to one another, contaminated swifts would quickly transfer the disease between themselves, increasing the chances for human infection either via direct contact with contaminated birds or contaminated feces, the two most common sources of infection' [102]

(c) Dengue Fever

Pools of water created by swifts' farmers to ensure an ideal humidity and temperature for the birds also create perfect breeding grounds for mosquitoes, including Aides Mosquitoes, which carry Dengue Fever. It is common to find dengue cases in certain streets in George Town.

In respect of the above three complaints by the George Town World Heritage Site, sources from DVS confirms that there is no record or reports that swifts are responsible or related to outbreak of SARS, Avian Flu H5N1, Cryptococcus or other disease relating to birds in Malaysia or elsewhere. Therefore, the argument that avian flu virus might be introduced to

[101] King, Dr. John W. and DeWitt, Meredith L., "*Cryptococcosis,*" http://emedicine.medscape.com/article/215354-overview, October 30th, 2009

[102] World Health Organisation, "*Avian influenza "bird flu"*, http://www.who.int/mediacentre/factsheets/avian_influenza/en/#countries, February 2006

swifts in George Town from the migratory waterfowl is baseless as swifts do not have any contacts with other birds.

Nonetheless, the DVS has taken a precautionary measure by requiring the BH operators to immediately report to DVS immediately upon discovery of the following disease under s 31(1) of *Animals Act 1953*:-

a) Avian chlamydiosis
b) Avian encephalomyelitis
c) Avian infectiou bronchitis
d) Avian mycoplasmosis
e) Avian salmonellosis
f) Avian spriocheatosis
g) Colibacillosis
h) Fowl cholera
i) Fowl pox
j) Highly Pathogenic Avian Influenza (HPA)
k) Infectious bursal disease
l) infectious laryngotracheitis
m) Marek's disease
n) Pullorum disease

4.3.2 Swifts are not agents of epidemic diseases

As explained in Chapter 2 above,[103] the nature of the swifts' foot with four claws in the front does not allow swifts to rest on trees, land or ground or even hang around on cables and electric wires. The nature of the swifts' foot prevents swifts from having contacts with other birds. The swifts only rely on insects as their food, unless the insects taken are the carriers of SARS, Avian Flu H5N1, Cryptococcus, and swifts would not be infected with these diseases.

[103] See Chapter 2, para 2.10 of this thesis.

Therefore, using public health as a ground to oppose the EBN industry is not a credible argument.

4.4 WORLD HERITAGE SITES

One important aspect of regulating the BH industry is the position of BH built within World Heritage Sites. A site is not considered 'world heritage' due to the presence of BH, but the world heritage status may be withdrawn if uncontrolled presence of the BH that lead to the destruction of the sites UNESCO intended to preserve.

4.4.1 BH within World Heritage Sites

As part of the objectives of the UNESCO to encourage the identification, protection and preservation of cultural and natural heritage around the world that are considered as of outstanding value to humanity, George Town in the state of Penang and Malacca had been accorded World Heritage Site status in recent years.

Declaring a site as world heritage has positive impacts on local and international tourism. The increasing number of BHs built within the Penang George Town's World Heritage Site has raised the concern of the public and also the council members of the Penang Heritage Trust.

In June 2010, the Penang Heritage Trust openly called upon the government to allow public discussion on the proposed swifts farming guideline on the ground of transparency.[104]

Based on the June 2005 newsletter of the Malaysian Swifts Farmers Association, this newsletter states that over 10% of houses – 400 houses- in George Town have been converted into swifts' farms, which is estimated to be close to 20% of houses in George Town. The

[104] See note 100

Penang Heritage Trust recognised that the contribution of swifts farming business which brought in approximately RM 1.5 billion per year to the nation. [105]

While highlighting the damage urban swifts farming in George Town is doing to our intangible heritage, the Penang Heritage Trust acknowledged that it was those 'exceptional range of shop houses and townhouses' that gave us our World Heritage Site listing in the first place but they also argue that it is too great to ignore the fact that that 'moving people out of buildings in order to open swifts farms' will affect and destroy the original features of the same exceptional buildings that gave us that World Heritage Site status.[106]

The objections of the Penang World Heritage Trust have been considered by the government but in doing so, the interests of the BH operators and the public needs to be balanced.

4.4.2 World Heritage Sites Technical Working Committee

In the *1GP* the government had a mechanism affecting the present and future BHs within the world heritage sites. Essentially, any future BH must have the approval of World Heritage Sites Technical Working Committee [107] before they are built. The members of this committee consist of a representative from National Heritage Department, DVS, Department of Urban and Rural Planning of Peninsular Malaysia, Persekutuan Persatuan Pedagang Sarang Burung Malaysia (Federation of Malaysia Bird's Nests Merchant Association) as provides in Section 4 of *1GP*. Further discussion on the mechanism of getting approval from World Heritage Sites Technical Working Committee and premises license from local governments will be covered in Chapter 5 and 7 of this research.

[105] See note 100

[106] See note 100

[107] Jawatankuasa Kerja Teknikal Tapak Bangunan Warisan

CHAPTER 5: EBN LEGISLATION IN EAST MALAYSIA

In Malaysia, there are two (2) sets of laws applicable to the EBN industry.

The first set comprise of building laws that can also be used to regulate BH. They can be identified as EBN Building laws. The EBN Building laws applicable here are *LGA 1976, Street and Drainage and Buildings Act 1976, Town and Country Planning Act 1976* and other statutes as listed in List of Statutes / Regulations. Government can make full use of the EBN Building laws to deal with complaints about nuisance, public health and world heritage sites involving BHs in Malaysia.

The second category consists of those sets of laws that are specifically related to conservation of swifts, harvesting and collecting of EBN, processing, importing and exportation of EBN. They can be identified as the EBN industry laws that are the main focus of this research.

5.1 EBN law in East Malaysia

For historical reasons and the specific provisions in List II of the *Ninth Schedule of the Federal Constitution* that empowers Sabah and Sarawak to promulgate their own laws relating to wildlife, the Malaysian Parliament is not empowered to pass any wildlife law that would be applicable to East Malaysia.

As the state laws in Sabah and Sarawak share similar though not identical provisions in respect of harvesting, import and exports of the EBN, this research devoted a separate chapter to evaluate the EBN related legislation in East Malaysia.

5.1.1 *Wildlife Conservation Enactment 1997 of Sabah*

The wildlife law applicable in Sabah is *Wildlife Conservation Enactment 1997* (*Sabah WCE 1997*) that came into force on 24th December 1997.

This enactment repealed the previous EBN related laws in Sabah namely the whole of *Birds' Nests Ordinance Cap.15,* Section 25 of the *Land Ordinance Cap 68,* and the whole of the *Fauna Conservation Ordinance 1963 Ordinance No.11 of 1963.* Section 2 (c) of the enactment defined 'forest produce' and substitutes *Wildlife Conservation Enactment 1997* for '*Fauna Conservation Ordinance'* in the *Forest Enactment 1968 Enactment No. 2 of 1968* with the usual transitional and saving provisions.

5.1.2 Interpretations

At the time the Sabah passed *Sabah WCE 1997* that came into effect on 24th December 1997, Sabah has the benefit of referring to West Malaysia *Protection of Wildlife Act 1976.* Though basically the objectives of both the wildlife conservation laws are the same, Sabah's *WCE 1997* clearly define the duties and functions of the Director of Wildlife under Section 4 and the powers of the directors are clearly stated in Section 5. There are no similar provisions in *POWLA 1972.*

In term of definitions of terms, Sabah has also chosen not to adopt similar meaning assigned to certain similar words such as 'animal', 'dealer' and 'wildlife' under *POWLA 1972.* Sabah defines 48 terms in *Sabah WCE 1997* in Section 3 while *POWLA 1972* only defined 29 terms in its interpretation provision.

Sabah WCE 1997 gave the following wide definition to 'animal':

> *'any vertebrate or invertebrate and the eggs thereof but does not include any domestic animal or the eggs thereof.'*

Therefore 'animal' includes birds or swifts which form essential part of our discussion here.

But when come to meaning of 'protected animals', it refers to the animals specified in Appendix I or II of the *CITES,* Part 1 of Schedule 1, Part 1 of Schedule 2 or Schedule 3.

5.1.3 Protected Swifts under Sabah WCE 1997

Unlike West Malaysia that has from 2010 totally removed EBN producing swifts from WCA 2010, under Part 1 of Schedule 2 of Sabah WCE 1997, there are four swifts' species that are protected and remain protected in Sabah until this day.

The four protected swifts' species are: [108]

i. Waterfall Swifts (*Hydrochous gigas*) Layang-layang Hantu

ii. Edible-nests Swifts (*Aerodramus fuciphagus*) Layang-Layang Gua

iii. Black –nests Swiftslet (*Aerodramus maximus*) Layang -Layang Padi

iv. Brown –backed Needletail (*Hirundapus giganteus*) Layang-Layang Besar.

Among the above four swifts' species, Edible-nests Swifts and Black – nests Swifts are known to be EBN producing swifts.

5.1.4 Sabah State owns protected swifts, EBN and guano in caves.

One special provision in Sabah's WCE 1997 that is absent in other wildlife laws in other states is Section 40(1) which provides that:

> *Every live protected animal or any animal product therefore shall be the property of the Government unless the same has been lawfully imported or obtained by a person under the authority of a valid license or permit or through operation of law.*

This literally made all the EBN producing swifts in Sabah to be the property of the Sabah State and thus the Sabah state has full control of the EBN industry.

Wild animals or birds are free to move or fly from one country to another and nobody owns them. The wild animals and birds that originated from Kalimantan (Indonesia) and Sarawak may travel and fly in and out of Sabah freely.

[108] see Item 163 to 166 of Part 1 of Schedule 2 of Sabah *WCE 1997*

It is unheard of any country that had passed law to declare that all the fishes and marine life within its inland water and territorial water belong to such country though foreign vessels are prohibited to fish within territorial water. The sovereign right over the land and territorial water is one thing, the ownership of the living animals, birds, reptiles and any living creatures within the land and air space of a state is another matter altogether. How could Sabah claim proprietorship over those protected animals in Sabah state?

While the question as to whether a state can lawfully pass a state law to unilaterally confer ownership or proprietorship of protected animals upon the state under the Federal Constitution is not a point for discussion in this research, undoubtedly Sabah state has ingeniously by passed the law to confer ownership of all such protected animal which include the swifts, its nests and guano upon the Sabah state. As it is, no one has ever challenged the validity of Sabah WCE 1997 in that respect, and therefore, that is the law that stands in Sabah.

5.1.5. Ownership of Natural Caves

In Sabah, there are two categories of natural caves that produce EBN known as the government and non-government edible birds' nests caves.

The first category consists of eleven caves that are recognised by the Sabah State as the property of private individuals or communities. They are subject to payment of royalties to the state government. The caves stated in Part 1 of the Schedule 4 of the *WCE 1997* are:

1. Madai Segalong and Baturong, Darvel Bay
2. Segama, Darvel Bay,
3. Gaya Island, East Coast
4. Kelumpong River, East Coast,
5. Senobong, including Pengharapan and Lingutan, Upper Kinabatangan
6. Melikop, Upper Kainabatangan
7. Batu Timbang, Kumut River, Upper Kinabatangan

8. Melobong, Marudu Bay

9. Batu Mandi, Kudat,

10. Mantanani Islands, West Coats,

11. Pohun Batu, Interior

The Second category is another twelve caves that are declared to be the property of the government as stated in Part II of the Schedule 4. The names of these caves are:

Lower Kinabatangan:

1. Gomantong including Semut Hitam, Semut Puteh, and Bobun-bulud

2. Karuack

3. Pangi

4. Baladut

5. Supu including Supu, Supu-agob, and Sembuan

6. Bod Tai, Menungal River

7. Materis

8. Batangan

Sandakan:

9. Berhala Island

Balembangan Island:

10. Bahaysimpul

11. Siburungei

Semporna :

12. Si Amil Island

Having claimed ownership of the protected animal under Section 40(1) of the Sabah WCE 1997, Section 85 of Sabah WCE 1997 also further declared that all the twelve caves in Part II of the Schedule 4 and any edible nests and guano found therein:

> *'are the property of the Government and shall remain reserved to the Government when any grant of land containing such caves, nests or guano is made to any person under the Land Ordinance or otherwise.'*

In other words, even if a land where such caves are situated had been alienated to any persons, the rights over the cave nests and guano shall always remain with the state government.

These provisions are not found in West Malaysia wildlife conservation laws. Hence Sabah retains total control over both the swifts that are classified under protected animal and those nests and guano in the natural caves.

In Sabah, the regulating licensing and enforcement authority of the EBN industry is the Department of Wildlife of Sabah.

5.1.6. Customary rights over natural caves

Long before the formation of Malaya in 1957 or Malaysia in 1963, Sabah formerly known as North Borneo is a sovereign state by itself (though the Philippines' at one point of time claimed North Borneo as part of its' territory). The natives of Sabah have their own customary rights and law.

One of the natives' customary rights is the right of ownership of edible nests producing caves. Such ownership to the caves includes the right to harvest the EBN in the caves. Such rights and privileges are capable of been passed down to the successor of the deceased owner in Sabah under their customary law.

Sabah *WCE 1997* under Section 86 recognised such customary rights of ownership of caves including right of succession to any caves enumerated in Part 1 of Schedule 4 or shares of

deceased persons therein by individual or communities. Any dispute connected with the ownership of such caves shall be referred to a Native Court for settlement.

This can be seen in the case of *Jaya bin Asahak v Munggau anak Lawai & Ors*[109] where an issue involving the native law and custom arose as to whether the plaintif, who was licenced to collect EBN from natural caves has any interest in such caves , the High Court of Bintulu held that :

> *'the plaintiff had been issued with licence by the authority to collect edible bird nests from the disputed caves; though the issuance of the license had been suspended because of the dispute. In my opinion, the fact that the plaintiff had been issued with such licence shows that the plaintiff had a right over the caves and this right is sufficient to give the plaintiff an interest in the caves'.*

In Sabah, the Mahkamah Anak Negeri, Lahad Datu, the native court is capable of giving the beneficiary's claim over her inherited rights to harvest birds' nests over natural caves. Such a right is recognised in *Dayang Kayang Dwaila v Mahkamah Anak Negeri, Lahad Datu.*[110] Such a right to inherit confer the beneficiary an interest with locus standi to take action to protect her interest, despite the fact that she is not a citizen.

5.2 ***Wildlife Protection Ordinance 1998 Chapter 26*** - SARAWAK

In Sarawak, the law applicable to the EBN industry is *Wildlife Protection Ordinance 1998 (Sarawak WPO 1988), Wildlife Protection (Edible Bird-Nests) Rules 1998* and *Wildlife Protection Rules1998.* They also must comply with *GAHP* guidelines issued by the DVS.[111]

Sarawak has long regulated their EBN industry. The Sarawak Wildlife Department is responsible to enforce regulations relating to harvesting of birds' nests produced by natural

[109] [2008] 4 MLJ 605,

[110] [2005] 5 MLJ 603.

[111] see Syed Azwan Syed Ali, *Bird-nests hysteria rages,* http://allmalaysia.info/news/story/asp?file=/2008/11/25/ state2584334&sec= mi_sarawak (Tuesday November 25,2008) accessed 28th October 2010

swifts at caves in Sarawak. The collection, selling, buying, importing and exporting into and out of Sabah and Sarawak were properly regulated under the above mentioned rules. However, these regulations primarily concern the collection of the EBN from natural caves.

5.2.1 Interpretations, administration and wildlife sanctuary.

Under Section 2 of the Sarawak *WPO 1988*, the meaning of the words 'animal' and 'nests ' has meanings as stated in the Sabah *WCE 1997* and *WCA 2010*.

In Sarawak, the administration of wildlife conservation is under the Controller of Wildlife his deputy and wildlife wardens.[112] Section 4 of Sarawak *WPO1998* stipulates seven functions and duties of the Controller; they are brief but wide in its application and nature.

As far as the wild birds within the wildlife sanctuary of Sarawak are concerned, no one shall enter the sanctuary without written permission from the warden in charge. [113]

Within a wildlife sanctuary itself, it will be an offence to be in possession of any wild animal (including wild birds) or any recognisable part or derivative thereof. [114] The derivative of the wild bird necessarily includes its nests and eggs. Therefore, if any EBN producing swifts is found in the sanctuary, the above provisions would apply and the possession of EBN will be in violation to the Act.

5.2.2 BH and Licensing authority

Unlike the position of Sabah where only four swifts species are included as protected species of wild birds and West Malaysia where EBN producing swifts have been totally removed

[112] See Section 3 of *Sarawak WPO 1988*

[113] See Section 24(1) of *Sarawak WPO 1988*.

[114] See Section 24(2) of *Sarawak WPO 1988*

from both totally protected and protected species of wild birds under *WCA 2010,* Sarawak adopts a more liberal and encompassing stand by including wider swifts species under its Sarawak *WPO 1998.*

Under Part II B of the Schedule in *WPO 1998*, all swifts namely all species of Aerodramus, Hydrochous and Collacalia are classified as protected wild birds. This literally classified all the EBN producing swifts under protected wild birds' category under the Sarawak *WPO 1998.*

Therefore, in Malaysia, Sabah and Sarawak maintain EBN producing swifts as protected wild birds but West Malaysia totally removed such swifts as protected species.

In Sarawak the EBN industry is regulated by Sarawak *WPO 1998*. Section 33 (2) of the ordinance provides that:

> *'No person shall collect, sell, offer for sale or export from or import into the State, any nests or any swifts or any recognisable part or derivative thereof without a license from the Controller.'*

In Part VI of the Sarawak *WPO 1998*, the power of the *Majlis Mesyuarat Kerajaan Negeri* (State Executive Council) to make rules and orders relating to edible nests , guano or animal feces is further strengthened by Section 55 (j) and (l) which provide that:

> *' The Majlis Mesyuarat Kerajaan Negeri may make rules generally for carrying out the provisions of this Ordinance, and in particular such rules may provide for –*
>
> *(j) regulating and controlling the collection, sale , offer for sale , export or import of turtle eggs, edible birds' nests , guano or animal faces;*
>
> *(l) the fees and forms for licenses and permits issued or granted under this Ordinance.'*

The above provision is wide enough for the Controller of Wildlife in Sarawak to make any rules and impose such terms in the license to regulate the collection, sale and import and export of EBN.

5.2.3 Licensing of BH premises.

In West Malaysia, DVS via *IGP* stipulates that the licensing authority of BH is the local governments. There is no specific provision on BH licensing in Sabah. What about the control of buildings of BH in Sarawak?

Our survey of the laws of East and West Malaysia as discussed in Para 5.2.2. above shows that the Sarawak legislative body has made clearer and more adequate provisions in regulating BH, especially Section 55(j) and (l) of Sarawak *WPO 1998* discussed above.

The uncontrolled building of BHs or conversions of existing residential and commercial buildings into BHs that fixed and played loud bird's songs are the main sources of complaints by the public and NGOs.

Sarawak can solve these problems by licensing the industry under sections 35(1) and (2) of Sarawak *WPO 1998* which provides that:

> *(1) No person shall breed, rear or keep any wild bird, reptile or amphibian for the purpose of trade, sale or commercial usage without a license from the Controller,*
>
> *(2) The sale or offer for sale of any wild animal, bird, reptile or amphibian which is bred, reared or kept pursuant to subsection(1) shall be regulated –*
>
> *(a) By conditions imposed in the license issue there under; or*
> *(b) Where the sale or offer for sale is not carried out by the holder or a license issued under subsection (1), in accordance with a license for the sale thereof issued by the Controller.*

Reading sections 33(2) with 35(1) and (2) of Sarawak *WPO 1998*, the sale of the wild birds will include their derivatives. Therefore, the sale of EBN and eggs can only be conducted in accordance with these provisions.

5.2.4 Does a BH operators breed, rear or keep swifts?

In order to bring any BH operators within Section 35 of Sarawak *WPO 1998*, the state must prove that by operating BH, a BH operator indeed breeds, rears or keeps swifts in the premises. This is not an easy task and the legal issues on this matter are not tested in court as yet.

If the Sarawak state charges a BH operators operating BH without a license that a BH operators breeds, rears or keeps swifts without a license what is the possible argument that can be raised by the accused?

An interesting legal question to be decided is , if a person build a building suitable for the inhabitation of the swifts and indeed swifts flew in and built nests in the BH, can one be said to 'breed, rear or keep any wild bird'?

This question is important because if the meaning of breed, rear or keep is not given a proper interpretation, it may frustrate the intendment and spirit of Sarawak *WPO 1988* or any other wildlife conservation law relating to EBN and BHs.

There are two sides to the argument. For the BH operators he may argue that he does not breed, rear or keep any swifts in his BH because he has no ownership or proprietary claim over the swifts that flew into his BH. Even if those swifts that made nests in his BH, he does not care for nor has control of such swifts. The swifts are free to fly in and out or permanently leave the BH just like any other wild bird.

Unlike other licensed wild birds dealer or other poultry farm owners, the dealer and farm owners have the care and control of the birds (such as chicken and ducks). The wild birds' dealers can restrict the free movement of their birds in the cages and the farmers who breed, rear and keep the chicken and ducks can limit the movement of their chicken and ducks within a confined area. On top of that, the dealers or farmers can legally and physically pass the ownership and possession of the wild birds, chicken or ducks sold to any buyer.

Therefore, since a BH operators do not have the care and control, or the ability to confine or restrict the free movement of the swifts and they are incapable of passing the physical possession of or ownership of the swifts to any buyer, the BH cannot be said to breed, rear or keep the swifts.

If such a case takes place in Sabah, the argument is more in the favour of the BH operators as Sabah has declared all wild birds are the property of the government. Therefore, BH operators cannot be said to breed, rear or keep the wild birds of Sabah government!

On the other hand, for Sarawak and West Malaysia, it is the considered opinion of the writer that in construing the meaning of breeding, rearing or keeping of the swifts, the element of care and the control, ownership of the swifts or whether the BH is capable of passing the physical possession of the swifts are not the deciding factors to be considered. This argument is based on the following grounds:-

(i) though in normal situations breeding, rearing or keeping suggest that the person breeds, rears or keeps a wild bird or wild animal has care, control and possession of such birds and animals, this does not necessarily mean that all those who breed, rear or keep any wild birds and animals must necessarily belong to the owners because breeding, rearing or keeping does not entail to ownership.

(ii) breeding, rearing or keeping refers to the temporary care and control over a certain period of time. A BH operator is capable of keeping the swifts in captivity even if for a short time as it is within the ability and capability of a BH to close all the exit points in the BH to prevent the swifts from leaving the BH. By providing nesting facilities to the swifts and inducing the swifts to occupy such premises, the BH operators have indeed breed, rear or keep the swifts.

(iii) though the BH operators are not in physical possession of the swifts, the BH operators are in possession and control of the nests. Section 35 applies to breeding, rearing or keeping but there is another specific provision i.e. Section 33 regulates the sale of the wild birds. Since these two sections clearly distinguish selling of swifts from breeding, rearing or keeping the swifts, it is thus clear that ownership and physical possession of the swifts and breeding, rearing or keeping of the swifts are two different things.

5.2.5 Departments that involved in the EBN industry in Sarawak.

In Sarawak, the licensing authority for the sale and purchase, import and export of EBN and for regulating the breeding, rearing or keeping of swifts premises is the Sarawak Wildlife Department.

While the Sarawak Wildlife Department controls the collection, harvesting, sale and exporting of the EBN, the Sarawak Agriculture Department is in charge of issuing health certificates under Section 9 (1) of the *Public Health Ordinance 1999* by imposing fees of RM10.00 per consignment. This is to ensure that the EBN products produced in Sarawak are clean and fit for consumption.[115]

[115] see Harry , *Sarawak : Licensing of Trade , Import and Export of Edible Birds'* Nests , http://www.mered.org.uk / Hornbill / Uning.htm ; (accessed at November 29th ,2012)

As to importing or exporting of the EBN, the Custom Department of Sarawak will impose 5% sale tax on the total quantity of the EBN imported or exported. [116]

Under Sarawak's *WPO 1988*, Section 2 of the *1998 Ordinance* includes birds under the definition of 'Animals'. Section 2(1) of *WPO 1998* defines 'Animals' as:

> *'any species of Animals, and includes mammals, birds, reptiles, amphibians, fish, invertebrates, or any recognisable part or derivative thereof'.*

The meaning of 'nests' under the Sarawak *WPO 1998*, the repealed *POWLA 1972* and the WCA 2010 applicable in West Malaysia is quite similar.

The meaning of 'nests' in Section 2 of the Sarawak WPO 1998:-

> *'nests' means-*
>
> *(a) in relation to a wild bird, any structure or device which is being constructed or is being used by wild birds for –*
> *(i) the laying of their eggs;*
> *(ii) the incubation of their eggs; or*
> *(iii) the protection or nurture of immature wild birds.*

Under Section 2 of *WCA 2010*, the meaning of 'nests' is defined as:

> *'any abode, den or any other structure which is being constructed or is being used by any wildlife for-*
> *(a) procreation;*
> *(b) the laying of eggs;*
> *(c) the incubation of eggs;*
> *(d) the protection of eggs or immature offspring; or*
> *(e) the nurture of immature offspring.*

[116] ibid

Based on the above definition the meaning of 'nests' that covers any structure or device which is being constructed or any structure is being used by wild birds is very wide. A structure which is being constructed includes nests made by the birds and also any structure or device constructed by man for laying eggs, incubation and protection of immature swifts off spring.

Under Part III of the repealed *POWLA 1972* the Director of Wildlife has power to issue licenses to a wide number of areas inclusive of issuing licenses to dealers; Part III does not expressly confer upon the Minister any power to make regulations regarding EBN in BH.

Sarawak has regulated the collection, sale and export of EBN under sections 33 and 34 of Sarawak *WPO 1998*. These provisions placed the monitoring and regulation of such activities under the Wildlife Department. [117]

5.2.6 Exemptions under the Sarawak *WPO1998*

Like other wildlife conservation laws, s 37 of the Sarawak *WPO 1998* has also allowed natives to possess not more than five (5) kilogrammes of any species of wild mammals, birds or reptiles for personal consumption if the natives are found residing within a 'Native Area Land' or 'Native Customary Land' as assigned by the *Land Code* of Sarawak.

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[117] See s. 33 (2) and (3) of the Sarawak's *Wildlife Protection Ordinance 1998*.

Section 33 (2) and (3) of the Sarawak's *Wildlife Protection Ordinance 1998* provides that :

(2) No person shall collect, sell, offer for sale or export from or import into the State, any nests of any swifts or any recognizable part or derivative thereof without a licence from the Controller.

(3) Any person who contravenes subsection (1) or (2), or who fails to comply with any condition imposed in a licence issued by the Controller for the purposes of subsection (2), shall be guilty of an offence: Penalty, a fine of five thousand ringgit.

Section 34 of the Sarawak's *WPO 1998* also provides that :

Any person who buys—

(a) any wild Animals or any recognizable part or derivative thereof which is sold or offered for sale in contravention of Section 33(1); or

(b) any nests of swifts which is offered for sale in contravention of Section 33(2), shall be guilty of an offence : Penalty, a fine of two thousand ringgit.

Consuming wild mammals, birds or reptiles in deep forest of Sarawak by the natives is a matter of survival and the right to consume such animals birds and reptiles are limited to the Native Area or Native Customary Land as defined under the *Land Code*.[118]

5.2.7 Prosecution of offences

The right to prosecute any offences under Malaysian law whether these law are state laws or acts passed by Parliament is always remain with the Federal Attorney General and not any State Attorney-General.

In Sarawak, Section 52 of Sarawak *WPO 1998* provides that prosecution of any offences under Sarawak *WPO 1998* can only be done by the Public Prosecutor or any person authorised in writing by him under Section 377(b) of the Penal Code.

In the case of *Public Prosecutor v Lee Ming & Anor*[119] an accused was charged for an offence committed under the Sarawak *Forest Ordinance (Sarawak Cap 126)*. The prosecution was conducted by a state legal officer sanctioned by Deputy Director of Forests, Sarawak to act as

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[118] See Section 37 of the Sarawak *WPO 1998* that provides that:-

37. (1) No person shall, unless licensed under this Ordinance, have in his possession any species of wild mammal, bird, reptile or amphibian: Provided that—

(*a*) a native residing within a Native Area Land or Native Customary Land may have in his possession, for his own consumption or use, any wild mammal, bird, reptile or amphibian or other recognizable part or derivative thereof; and

(*b*) any other person may have, for his own consumption, not more than five kilograms of wild mammal, bird, reptile or amphibian.

(2) Any person who contravenes subsection (1) shall be guilty of an offence: Penalty—

(*a*) if the animals concerned is a totally protected species, the penalty shall follow those specified in subsection (1) of Section 29 per individual animals and animals part in his possession;

(*b*) if the animals concerned is a protected species, the penalty shall follow those specified in subsection (2) of Section 29 per individual animals and animals part in his possession;

(*c*) for all other species, the penalty shall be imprisonment for one year and a fine of two thousand ringgit per individual animals and animals part found in his possession.

(3) Any person having in possession any wild mammal, bird, reptile or amphibian exceeding the quantities stipulated in paragraph (*b*) of the proviso to subsection (1) shall be deemed to have intended to sell or offer for sale such wild mammal, bird, reptile or amphibian, and be guilty of an offence under Section 33(1).

(4) The terms "Native Area Land" and "Native Customary Land" in subsection (1) shall have the same meanings assigned thereto in the Land Code.

[119] [1998] 4 MLJ 113

forest officer under Section 92 of the *Forest Ordinance (Sarawak Cap 126)*. Section 92A *Forests Ordinance (Sarawak Cap 126)* reads as follows:

> *Prosecution in respect of offences under this Ordinance or by any subsidiary legislation trade hereunder may be conducted by:*
>
> *(a) The State Attorney General or any legally qualified officer authorised by him;*
>
> *(b) The Director; or*
>
> *(c) any forest officer or any other public officer generally or specially authorised in that behalf by the Director.*

It was held that the prosecution conducted by a state legal officer sanctioned by Deputy Director of Forests, Sarawak to act as forest officer under Section 92 of the *Forest Ordinance (Sarawak Cap 126)* was bad in law. Section 92A of the *Forests Ordinance (Sarawak Cap 126)* and s 39 of the *Wildlife Protection Ordinance* was held unconstitutional and therefore null and void as the provisions allow persons other than the Federal Attorney General to institute,conduct or discontinue any proceedings for an offence commited under the said *Forests Ordinance*.

Therefore, the court held that the prosecution against Lee Ming was bad in law as 'the authorisation given pursuant to the provisions did not clothe the prosecution officer with the authority to prosecute. In this regard, the learned sessions court judge was right in concluding that the prosecution was a nullity'.[120]

5.2.8 *The Wild Life (Edible Birds' Nests) Rules 1998*

This is the rule made under section 55(1)(j) of the Sarawak WPO 1988. It takes effect from 1st October 1998. Rules 3 regulate the collection of EBN (section 3) natural caves or the natural habitat of the swifts, Rule 4 regulates the sales and Rule 5 regulates the import and exports of

[120] Ibid see p 117 para B-H

EBN from Sawarak. The swifts' family that is applicable under this Rule 2 is the genus Collacalia that includes the Collacalia fuciphagus and Collacalia maxima.

Though the right to collect caves is permited by license, Rule 8(a) clear states that the license does not confer the licensee any right to the caves . Rule 8(b) requires that entry to any caves within national park, natural reserve or Wild Life sanctuary is subject to the relevant regulations.

5.2.8 Other legislation applicable to the Sarawak's EBN industry

Apart from Sarawak *WPO 1998* and *The Wildlife (Edible Birds' Nests) Rules 1998* the following EBN related regulations are applicable in East Malaysia:-

1. *Uniform Building Bylaws 1986,*
2. *Destruction of Disease Bearing Insects Act 1975*
4. Health Department regulations,
5. Collection of birds' nests licenses and a trading of birds' nests licenses from the Department of Wildlife and National Parks,
6. *Forests Ordinance (Sarawak Cap 126)* ss 18(1), 68(1), 80, 86(1), 92A
7. *Penal Code (FMS Cap 45)*

CHAPTER 6: EBN LEGISLATION IN WEST MALAYSIA

In West Malaysia, protected birds are at all material times placed under the care of and charge of the Department of Wildlife (DWL) under the repealed *POWLA 1972* and *WCA 2010*. EBN producing swifts species were placed under the protected wild birds' category, but when *WCA 2010* came into force, the whole EBN producing swifts were totally removed from the *WCA 2010*. But DWL in West Malaysia is still the licensing and enforcement authority in certain aspects of the EBN industry.

With rapid growth of the EBN industry in the last two decades, the production of EBN from man-made BH has over taken the EBN production from natural caves. New sets of conflicts and problems have now arisen.

New complicated issues including those of noise pollution, public health issues, BHs built within World Heritage Sites, fake nests, excessive nitrite contents in EBN and marketing EBN in overseas market have overshadowed the caves ownership disputes. These pressing issues have haunted the local, state and Federal Governments over the past years and remained unresolved until to date.

The problems relating to noise pollution, public health and world heritage site are easier to handle or regulate.

A further arguable jurisdictional problem is which ministry or department is in charge and which department should take charge of licensing and regulating the EBN industry? These issues involve several government departments and there are also overlapping areas of responsibility among the ministries, state governments and also local governments. These new issues and new conflicts challenged both the Federal and State governments to take further necessary measures.

In 2009 the cabinet decided to place the West Malaysia EBN industry under DVS. For East Malaysia states Sabah and Sarawak; their respective states' DWL are still in charge.

Despite the fact that numerous guidelines have been issued and the cabinet has entrusted the DVS to take charge of the EBN industry, has the Federal and State governments done enough to address the issues and conflicts? And if so, to what extent can the regulations address them? These are discussed below.

6.1 ***Protection of Wildlife Act 1972 (Act 76) ('POWLA 1972')***

This repealed *POWLA 1972* came into force on 4th of May 1972. POWLA 1972 repealed the Wild Animals and Birds Protection Ordinance 1955 after been in force for seventeen years. Thirty eight years later *POWLA 1972* was repealed by *WCA 2010* from 4th of November 2010. Although repealed, due to the historical importance in relation to the study of the development of wildlife law in West Malaysia, *POWLA 1972* is discussed here.

The primary purpose of *POWLA 1972* was to protect wildlife in West Malaysia. Sabah and Sarawak has their own set of Ordinances protecting their wildlife. *POWLA 1972* applied to both animals and birds.

As for trading of EBN among the BH operators and the raw EBN merchants, the law applicable is the relevant commercial laws and law of contract of Malaysia. Imports and exports of EBN are governed by customs laws, health regulations and *CITES* [121] regulations.

[121] *CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora)* is an international agreement between countries that are parties to the agreement which aims at ensuring that international trade in specimens of wild animals and plants does not threaten their survival. *CITES* also regulates cross-border trade in wild animals and plants to safeguard certain species from over-exploitation. *CITES* was agreed at a meeting of representatives of 80 countries in Washington DC., United States of America, on 3 March 1973, and on 1 July 1975 *CITES* entered in force. In 1978, Malaysia became a state party acceding to *CITES*. In Malaysia, Ministry of Science and Environment is the *CITES* Scientific Authority and several government agencies such as the departments in charge of Wildlife, Fisheries, Agriculture and Malaysian Timber Industry Board are *CITES* Management Authority). DWL controls the trade of wildlife and related products by issuing *CITES* permits for imports and exports. http://www.cites.org/eng/disc/what.shtml accessed on 15th April 2011

6.1.1 Totally protected species vs. Protected species

POWLA 1972 divided the list of wild animals and birds into two categories. The first category is the totally protected species and the second category is the protected species. For birds, the lists of birds stated in Schedule Three are totally protected birds and the list of birds stated in Schedule Four are protected species.

The main difference between the totally protected species and protected species are, in the case of totally protected species, no one shall shoot, kill or possess such species save and except as provided in Part V of *POWLA 1972* [122] while for protected species, only licensed hunters, dealers or persons permitted under *POWLA 1972* can shoot, kill or be in possession of the said species. [123]

An interesting issue arose in the New Zealand High Court case *Police v Johnson*[124] as to whether a person in possession of dead '*absolutely protected or partially protected wildlife*' without permit is guilty under the *New Zealand Wildlife Act 1953*?

In *Police v Johnson* ,in 1984 the accused took an injured kiwi bird to a veterinary surgeon but it was dead on arrival. At his request, the Department of Wildlife then issued him a permit authorising him to retain and stuff the dead bird which was ostensibly intended to be given by him to a named primary school. Four years later in 1988 he was still found in his possession of the dead kiwi. He was convicted for having in his possession without lawful authority a dead kiwi, an absolutely protected wildlife species.

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[122] See s 2 of *POWLA 1972*.

[123] As for the totally protected species, Part V of *POWLA 1972* allows limited exceptions to the right to shoot, kill or in possession of the species. Among other exception are rights to shoot, kill, take, keep, buy, house, confine or breed under special permit issued for research purpose (section 51A); rights given to aborigines to shoot or kill the species for food (section 52); right of rangers acted in bona fide to kill in order to prevent danger to human life and property or to carry our mercy killing of such species (section 53); right of owner or occupier acted in bona fide to prevent destruction of crops (sections 54 and 55 and shooting or killing if the animals constitutes an immediate danger to human life (section 56).

[124] [1991] 3 NZLR 211; 1990 NZLR Lexis 1007

On appeal, he argued that a dead and stuffed kiwi bird was not an absolutely protected wildlife because a dead bird is not a living bird. The New Zealand High Court at Auckland held that the expression 'absolutely protected or partially protected wildlife' should be interpreted to mean an animals, or bird, that is living or has been living in a wild state. Therefore the High Court dismissed his appeal and held that the kiwi whether a living or dead bird it is still an 'absolutely protected or partially protected wildlife'.

Though a New Zealand decision does not bind the Malaysian courts, this case can be persuasive in Malaysia if any person in Malaysia having possession of dead totally protected species of wildlife without license or permit or falls under exemptions, he may be held liable under *WCA 2010*. Otherwise those poachers and wildlife smugglers can easily get away from WCA 2010 by slaughtering the totally protected or protected animals and birds.

6.1.2 From protected species in 2003 to unprotected species in 2010

Prior to 2003, *POWLA 1972* classified 13 species of swifts as totally protected species under the Schedule Three. In the year 2003, the following two swifts' species were removed from the Totally Protected Wild Birds species in Schedule Three and moved to Schedule Four as Protected Wild Birds species: [125]

1. Black-nests Swifts (*Aerodramus maximus*);
2. Edible-best Swifts (*Aedrodramus fuciphagus*) [126]

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[125] see Item 5a and 5 B Schedule Four of the *POWLA 1972*, inserted by PU (A) 392/03

[126] Out of the remaining 11 species, the first nine (9) species are from Apodidae family and the last two species are from Tree Swifts, family Hemiprocnidae. The remaining 11 species of totally protected species were:-

1. Giant Swifts (*Collocalia gigas*)
2. Himalayan Swifts (*Collocalia brevirostis*)
3. White-bellied Swifts (*Collocalia esculenta*) Layang Padi
4. White-throated Swiftslet (*Chaetura caudacutta*)
5. Malaysian Spinetail Swifts (*Chaetura gigantean*) Layang-layang Besar
6. White-rumped Spinetail Swifts (*Chaetura leucopygialis*)
7. Migrant Swifts (*Apus pacificus*)

Therefore this removal empowered DWL to make license to regulate swifts and the EBN industry under *POWLA 1972*.

Later, the cabinet decided to place the EBN industry under the jurisdiction of DVS. The five (5) species of swifts inclusive of Black-nests Swifts (*Aerodramus maximus*) and Edible-best Swifts (*Aedrodramus fuciphagus*) were totally removed from protected species under the new law *WCA 2010* and they became ordinary wild birds.[127]

But by removing the 5 protected swifts species from *WCA 2010*, does that mean swifts and the EBN industry now come under the exclusive domain and jurisdiction of DVS?

This question will be examined in Para 6.4 below.

6.2 The EBN Industry under *Wildlife Conservation Act 2010 (WCA 2010)*

6.2.1 Resolving EBN jurisdictional issues

Between 2003 and 2009, despite having the authority to license and regulate swifts and the EBN industry, DWL is unable to cope with the new problems such as nuisance complaints and problems caused by the uncontrolled constructions or conversions of existing buildings into BHs in urban areas alone.

Concerted efforts of at least three major authorities namely the DWL, DVS and local governments are necessary to handle the problems. There are overlapping roles and jurisdictions between DVS and DWL as far as handling edible-nests producing swifts is concerned; both are competent departments with competent officers handling the issues.

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8. House Swifts (*apus affinis*)
9. Palm Swifts (*Cypsiurus parvus*)
10. Crested Tree Swifts (*Hemiprocne longipennenis*) Layang-layang Berjambul;
11. White-whisked Tree Swifts (*Hemiprocne comata*)

[127] Interview with the Deputy Director of DVS Dato' Dr. Ahmad Suhaimi Bin Omar in a meeting " Mesyuarat Penyelarasan R&D Bersama Agensi berkaitan dengan Industri Sarang Burung Walit di bawah EPP 2, Programe National Key Econocmic (NKEA) Bil 03/2011" attended by the writer on 1st March 2011 at 2.30 p.m., at Bilik Mesyuarat Utama. Bahagian SPS, Tingkat 5, Blok Podium 4G1, Kementerian Pertanian dan Industri Asas Tani, Wisma Tani, Putrajaya, Malaysia attended by the writer.

DWL is under the charge of Ministry of Science and Technology. DVS is under Ministry of Agriculture and Agro Based Industry (MOA).

Due to these new problems faced by the public and the NGOs, a crucial inter-departmental understanding *vis-a-vis* the EBN jurisdictional issues between the DWL and DVS arose. Which department is more suited to take charge of regulating the EBN industry?

The argument advanced by DVS is that, DVS is the specific department that deals with animals and birds and under *Animals Act 1953*. DVS is in charge to maintain and regulate the welfare of animals and birds so as to prevent any cruelty to such animals and birds. So DVS should be in charge of regulating the EBN industry.

DWL argued that since the EBN producing swifts are protected species, therefore DWL should be in charge. To overcome these departmental jurisdictional issues in 2010 the parliament had passed *WCA 2010* that expressly repealed *POWLA 1972* with immediate effect.

There are numerous new provisions introduced by *WCA 2010* that are related to birds' nests. We will examine and discuss below whether and to what extent *WCA 2010* resolves the jurisdictional issues and whether *WCA 2010* can effectively regulate the EBN Industry in Malaysia.

As stated above, the Cabinet has on 1st of April 2009 entrusted DVS to totally resume the task of planning and developing the EBN industry. [128] But in *WCA 2010*, the legal position suggest otherwise. Did *WCA 2010* resolves jurisdictional issues between these two departments? This is discussed in Para 6.2.3 below.

[128] See note 37.

6.2.2 The Needs to Improve Law on Wildlife Conservation in Malaysia.

The common awareness of the public and the world at large over global warming, the needs to conserve the planet earth generally and the needs to conserve wildlife, fish, flora and fauna, oceans and ozone *etc.* had improved tremendously over the last few decades.

In 2010, a news that "rocked" the conservation circles and Malaysian public when a 52 year old Malaysian wildlife trafficker Anson Wong was given a 71 months jail terms and fined US60,000.00 for wildlife trafficking. Anson Wong is known in the United States as "Lizard King". He was caught on 26th August 2010 at KL International Airport while trying to smuggle 95 boa constrictors without permit to Jakarta.[129] This further escalated the need to reform our conservation law.

As far as EBN is concerned, mass producing of EBN through man-made habitats only gained momentum in late nineteen eighties. Traditionally, EBN were collected from natural caves. But with the rapid growth of BHs in Malaysia, the negative by-products of such industry such as nuisance etc. became apparent. The Government must respond to the demands for such industry to be regulated. Thus POWLA 1972 was therefore repealed and replaced by WCA 2010.

[129] See The Star 7th September 2010. However in the local newspaper the Sun 23rd February 2012 under the title " Anson Wong now a free man", it was reported that The Shah Alam High Court had enhanced his jail term from six months to five years. On appeal, the Court of Appeal chaired by Justice Low Hop Bing reduced his jail terms from five years to 17 and half months. ' Low said the High Court in enhancing the jail term on Wong, had erroneously considered certain facts such as the squeezing of the 95 boa constrictor snakes into a small bag, thereby torturing the snakes , Bernama reports. He said the High Court had also erroneously considered two venomous rhinoceros viper snakes (found in Wong's bag) but were not stated in the charge against Wong. Low said the charge against Wong was one of exporting the boa constrictors without a permit, therefore any other consideration would be outside the ambit of the charge which warranted the Court of Appeal 's intervention.' The RM190,000.00 fine impose on Wong by the Sepang Sessions court was set aside as the ceiling for such fine is only RM10,000.00

6.3 *WILDLIFE CONSERVATION ACT 2010 (WCA 2010)*

WCA 2010 receives its Royal Assent on 21st October 2010 and came into force on 4th November 2010. *WCA 2010* repealed the *POWLA 1972*. [130]

WCA 2010 has literally rewritten and rearranged the old provisions of *POWLA 1972* but at the same time it also introduced numerous licensing and enforcement provisions pertaining to the wildlife.

In this research, we will only discuss on the improvements and changes made by the *WCA 2010* in relation to EBN or bird nests.

6.3.1 Relevance of *WCA 2010* to the EBN industry

After *WCA 2010* came into force on 4th November 2010, the questions that can be posed by BH operators and the concerned public are:

i. Is the WCA 2010 applicable to EBN producing swifts? If so, to what extent *WCA 2010* is applicable to various legal issues concerning EBN?

ii. And if not, what are the laws that govern EBN now?

6.3.2 Is *WCA 2010* applicable to EBN producing swifts? And if so, to what extent *WCA 2010* is applicable to various legal issues concerning EBN?

On the surface of *WCA 2010*, the Act applies to bird nests as there are many provisions which clearly and specifically deal with bird nests.

[130] It is noted that preamble of *POWLA 1972* stated that POWLA is an "act to consolidate the laws relating to and to further provide the protection of wildlife and for purposes connected therewith' whereas the pre amble of *WCA 2010* states as follows: "An Act to provide for the protection and conservation of wildlife and for matters connected therewith'.

It began with s 9 (1) (b), (c), (d) and (f) of *WCA 2010* which requires any person who takes or keeps any part or derivative of any protected wildlife; collect birds' nests ; carry on the business of dealing, importing, exporting or re-exporting any part or derivative of any protected wildlife, to obtain license from the DWL.

Section 3 defines 'part of derivative' means that any substantially complete or part or derivative of wildlife that include nests and eggs.

Nests are defined under s 3 as 'any abode, den or any other structure which is being constructed or is being used by any wildlife for procreation, laying of eggs, and incubation of eggs, the protection of eggs or immature offspring or the nurture of immature offspring'. It is the considered opinion of the writer that the meanings assigned thereto should be read disjunctively.

The business of dealing is defined under s 3 as to 'include selling, purchasing for resale of protected wildlife or any part or derivative of any protected wildlife whether for food or medicinal purposes'. EBN are bird's nests that are consumable as food and for medicinal purposes.

Since *WCA 2010* applies to both protected and totally protected wild animals and wild birds, on the surface, *WCA 2010* also applies to EBN producing swifts.

But upon careful examination of the First and Second Schedule of *WCA 2010*, we found that only the following family or swifts' species came under protected species in *WCA 2010*:

First Schedule: Protect Wildlife		
Family	**Scientific Name**	**Common Name**
Apodidae (typical Swifts)	*Colocalia esculenta*	Glossy swifts

Second Schedule: Totally Protect Wildlife		
Family	**Scientific Name**	**Common Name**
Apodidae (typical Swifts)	*Aerodramus brevirosrtris*	Himalayan Swifts
	Aerodramus salanganus	Mossy-nests Swifts
	Apus affinis	House Swifts
	Apus pacificus	Fork-tailed Swifts
	Cypsiurus balasiensis	Asian Palm Swifts
	Hirundapus caudacutus	White-throat Needletail
	Hirundapus cochinchinensis	White-vented Needletail
	Hirundapus giganteus	Brown Needletail
	Hydrochous gigas	Waterfall Swifts
	Raphidura Leucopygialis	Silver-rumped Needletail

Under the First and Second Schedule of *WCA 2010* and under Section 3 of the Schedule, the interpretation clause clearly states among others mentioned that:

> *'the common names includes after the scientific names of families are for reference only. They are intended to indicate the species within the family concerned that are included in the schedule. In most cases this is not all of the species within the family.'*

Section 4 of the Schedule further provides that:

'where there is conflict between a scientific term and a common term in the use of the name of any species in this Schedule, the scientific term shall prevail...'

Therefore it is clear from the interpretation clauses in the First and Second Schedule, the scientific term of the species is to be preferred and only those specific species stated in the Schedule are to be treated as the species intended to be covered by *WCA 2010* as 'in most cases this is not all of the species within the family'.

In order to determine whether *WCA 2010* applies to EBN producing swifts, we have to go back to the species that produce EBN in South East Asia. As stated in Chapter 2 above, there are four known swifts'' species that produces EBN in the South East Asian countries, they are

1. *Collocalia fuciphaga;*
2. *Collocalia germanis,*
3. *Collocalia maxima;* and
4. *Collocalia unicolor.*

In Malaysia, under the repealed *POWLA 1972*, there are two protected Apodidae EBN producing swifts' species:

i. Black-nests Swiftlet (*Aerodramus maximus*)

ii. Edible-nests Swiftlet (*Aerodramus fuciphagus*).

Therefore, it is clear that Black-nests Swifts and Edible-nests Swifts, the two protected species under *POWLA 1972* were removed from both the protected and totally protected species under *WCA 2010*. They are removed from the control and jurisdiction of the DWL.

By removing these two species of edible-nests producing swifts from the totally protected and protected species of birds under *WCA 2010*, the licensing power to control the possession of swifts is taken out form DWL. But for the EBN industry, the focus is on the nests and not the

swifts. The question therefore is does that totally remove DWL's jurisdiction and control over the eggs and nests of the edible-nests producing swifts?

The answer is in the negative. The *WCA 2010* did not totally remove EBN producing swifts from the DWL but in fact, the *WCA 2010* further strengthen the position and the role of the DWL as key department in charge of the EBN industry based on the reasons below.

Section 3 of *WCA 2010* defines the following words:

i. *'wildlife' as 'any species of wild bird whether totally protected or protected, live or dead...and whether or not (they) may be tamed or bred in captivity.'*

This definition covers edible-nests producing swifts.

ii. *'part or derivative' as' any substantially complete or part or derivative of wildlife that include 'nests and eggs'.*

iii. *'birds' nests collector' as ' a person who is granted a license to collect bird's nests under this Act'*

iv. *'nests' as ' any abode, den or any other structure which is being constructed or is being used by wildlife for procreation, the laying, incubation and protection of eggs or immature offspring or the nurture of the immature offspring.*

v. *'business of dealing' as ' a business involving the carrying out of the selling ...any part or derivative of any protected wildlife as food or for medicinal purposes; selling or purchasing fort resale any part or derivative of any protected wildlife, housing, confining or breeding any wildlife for sale.*

The key emphasis under Section 3 is that, the word wildlife means any species of wild birds whether totally protected, protected or not. EBN producing swifts are certainly wild birds and thus covered by *WCA 2010*.

The most relevant provision of *WCA 2010* to the EBN industry is Section 64 of *WCA 2010*. Section 64 made collecting birds' nests without license an offence and upon conviction, is liable to a fine not less than RM20, 000.00 and not more than RM50, 000.00 or to imprisonment not exceeding 2 years or both.

That means EBN collectors from both BH and natural caves in Malaysia now must be licensed by the DWL. As a birds' nests under *WCA 2010* is not only confined to the nests of totally protected or protected birds but any wild bird, therefore, collecting EBN is covered by Section 64 of WCA 2010.

As to the selling of the birds' nests, Section 41 (1) of *WCA 2010* provides that:

> *'a bird's nests collector shall sell birds' nests collected by him only to a licensed dealer or licensed taxidermist'*

And Section 41(1) of the same Act provides a fine not exceeding RM20,000.00 or imprisonment not exceeding one year or both for infringing this provision.

The prohibition that bird's nests collector cannot sell the bird's nests to unlicensed dealers is a very disturbing provision that certainly will affect the EBN industry if this section is strictly enforced. This provision might be abused by the relevant agency to force Malaysian BH operators to sell their EBN to a controlled number of closely related or associated licensed dealers that will eventually monopolies the EBN products in Malaysia. As the *WCA 2010* had just come into force from 4th November 2010, most of the BH operators in Malaysia are not aware of this provision yet.

Reading sections 41 and 64 of *WCA 2010* together, it means that both birds' nests collectors and dealer must be licensed by the DWL. Therefore, in answering the above question, it is clear that *WCA 2010* is applicable to the EBN Industry.

WCA 2010 is also applicable to the EBN industry in the following ways.

Sections 74 and 75 of *WCA 2010* only apply to destruction or damage of such eggs belonging to totally protected and protected wildlife only.

Though Section 76 of *WCA 2010* prohibit the destruction of or damage to wildlife's eggs (that also covers edible-nests producing swifts), this provision only covers those action taking place

within a wildlife reserve or a wildlife sanctuary. Therefore, Section 76 only applies to the destruction or damage of swifts' eggs within a wildlife reserve or a wildlife sanctuary and it does not cover eggs in the man-made habitats such as BH. So, there is a clear distinction in the treatment between eggs in wildlife reserves or wildlife sanctuaries from those eggs outside wildlife reserves or wildlife sanctuaries.

In terms of power to enter land or to enter into premises, Section 58 presumes that the occupier of any premises is in possession of the wildlife or part or derivative of the wildlife. That means the occupier is in possession of the swifts, the nests and the eggs.

Both sections 97 and 98 *WCA 2010* gave the enforcement officers a right to enter without warrant any alienated land or premises for the purposes of inspecting any wildlife. This is a wide power and may be subjected to abuse by the enforcement officer. In criminal law, such power to conduct search without warrant is only given to cover seizable offence in *Penal Code*.

The prosecution under *WCA 2010* cannot be instituted against any person without the written consent of the Public Prosecutor. As WCA 2010 is only applicable in West Malaysia, then the Public Prosecutor is the Federal Attorney General.

Under the repeal and saving provisions of *WCA 2010*, Section 135 expressly repeals *POWLA 1972* but all regulations, directions and orders made, licenses, permits and other records kept under *POWLA 1972* shall continue to be in force and effect as if they had been made, granted and kept under the new *WCA 2010*.

By removing these two edible-nests producing swifts from *WCA 2010*, does that mean that DWL has no control of these two species at all? It is argued that since DWL has no jurisdiction to deal with EBN producing swifts, therefore the jurisdiction to regulate the EBN industry or this particular issue fall under the purview of *Animal Act 1953* thus it enable the DVS to take charge of the EBN industry?

In the writer's considered opinion, the answer is in the negative. To the contrary, by removing the two EBN producing swifts' species from totally protected and protected species, the removed edible-nests producing swifts still fall under the definition of other wildlife and thus are fully covered by sections 3, 41 and 64 of *WCA 2010*.

Therefore, the DWL is still fully in charge of EBN producing swifts and the collection and dealing of EBN in Malaysia. Accordingly any rule, regulations and guideline relating to buying and selling of EBN and the EBN industry as a whole must come from the DWL and not the DVS.

That being the case based on the above explained situations and Sections 3, 41 and 64 in *WCA 2010* it is obvious that the MOA (through the DVS) does not any legislative power to make any guidelines neither the *1GP* in 2010 has any legislative power for that matter.

To what extent this *1GP* has its legal force under administrative law will be discussed in the chapter below.

6.3.3 Apart from *WCA 2010* what are the other laws that govern EBN?

Apart from *WCA 2010*, there are other two statutes namely *Animals Act 1953* (enforceable by DVS) and *Foods Act 1983* (enforceable by MOH) and a bill known as Animal Welfare Bill 2012 pending approval by the Parliament in 2013. These two statutes and the Bill will be discussed in Para 6.4, 6.5 and 6.6.below.

To regulate the EBN industry as a whole, WCA *2010* alone is not enough as *WCA 2010* is not applicable to the granting of license to build BHs and the regulation of nuisance, control of public health and control of buildings within World Heritage Sites as discussed earlier.

6.4 *ANIMALS ACT 1953*

The objectives of *Animals Act 1953* are primarily to prevent the introduction into, and the spreading within, Peninsular Malaysia of the disease of animals; for the control of the movement of animals into, within and from Peninsular Malaysia; for the control of the slaughter of animals; for the prevention of cruelty to animals; for measures pertaining to the general welfare, conservation and improvement of animals in Peninsular Malaysia; and for purposes connected therewith.

Animals and birds are given different definition under the *Animals Act 1953.* [131]

But for the purpose of the prevention of cruelty, Section 43 merged animals and birds together where the meaning of animals to include

> *'any living creature other than a human being and includes any beast, bird, fish, reptile or insect, whether wild or tame'.*

Therefore, by the above definition, swifts come under the protection of Part IV of the *Animals Act 1953* if and only if cruelty is involved.[132]

It was thought that by removing EBN producing swifts from WCA 2010, *Animals Act 1953* can assume its jurisdiction and control over swifts. But, a careful study of *Animal Act 1953* shows that DVS will only have jurisdiction over swifts under Part IV of the *Animals Act 1953* if and only if cruelty is involved.

In the absence of any cruelty to the swifts, DVS has no jurisdiction over swifts or the EBN industry. It is thus incomprehensible as to how *Animals Act 1953* can empower the Minister or

[131] Under the definition given inSection 2, animals includes horses, cattle, sheep, goats, swine, dogs, cats and any four-footed beast kept in captivity or under control, of any age or sex. Under the same provision, "birds" includes domestic fowls, ducks, geese, turkeys, guinea, fowls and pigeons of any age or sex and their eggs. Therefore, obviously Animals and bird are two different living beings.

[132] See PART IV under the heading 'Prevention of Cruelty to Animals', s 43 of the *Animals Act 1953*

DVS to make any rules and regulation regarding swifts or to the EBN industry unless cruelties to the swifts are involved. [133]

The MOA may argue that DVS has jurisdiction to make the guidelines under *Animal Act 1953* as there are specific provision under Part IV under the heading 'Prevention of Cruelty to Animal', for the purpose of Part IV only, Section 43 of *Animals Act 1953* defines animal as 'any living creature other than a human being and includes any beast, bird, fish, reptile or insect, whether wild or tame'.

True, by definition and for the purpose of the prevention and punishment of cruelty, birds and animals are called 'animals' and therefore swifts also come under this definition. Accordingly, Section 44 of *Animals Act 1953* provides penalty for cruelty to animals that includes birds[134]

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[133] Why is it so? The answer lies within the four corner of the *Animals Act 1953* itself. *Animals Act 1953* is only applicable to animals and not birds. But for the purposes of enforcing law against cruelty under s 43 , bird is included in the definition of animals. Other than for the purpose of prevention of cruelty , the Minister in charge or DVS has not power to regulate anything about swifts.

Section 44 of the *Animals Act 1953* provides certain acts amount to cruelty. Among others are, cruelly beats, kicks, ill-treats, overrides, overdrives, overloads, tortures, infuriates or terrifies any Animals; neglects to supply such Animals with sufficient food or water; permits any unnecessary pain or suffering to any Animals and other acts as provided in s 44 .[133]

The BH operators who provide swifts with good man-made habitat and safety cannot be said to have committed cruelty against the swifts. To the contrary, the BH operators are actually protecting and conserving swifts from depleting. Furthermore, BH operators never own the swifts nor the swifts in the BH are in the possession of the BH operators.

[134] Section 44 of Animals Act 1953 provides as follows:

Penalty for cruelty to animals

(1) Any person who—

(a) cruelly beats, kicks, ill-treats, overrides, overdrives, overloads, tortures, infuriates or terrifies any animal;

(b) causes or procures or, being the owner, permits any animal to be so used;

(c) being in charge of any animal in confinement or in course of transport from one place to another neglects to supply such animal with sufficient food or water;

(d) by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary pain or suffering, or, being the owner, permits any unnecessary pain or suffering to any animal;

(e) causes, procures or, being the owner, permits to be confined, conveyed, lifted or carried any animal in such manner or position as to subject it to unnecessary pain or suffering;

(f) employs or causes or procures or, being the owner, permits to be employed in any work or labour, any animal which in consequence of any disease, infirmity, wound or sore, or otherwise is unfit to be so employed;

or

(g) causes, procures or assists at the fighting or baiting of any animal, or keeps, uses, manages, or acts or assists in the management of any premises or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or permits any premises or place to be so kept, managed or used, or receives or causes or procures any person to receive, money for the admission of any person to such premises or place, shall be guilty of an offence of cruelty and shall be liable to a fine of two hundred ringgit or to imprisonment for a term of six months or to both.

In situation where cruelty as stated in Sections 44 arises, Section 48 of the *Animals Act 1953* empowers the veterinary authority not below the rank of Assistant Veterinary Officer who has satisfied himself by personal inspection may by order in writing direct that such animal be destroyed.[135]

Under the same Part IV, Section 50A of the *Animals Act 1953* provides that animals and birds not to be kept in captivity for sale, export or exhibition without licenses. [136]

A more important point to note is that DVS can only act if cruelty against birds is involved. By building BH, the EBN industry is actually helping to conserve the EBN producing swifts by providing the swifts with a safe and protected BH with proper humidity and temperature. BH operators are actually taking care of the welfare of the swifts and the issue of cruelty does not arise.

Therefore, *Animals Act 1953* is certainly not a suitable Act to confer jurisdiction to the DVS to make regulations and guidelines regarding the EBN industry.

[135] Section 48 of the Animals Act 1953 empowered the veterinary authority not below the rank of Assistant Veterinary Officer who has satisfied himself by personal inspection-

(a) that an animal is diseased or injured and that the disease or injury from which the animal is suffering is incurable or that it is cruel to keep the animal alive; or

(b) that an animal is so diseased or so severely injured or in such a physical condition that, in his opinion, having regard to the means available for removing the animal, there is no possibility of removing it without cruelty and that it is cruel to keep it alive, may by order in writing direct that such animal be destroyed, and such order may immediately be carried out by or under the direction of such officer or of any police officer:

Provided that if the animal so diseased or injured is in any house, stable, shed, or enclosure proper for such animal and not in a public thoroughfare, market or place, no order shall be made until the owner of the animal (if known) or person in charge (if any) has been duly notified of the state of the animal.

[136] Section 50A of the *Animals Act 1953* provides that:

(1) No person shall keep in captivity for sale, export or exhibition any animal or bird in any place which is not licensed in that behalf in accordance with rules made under this Act:

Provided that this section shall not apply except in such areas as shall be prescribed by such rules.

(2) Any person who contravenes subsection (l) shall be liable to a fine of two hundred ringgit or to imprisonment for a term of six months or to both.

Both DWL and DVS have made tremendous contributions to the development of the EBN industry through their scientific research and in preparation of useful guidelines to the EBN industry.

However, the only set back is DWL and DVS are placed under the charge of two separate ministries. Administratively, both departments are independent of each other and each of the department derives their jurisdictional authority from different sources of law.

In order to give DVS exclusive legal power to handle the EBN industry or EBN producing swifts, *Animals Act 1953* needs to be amended to expressly empowered DVS to make by laws, regulations, orders or guidelines relating to the EBN industry. The proposed amendments should also harmonise with the relevant provisions of the current *WCA 2010* that is in force now especially on those sections dealing with buying and selling of birds' nests, licensing of birds' nests collector and dealers.

6.5. *ANIMAL WELFARE BILL 2012*

In November 2010 the MOA also raised the idea of introducing a new law known as Animal Welfare Bill. The draft Bill had gone through 12 revisions and amendments as at August 2012. [137]

As at the date of completion of this research in the early year of 2013, this Bill is still pending the final approval of the Parliament in the year 2013 .Once gazetted this law will only apply to West Malaysia and Labuan only.

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[137] See *Noh Omar: Animal Welfare Bill to be tabled in 2013*, http://www.themalaysianinsider.com/malaysia/article/noh-omar-animal-welfare-bill-to-be-tabled-in-2013, accessed on 22-2-2013

Under this Bill, animal means any living creature includes birds but it does not include man. Since EBN swifts had been removed from the protection list in WPA 2010, swifts will come under this Bill. Under this Bill, a board known as Animal welfare Board to be chaired by the Director General of DVS will be established.

Essentially this Bill intends to protect animals and birds and to prevent cruelty. Section 29 of this Bill defines the acts of cruelty that is punishable under this Bill. The punishment imposed is severe, the fine imposed is minimal RM20,000.00 and maximum of RM100,000.00 with imprisonment not exceeding three year or both for the offences committed.

Section 68 of the Bill gives power to the Minster to make regulations to prescribe all matters relating to the good practice with regards to animal welfare. DVS had issued numerous good practices with regards to animals' welfare.

Therefore, once this Bill is passed by parliament the EBN producing swifts, BHs and EBN industry will be subjected to this Bill. This Bill will become a parent Act that literally removes the overlapping jurisdictional issues and other weaknesses under the Animals Act 1953. This Bill will be used as a parent Act to regulate EBN industry in the future.

6.6. ***FOODS ACT 1983***

The Ministry in charge to enforce *Foods Act 1983* is Ministry of Health. To further protect and safeguard EBN consumers both within Malaysia and overseas the Food Safety and Quality Division of MOH Malaysia has on 12th March 2012 issued two guidelines under *Foods Act 1983*. The guidelines are:

1. Standard Operation Procedure (SOP) on the Controls of the Safety of Raw-edible Bird's Nests along the Food Supply Chain.

The *Food Regulation 1985* prescribed the standard and labelling requirements for all foods whilst, the *Food Hygiene Regulation 2009* prescribed the hygiene requirement for all foods and processing establishment producing animal products including EBN and transportation of the animal products. This SOP provides for the safety controls along the raw EBN supply chain from the BH, transport vehicle, middlemen/ trader, EBN process centres up to import and export stage. Detail procedures are reproduced in Appendix B.

2. *Standard Operation Procedure on the Controls of Nitrite Level in Edible Bird's Nests.*

MOH recognised that nitrite in EBN can come from bird's saliva; formation of ammonia in the bird's nests ; presence of ammonia derived from bird droppings in the BH or cave environments that subsequently converted into nitrite in EBN and bird droppings containing nitrite that later contaminated the EBN. MOH is also aware that preparation processes prior to consumption i.e. soaking and rinsing significant reduce the level of nitrite in EBN as nitrite is highly soluble in water.

This SOP laid down the procedures involved in handling and processing EBN from BH to processing raw EBN. Detail procedures are as reproduced Appendix C.

6.7 **Proposal:**

The guidelines issued by DVS inclusive of the latest is *1GP* issued in 2010 as discussed in Chapter 7 below may suffer jurisdictional defects as DVS does not have any legal jurisdiction to issue such guideline under *WCA 2010* or *Animals Act 1953*. It is proposed that:

(a) The Minister in charge of DWL should immediately make such regulations under Section 132 of *WCA 2010* to fill the lacuna and the vacuum in these aspects of the law.

(b) The Director General for Wildlife and National Park should make an in depth study of the EBN industry and make proposals to the said Minister in charge about the problems faced by the EBN industry and to develop this industry further under the ETP.

(c) The ministry in charge of DWL should study, review, improve, redraft, adopt and reissue the improved guidelines issued by DVS over the years inclusive of *1GP* as discussed in Chapter 7.4 below under Section 132 *WCA 2010*.

(d) To avoid the overlapping of departmental jurisdictions between the DVS under *Animals Act 1953* and the DWL under *WCA 2010* as discussed in Para 61 to 6.4 above, it is advisable to repeal the whole *Animals Act 1953* or pass a new Act relating to animals, birds and reptiles that expressly indentify and empower the DVS as key department in charge of the EBN industry and supported by DWL and MOH.

(e) Though the Animal Welfare Bill 2012 that put the DG of DVS as chairman of the Animal Welfare Board to enforce the said law that is pending approval, this Bill does not adequately place swifts under the jurisdiction especially the BHs are concerned.

(f) Animal Welfare Bill 2012 should make specific to cover the swifts, BH and EBN industry regardless whether cruelty is involved or not. This is to avoid uncertainty whether DVS is the department in charge of EBN industry if the government intends to use this new law to regulate EBN industry.

CHAPTER 7: THE EBN INDUSTRY GUIDELINES

Though the DWL in West Malaysia is in charge of swifts and EBN regulations and though DWL has made a preliminary study on the nutrition contents of EBN, [138] DWL is not alone in handling the EBN industry issues in Malaysia. DVS and Ministry oif Health (MOH) are also equally involved.

A. DVS' contribution:

DVS has contributed to the development of EBN industry by issuing the following published guidelines:

i) *Good Animals Husbandary Practice For Edible Birds Nests Swiftslet Aerodemus Species Ranching and Its Premis (* revised in December 1994*)* ;

ii) *Amalan Baik Penternakan Haiwan Untuk Burung Walit (Good Animals Husbandry Practices for Swifts) - January 2005 2nd Edn.*

iii) *Garis Panduan Amalan Baik Pertentakan Burung Walit (Good Animals Husbandry Practices for Swifts Guidelines) - October 2007 3rd Edn.*

iv) *Garis Panduan Pembangunan Industri Burung Walit (1GP) Januari 2010 (Swifts Industry Development Guidelines (1GP) January 2010)*

B. MOH's contribution:

MOH through Food and Quality Division had the two Standard Operation Procedures as discussed in Chapter 6.5 above.

138 See note 65

C. SIRIM'S Contributions

SIRIM Berhad , a wholly owned company of Malaysian Government under Ministry of Finance Incorporated and a leading testing and cerftication body in Malaysia , had also in its news SIRIM Vol. 18.02/2010 S&Q Standards & Quality News announced the following three standards relating to the EBN industry:

1. *MS 2272, Good Animal Husbandry Practice: Edible-Birdnests Swiftlets Ranching Premises* - to ensure the health, safety and comfort to both the operators and the birds with no degradation to the natural environment.
2. *MS 23333, Good Animal Husbandry Practice: For Processing Raw-Unclean and Raw-Clean Edible –Birdnests (EBN)* - guidelines for EBN Processors, provide standards for sorting, grading and packaging of raw-unclean EBN.
3. *MS 2334, Edible Birdnests (EBN)-Specification*-as guideline for grading of raw-unclean EBN and raw-clean EBN.

For this reseach, we onbly discuss the following guidelines issued by DVS.

7.1 Good Animals Husbandary Practice (GAHP) For Edible Birds Nests Swifts Aerodemus Species Ranching and Its Premise (Revised December 1994)

These guidelines are known as *Codes of Practice*.

At the outset, these *Codes of Practice* expressly state that it contains nationally developed guidelines for the care and handling of animals and different species of animals. The *Codes* also makes recommendation on matters relating to housing, transportation and management practices for EBN swifts.

These *Codes of Practice* only serve as adjuncst to expert testimony under the *Animals Act 1953* and should not be used to determine compliance or the legality of a particular operation. These *Codes of Practice* consist of recommended guidelines only and they are not the required standard set by the Government.[139]

These *Codes of Practice* supplements government legislation which, among others provides laws and regulations regarding licenses, bird ranching, premises, establishes species which can be bred , farmed , ranched, sets containment and facility standards, tagging and reporting requirements, transport, import and export, disease control, culling, mercy killing, access to water and food, enclosure requirement and stocking densities.[140]

There are two Acts in Malaysia that prohit cruelty to animals and birds namely the *Animals Act 1953* and the *Aminals Protection Act 1960*. Though causing unnecessary pain and distress to animals and birds may also be an offence under these two Acts, admittedly these *Codes of Practice* concede that breaching these *Code of Practice* does not consitutute an offence but it may be used as evidence against such offender under the said Act.

The bulk of these *Code of Practice* take into consideration of the hygience , environment and facilities, transportation and space requirement for the animals and these *Codes* also provide guidelines regarding water and feed, handling, restrain, breeding, weaning, health care centre , health monitoring of flocks and euthanasia of the animals and birds.

Section 5 of this *Codes of Practice* recommended that any BH must be located at a minimum distance of 100 metre radius from any urban development as approved distance by the Ministry of Science and Environment in order to prevent noise pollution. BH should be located on agricultural land and usage of heritage buildings for BH are prohibited. Ghost

[139] See page 1 *Good Animals Husbandary Practice For Edible Birds Nests Swiftslet Aerodemus Species Ranching and Its Premis* (revised December 1994) (*the Codes of Practice*) ;

[140] Ibid, See section 2.1.1 of the *Codes of Practice*.

towns or areas with minimum human activities and empty buildings could be considered for converting into BH if approved by the Local Council.

Though generally these *Code of Practice* does not have any force of law and non enforceable , the DVS has pursuant to *Animals Importation Order 1962,* made a regulation known as *'Regulations for the Importation of Hatching Eggs into Malaysia'.* These regulations apply to importation of eggs from any country for any purpose.

7.2 Amalan Baik Penternakan Haiwan Untuk Burung Walit (Good Animals Husbandry Practices for Swifts) - January 2005 2nd Edn. (GAHP 2005)

Essentially, this *GAHP 2005* contains similar provision as the 1994 *Code of Practice* except it contains some updates and additional materials. By 2004, the DVS has included Regulation for the Importation of the Bird's Nests , made pursuant to Section 8 of the *Animals Rules 1962* in this *GAHP 2005*.

These regulation require importer to obtain import licenses from DVS and prior approval from the DWL and National Park, Malaysia pursuant to *CITES* guidelines.

7.3 Garis Panduan Amalan Baik Pertentakan Burung Walit (Good Animals Husbandry Practices for Swifts Guidelines) - October 2007 3rd Edn. (GAHP 2007)

This *GAHP 2007* is actually an improved version of the *GAHP 2005*. *GAHP 2007* focuses on the operators, matters relating to the swifts, cleanliness and hygiene, the environment and facilities of the BH, specific requirements for specific swift's species, transportations and requirement as to space.

Under the heading 'operators ', the *GAHP 2007* requires operators to comply with high standard of the *GAHP 2007*. The compliance of the code is necessary for the BH operators to observe the requirements regarding maintaining the facility, tagging, transportation, importing and exporting, controlling of diseases, quarantine, killing of the birds when it is necessary or expedient to reduce suffering on the part of the birds, food and drinks, and confinement for the purpose of balancing density of stocks. [141]

The operators are required, among others, to prevent causing cruelty to the birds. [142]

Section 3 of the *GAHP 2007* covers provisions on the BH, food and water, handling of swifts, health and reproduction, nests , nests ling and fledging and euthanasia.[143]

Section 4 of the *GAHP 2007* emphasises the cleanliness of the BH, provision of foot bath, safety and matters relating to handling of guano, prevention of germs and parasites. [144]

Section 5 of the *GAHP 2007* made provisions, among others, that cover the environmental facilities of the BH. The ground floor of any building is prohibited from being used or converted into BH. Further guidelines as to the maintenance of temperature in the BH i.e. 26 degree Celsius to 31 degree Celsius, accommodation of aviaries so as to provide the swifts with sufficient air space to fly, avoidance of stress on the swifts, requirement of warning signage in case of emergency, requirement of galvanised layers to prevent rats and prohibition of the usage of poisons and traps. [145]

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[141] *Garis Panduan Amalan Baik Pertentakan Burung Walit (Good Animals Husbandry Practices for Swifts Guidelines) - October 2007* 3rd Edn. see Para 2.1 in Section 2 at p 5,

[142] Ibid , Para 2.4 p 5 and 6

[143] Ibid, page 17 to 12

[144] Ibid, page 13 to 14

[145] Ibid page 15 to 16

GAHP 2007 has appendixes that are relevant and helpful to BH operators. BH operators must report to the nearest veterinary office under Section 31 of the *Animals Act 1953* the disease stated in Appendix 1.[146]

Even though 17 types of diseases are listed in Appendix 1, so far there has been no reported case that EBN producing swifts are the agent of spreading these diseases.

Appendix 2 deals with transportation of swifts. Appendix 3 provides a general guideline to the drivers in the event of any accident, damage or delay in transportation swifts. Appendix 4 laid down the general guidelines for preparation of foods for the orphanage young swifts. Appendix 5 gives recommendations on the sizes of the space within BH for the swifts to make nests.

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[146] Ibid pg. 29. The disease are:-

a) *Highly Pathogenic Avian Influenza (HPAI)*
b) *Newcastle Disease (ND)*
c) *Avian Infectious Bronchitis*
d) *Avian Infectious Larygotracheitis*
e) *Avian Tuberculosis*
f) *Duck Virus Hepatitis*
g) *Duck Virus Enteritis*
h) *Fowl Cholera*
i) *Fowl Pox*
j) *Fowl Typhoid*
k) *Infectious Bursal Disease (Gumboro Disease)*
l) *Marek's Disease,*
m) *Avian Mycoplasmosis*
n) *Avian Chlamydiosis*
o) *Pullorum Disease*
p) *Salmoneia Entridis*
q) *Salmonella Typhimurium*

Under the *Regulation for the Importation of Bird's Nests* each consignment of bird's nests imported is charged RM3.00 per permit.

7.4 THE SWIFTS' INDUSTRY DEVELOPMENT GUIDELINES (1GP) JANUARY 2010 (Garis Panduan Pembangunan Industri Burung Walit (1GP) Januari 2010)

In the year 2010, the government made two major changes to legislation relating to wildlife law and the EBN industry.

First, in January 2010 the Ministry of Agriculture and Agro-Based Industry Malaysia (MOA) issued and published *Garis Panduan Pembangunan Industri Burung Walit (1GP) Januari 2010* in Bahasa Melayu (see Appendix A) . The English version of 1GP is not available.

Secondly, the Parliament passed a new act known as *Wildlife Conservation Act 2010 (WLA 2010)* , gazzetted on 4th November 2010 which repealed the *POWLA 1972* as discussed in Chapter 6.3 above.

For the purpose of this research, the *1GP* is translated as *'Swifts Industry Development Guidelines (1GP) January 2010'* and all English terms employed by the writer in this research are translated terms.

Even though *1GP* was ready as early as January 2010, it was only launched by the MOA in January 2011 as the Cabinet and other relevant departments require time to discuss and approve the *1GP*. *1GP* is intended to be a comprehensive guideline for the Malaysian EBN industry. Through the publicity given by the media, this *1GP* was perceived as a cure-all illness regulations and thereafter seminar after seminar were organsised by both private organizers and the relevant ministries. However, the issues regard the actual effect and the legality of *1GP* was not properly dealt with.

7.4.1 Contents of 1GP

Compared with the previous guidelines, this new guideline is much more comprehensive and detailed. The scope covered by *1GP* as discussed below is also much wider than the earlier guidelines. As *1GP* is the latest guidelines applicable to the EBN industry, we will discuss *1GP* extensively. There are several new areas not covered by the previous guidelines.

7.4.2 The Preface of *1GP*

The preface of *1GP* clearly states that this *1GP* intends to explain and clarify the required criteria to be complied by the parties concerned relating to the maintenance of farm houses, the premises used for processing raw EBN into processed EBN and also the welfare of the animals.

The parties concerned include the BH operators, the EBN processing centres, the EBN traders, importers and exporters, the local authorities, the relevant ministries and the licensing authority. It will to a certain extent, include the interest of the public and the NGOs.

1GP has made references to all the existing legislation which deal with licensing and registration of the BH farming and processing premises.[149]

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[149] The impressive and comprehensive level of consultations and cross references on legal materials made by *1GP* is commendable. The learned author of *1GP* has made reference to voluminous legislation and materials related to DVS, Ministry of Housing and Local Government and Ministry of Health, National World Heritage Department, Jabatan Kemajuan Islam Malaysia (JAKIM) and Jabatan Standard Malaysia (JSM).

The following are the list of legislation and legal materials referred to and considered by the 1GP:

1. Department of Veterinary Services

   a) *Animals Act 1953 (Revised 2006) [Act 647]*
   b) *Veterinary Doctors 1974 [Act 147]*
   c) *Animal Feeds Act 2009 [Act 698]*
   d) *MS 11785: 2003, Radio Frequency identification of Animals-Code Structure*
   e) *MS 2027: 2003, Radio Frequency Identification of Animals-Technical Concept*
   f) *MS2027: 2007, Good Animal Husbandry Practice (GAHP)*
   g) *MS 2273: 2009, Good Animal Husbandry Practice- Edible - Birdnests Swifts Ranching and Its Premises,*
   h) *MS 2333: 2010, Good Manufacturing Practices (GMP) for processing raw-clean and ran unclean EBN*
   i) *MS 2334L 2010 (P), Edible Bird-nests (EBN)-Specification*
   j) *Sijil Amalan Ladang Ternakan 2003 (SALT)*
   k) *Veterinary Health Mark (VHMN)*

2. Ministry of Housing and Local Government

1GP also explains the standard of maintaining records, packaging, labelling, transportation, import and export, control of disease, specification, grading, facility, quarantine and the disposal EBN according to the procedure as laid down by the Ministry of Environment.

Unlike the previous guidelines, the guidelines in *1GP* are much more dynamic as they are consistent with the ever changing world, improved scientific findings and cumulative experience of the EBN industry.

1GP contains suggestions that could assist the relevant authorities and the private sectors to cooperate with each other in developing the EBN industry. *1GP* is applicable to the whole of Malaysia for all kinds of BH and it explains the general rules, laws and ecology and public friendly licensing procedure.

1GP emphasises on *Good Animal Husbandry Practices (GAHP-MS 2273:2009),* a code that deals with management of farming within the premises, transportation, administrative practices, traceability as well as welfare of the animals. *1GP* can assist the West Malaysian Department of Urban and Rural Planning [150] in planning and developing the EBN industry.

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a) *Town Planning and Rural Act 1976 [Act 172] subs-section 19 (1) and Section 22 (A) for the planning approval.*
b) *Local Government Act 1976 {Act 171] Section 107 and 110 for licensing and enforcement,*
c) *Streets, Drainage and Buildings Act (Act 133), Section 70 for the requirement of building plan.*
d) *Uniform Buildings Bye Laws 1988, to be used by local governments to regulate any changes and renovation of the existing buildings into BH;*
e) *Trade, Business and Industry regulation enforce by the local governments.*
f) *Local Government Ordinance 1961 (Sarawak No. 11 of 1996)*
g) *Local Government Ordinance 1996 (Chapter 20) of Sabah.*

3. Ministry of Health Malaysia

a) *Food Act 1983 [Act 281]*
b) *Peraturan –Peraturan Makanan 1985 / Food Regulations 1985 [P.U. (A) 437]*
c) *Peraturan-peraturan Kebersihan Makanan 2009 [P.U.(A) 85/2009]*

4. Jabatan Warisan Negara / National World Heritage Department

a) *National Heritage Act [Act 645]*

5. Jabatan Kemajuan Islam Malaysia (JAKIM)

a) *MS 1500:2009 Halal Food- Production, Preparation, Handling and Storage – General Guidelines.*

6. Jabatan Standard Malaysia (JSM)

a) *Akta Standard 1996 (Semakan 2006) Akta 549*

[150] Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia (JPBDSM)

1GP also embodies the premises that the welfare of the public and the community adjacent to or near to the BH can be harmonised.

Apart from the BH, *1GP* also stipulates the guidelines for processing the EBN based on *Good Manufacturing Practice (GMP-MS 2333: 2010).* 1GP lays down guidelines dealing with the processes involving selection, cleaning, packaging and labelling of EBN products in accordance with the specification given. Laboratory sampling also explains the criteria and tests to be carried out.

Accordingly, the MOA proposes that the application of this guideline be extended beyond the administrative scope of the local governments in respect of the EBN industry especially since the registration of such EBN and BH at the Department of Veterinary Services is compulsory.

1GP also contains many other basic guidelines that can assist and be useful to other relevant technical departments or agencies concerning the monitoring and controlling of the EBN industry. These new guidelines are useful as there are no similar or comparable standard guidelines regarding the EBN industry available before the issuance of *1GP.*

7.4.3 Reference to legal materials

Though the *1GP* has made references to many aspect of legislation related to the EBN industry and lists of Acts of Parliament, by laws and the minimum standard practices [151] *1GP* does not make any in-depth discussions or comments on the said legal materials.

1GP became a firm foundation for future study on the overall areas regarding the ENB Industry. It also became helpful to coming generations to conduct future researches, studies and discussions on the legal aspect relating to the EBN industry.

[151] See note 138

7.4.4 Definitions

1GP has standardised the usage of certain commons terms in the EBN industry by setting out a list of terminologies and meanings of the assigned terms.

In order to uniformly enforce the guidelines, the *1GP* defines 41 terms employed by the EBN industry . The definitions covered terms such as GMP , GAHP, Contamination, Raw-unclean EBN, Raw-unclean EBN, Hazard Analysis Critical Control point, Jack-roof, Adulteration, Veterinary Health Mark (VHM)[152] and all these standardised definitations and terminologies will go a long way in developing the EBN industry .

By standardising the usage of such terms in the EBN industry and once the terms are accepted by the EBN industry, these well defined terms will not only be widely accepted as commons terms employed in Malaysia and internationally, the Court may also refer to these terms when deciding matters relating to EBN.

7.4.5 Introduction to Swifts

1GP notes that many BH operators have adopted more humanitarian, economic and environmental friendly approach in the conservation of swifts' population as compared with the traditional harvesting methods from caves.

Swifts use echo location to navigate in darkness to avoid collision with stationary objects and flying objects. In order to assist the readers and to avoid confusion between Edible-nests Swifts (Burung Walit) and Swallow (burung layang-layang), *1GP* list the differences between swallow and Edible-nests Swifts as they are reproduced in the following table: [153]

[152] See page 4 to 9 of 1GP in Appendix A.

[153] See Jadual 1 page 10 1GP in Appendix A

Category	Swiftlets	Swallow
Order [154]	Apodiformes- aerial agility	Passeriformes- gripping to electric lines at dawn (gripping feet)
Family[155]	*Apodidae*	*Hirudinidae*
No. of species	8	74
Habitat	Homing behaviour (Nests site fidelity)	Most species migrate
Nests ' Components	Salivary exudation from the salivary gland to make the nests	Grass, branches and feathers.

To untrained eyes, it is not easy to distinguish between swifts and swallows. Both species of birds are small in size and look like they are from the same species and we have earlier discussed about the swifts families and the anatomy of swifts in Chapter 3.

The table above will be useful to the local authorities, enforcement agencies and also courts of law in determining disputes between parties involving the species of birds. Within the swifts families, it is also important to differentiate between the edible-nests producing swifts and non-edible nests producing swifts.

In the EBN industry, we are only concerned with edible-nests producing swifts and any other non-edible nests producing swifts species are not part of the discussion for this research, except for comparison purposes.

[154] The word Order is used as a scientific classification used in biology.

[155] Family is used to denote a biological classification.

7.4.6 Swifts ranching premises: The BH

Regulating swifts ranching premises is the most essential and important aspect of the EBN industry as the location and noise pollution generated from these premises are the main sources of public complaints.

There are plenty of reports of birds been sucked into the jet engines of aeroplanes and damaged the jet engines. The safety of airplanes, whether commercial, cargo or military, the life and safety of passengers' crew members' pilots and the cargo the aircrafts carry are far more important than the birds. Therefore, the construction and building of BHs near the airports must be regulated and *1GP* fully addresses such issues.

1GP goes further by taking extra precaution in making provisions to protect the safety of aeroplanes taking off and landing at the airports.

An interview with the learned author of 1GP reveals that DVS prefers to employ the word 'ranching' rather 'farming'. According to the learned author of 1GP, farming refers to the act of taking or removing the species from the existing gene pool, whereas ranching involves conservation, rehabilitating and also development of the genes pool. In other words, farming involves taking away the animals and birds from the gene pools that will eventually reduce the population, hamper, reduce or slow down the multiplying of the animals and birds. Ranching on the other hand will sustain, conserve and develop the animals and birds population.[156]

Section 4 of the *1GP* discusses two (2) aspects of swifts' ranching premises planning:

(a) First, the existing swifts ranching premises; and

(b) Secondly, the new Swifts ranching premises.

[156] As highlighted by Dr. Fadhillah Ai'ni Binti Abdul Kadir, the author of 1 GP in an interview with her personally on 1st March 2011after the meeting with the Deputy Director of DVS Dato' Dr. Ahmad Suhaimai Bin Omar at MOA.

7.4.7 The existing swifts ranching premises in urban areas

For the existing swifts ranching, it is again divided into four (4) categories as discussed below:-

i. The existing swifts ranching in urban areas

a. For the swifts ranching in urban areas, Section 4.1.1 provides guidelines in handling the existing BH within town areas, rural areas, World Heritage sites and areas surrounding airports. All existing BHs located within urban areas are permissible but the BHs within the concentrated areas in the town or cities must follow the *GAHP* subject to the approval of local governments. They must also register the premises with DVS.

b. However, section 4.1.1 of *1GP* prohibits the renovation of the facade, extension and enlargement of the existing building. The jack roof installed must be harmonious with the neighbouring surrounding. The BH operators must register their EBN activities with the DVS and they must also apply for license from the local authorities.

ii. The existing swifts ranching in rural areas

In rural areas, there are only two places where swifts' ranching activities can be carried out.

First, the agricultural land that includes plantation, aquaculture areas, places for agro-tourism and vacant agricultural lands.

Secondly, the light industrial areas or cluster of industrial areas.

The height of the BH premises must not exceed 12 metres. No explanation is given as to why the 12 metres height limit was imposed. [157]

[157] See Section 4.1.1 and 4.1.2 of 1GP Appendix A

iii. The existing swifts ranching within World Heritage Sites

For the BH located within the World Heritage sites, the existing BH operators must submit their application to *Jawatankuasa Kerja Teknikal Tapak Bangungan Warisan (TWGBW) (translated as World Heritage Sites Technical Working Committee)* [158] for approval. The members of the committee consist of representatives from the National Heritage Department, DVS, Department of Urban and Rural Planning of Peninsular Malaysia and Federation of Malaysian Birds' Nests Merchants Associations. [159]

TWGBW will make evaluation of every existing BH within the sites. Based on the evaluation report by TWGBW the local governments will issue recommendations as to whether the BH should be allowed to continue, disallowed or to recommend changes and improvements to the BH or to impose conditions.

Meanwhile the status quo of the existing BHs within World heritage sites are preserved and allowed to continue operating until the decision of the World Heritage Sites Technical Working Committee has been made. But any activities concerning the changes to the facade, exterior and interior structure of the existing BH within the sites cannot be done unless they are given prior approval from the local governments.

iv. The existing swifts ranching around air ports.

Unlike the previous guidelines, *1GP* took serious consideration of aviation safety.

In order to protect aviation and the safety of flights near airports BHs are not allowed to be built within 10 kilometres from both ends of run ways unless they are approved by Department of Civil Aviation (DCA). Instead of setting up one stop licensing body for the

[158] See section 4.13 (b) of 1GP in Appendix A

[159] See section 4.1.3 of 1 GP in Appendix A

EBN industry under *1GP*, this is a typical bureaucratic subsidiary legislation that requires an applicant to get numerous agencies' consent before for a license can be issued.

The more complicated the process of license application and the more consenting parties involved, the more such rules will enhance the possibility of corrupt practice in this industry. Pressing by the urgent needs to obtain license to start BHs operations as most of the BHs operators borrowed moneys from banks to build their BHs, making rules that requires an applicant to obtain consent from various approvals inclusive of DCA will encourage the applicants to bribe the officer issuing the license.

If the approved locations are agriculture land and industrial areas that subject to the same 12 metres height limit BHs are not allowed to be built within 50 metres from residential areas. [160]

1GP does not define the meanings of residential areas or its boundaries. Would the definition of a residential area be based on the category of land use as specified in the land titles or it is based on the zoning as prescribed by the local governments? As the 50 metres boundary is vague, it may give rise to complications in enforcing the guidelines.

7.4.8 The new swifts ranching premises

The new swifts' ranching is also divided into four (4) categories as discussed below:

i. The new swifts ranching in urban areas

Section 4.2 of *1GP* prohibits construction of new BHs within town central business areas. The new proposed premises must comply with *GAHP*. If the proposed premises are within the existing buildings, all the existing doors entrance and windows must be maintained. The windows must be capable of being closed from within the building.

[160] see Section 4.2.2(h) IGP in Appendix A

1GP encourages usage of the top entry method for the swift's entry passage into the premises and the design of the building especially the jack–roof must be harmonious with the surrounding building. The new premises must have a buffer zone of 50 metres from the residential areas.

The new BH operators must register the premises with DVS and obtain licenses from the local governments.

ii. The new swifts ranching in rural areas.

There are only two places in rural areas that are allowed to carry out swifts ranching activities. First, is the agricultural land that includes plantation, aquaculture areas, places for agro-tourism based and vacant agricultural lands. But only individual building is allowed within agricultural land.

Secondly, only areas within light industrial areas or cluster of less than 50 premises within one area are allowed. The types of buildings allowed within the industrial areas are terrace, semi-detached or individual unit.

Under this category, the prohibited places are schools, clinics, places of worship, recreational grounds, areas for special usage, utility reserved areas and areas that are sensitive to the environment such as water encashment areas and forest reserve.

However, there is no mention of the requirement that the height of the BH premises must not exceed 12 metres for new BHs. The assumption therefore is that there is no limit to the height of BHs in rural areas.

iii. The new swifts ranching within World Heritage Sites

For the new BHs located within the World Heritage sites, Section 5.2.3 of *1GP* requires the applications must be first submitted to the TWGBW (World Heritage Sites Technical Working Committee) [161] for approval.

TWGBW will evaluate each new application under Section 5.2.3(b) of *1GP* and will give their recommendation to the local governments and based on the recommendation, the local governments will act accordingly whether to approve or disapprove the application or grant approval with conditions. The approved premises will be made after TWGBW met and published the decision. Again, similar provision in Section 5.2.3(c) of *1GP* that prohibit the changes of the façade of the proposed building and any changes to the structure must first obtain the approval of TWGBW.

This new guideline will definitely help to plan the proper site of future BHs within the World Heritage Sites and thus reduce the future complaints by the NGOs or the public against BHs been built within World Heritage Sites.

iv. The new swifts ranching around air ports.

1GP states that the buffer zone around airports shall be based on the local planning of the areas concerned.

The position of the new swifts ranching around airports is the same as what have been discussed at paragraph 7.4.7(iv) above. The prohibition of building new swifts' ranch within 10 kilometres from both end of run way unless approved by DCA is to protect aviation and flight safety.

[161] Jawatankuasa Kerja Teknikal Tapak Bangunan Warisan

Any regulations that requires applicant to go obtain numerous approvals various departments before a license can be issued will certain path ways for corrupt practices in this industry.

As for the new BHS, if the approved locations are agriculture lands and industrial areas subject to the same 12 metres height limit, BHs are not allowed to be built within 50 metres from residential areas. [162]

As highlighted in paragraph 7.4.7(iv) above, *1GP* does not define of the meaning of residential areas or their boundaries. Possible dispute may arise as to the meaning of 50 metres from residential area as it is uncertain a residential area starts form where.

However, *1GP* takes the aviation safety to another height by controlling building of BHs nearby the airports. This is a positive step taken by *1GP*.

7.4.9 EBN ranching premises license

The choice of the licensing body for BHs has been an issue to be resolved between the Federal and State Government. Apparently, *1GP* prefers the licensing body of BHs to be the local governments. *1GP* provides that premises licenses for BHs are to be issued by local governments. [163]

The applicants must meet the following conditions for approval of their licenses:

i. *BHs operators must register the BHs with DVS and apply for premises license.* [164]

ii. *All BH operators must comply with GAHP;* [165]

[162] See section 4.2.2(h) of 1GP

[163] See section 4.3.1 of 1GP

[164] See section 4.3.2 (a) of 1GP

[165] See section4.3.2 (b) of 1GP

iii. *The premise must have Certificate of Fitness or Certificate of Competition and Compliance.*[166]

iv. *The applicant must be a member of the Federation of Malaysian Birds' Nests Merchants Associations of the state.*[167]

The license is valid for three years.[168]

The purposes of requiring new BHs to be registered with DVS are to allow DVS to maintain a record of the number of BHs, its locations and the person in charge in order to monitor the BHs and to track the source of any disease that may be related to the EBN industry, though so far no such cases are reported. Therefore, we can see that DVS plays a lesser role in regulating and enforcement in comparison with the local governments over BHs.

Accordingly, DVS can take action against any party who violates the Animals Rules (Registration of Swifts Premises) 2010. [169]

7.4.10 Public Health and Noise Pollution control

1GP requires the BH operators to comply with *GAHP*. Lengthy discussion on the responsibility of BH operators, cruelty and negligence, duty to report 16 types of Avian disease under Section 31 of the *Animals Act 1953* and duty to maintain cleanliness of the BHs are provided.

But the most important section in s 4 is s 4.5.3 that strictly provides that:-

[166] See section 4.3.2 (c) of 1GP

[167] See section 4.3.2.(d) of 1GP

[168] See section 4.3.4 of 1GP

[169] See Section 4.5.2 of 1GP *on Kaedah-kaedah Binatang (Pendaftaran Premis Bagi Burung Walit) 2010*

a) *The bird songs played shall not exceed 40dB (decibel) calculated from 6 metres from the exterior wall of the BH;*

b) *The loud speaker should face 60 degree facing upward;*

c) *The time allowed for paying birds song is limited to between 7.00 a.m. to 10.00 a.m., 5.00 p.m. to 8.00 for West Malaysia; and 6.00 a.m. to 9.00 a.m. and 4.00 p.m. to 7.00 p.m. for East Malaysia.*

The limitation of loudness and time of playing birds' song will greatly reduce noise pollution and it will also strike a balance between the interest of the BH operators and their neighbours. The BH operators who violated this section has committed a quasi-criminal offence and maybe held liable for statutory nuisance as discussed in Chapter 3 above.

Strict enforcement of this section will reduce noise pollution around BHs and protect the neighbours and public.

7.4.11 EBN Processing Centres

Under ETP, Malaysia aims to add seventy or more EBN Processing Centres in order to capture a bigger EBN global market by the year 2020.

For the Malaysian EBN Processing Centres to compete in the global market, our processing centres must have proper certification of our EBN products. Section 5 of the *1GP* Guidelines requires the processing centres to register with MOH for Hazard Analysis Critical Control Point (HACCP) [170] and Good Manufacturing Practices (GMP)[171] certification and register with DVS for VHM certification.

[170] See Malaysian Certification for Hazard Analysis Critical Control Point (HACCP) *'Guidelines For HACCP Certification'* issued by Food Safety and Quality Division, Department of Public Health , Ministry of Health.

[171] Good Manufacturing Practice (GMP) is the prerequisite programme before HACCP certification can be issued.

Another requirement of premise license of the processing centre whether within town or rural areas or World Heritage Site is that the processing centre is subject to similar requirements as BHs in section 4 except there is no such 10 km restriction near the airports.

The BN processing centre is required to comply with *Malaysian Standard (MS 2333-2010- Good Manufacturing Practices (GMP) for Processing Raw-clean and Raw-unclean EBN)* in order to maintain high quality and standard of EBN produced in Malaysia.

The strict requirement of certification of Malaysian EBN may be viewed as hassle for EBN Processing Centres but in the long term, Malaysian EBN industry will benefit from strict certification for branding purposes. It is also a very effective way to overcome irresponsible non-Malaysian merchants passing their adulterated or fake EBN as Malaysian products in the international market.

7.4.12 Exports and Imports of EBN

This part is covered by Section 6 of *1GP*.

There are several requirements imposed by the Malaysian government in order to ensure the EBN produced in Malaysia are of high standard and quality that they are clean and safe for consumers. Apart from that, EBN traders are encouraged to secure *halal* certification from *Jabatan Kemajuan Islam Malaysia (JAKIM)* in order to penetrate Muslims markets.

Among other requirements to be fulfilled by Malaysian EBN exporters are, the EBN must have complied with *GAHP* and obtain a certificate *Skim Amalan Ladang Ternakan (SALT)*, Veterinary Health Mark (VHM),[172] obtaining export permit from DVS before it issues the Veterinary Health Certificate or Heath Certificate. [173]

[172] See 6.1.1 and 6.1.2 of *1GP*

[173] See 6.1.3 o *1GP*

It is pertinent that EBN exporters must comply with the above requirements in order to satisfy *CITES* regulations when dealing with importing and exportation of protected animals, birds, reptiles etc.

The necessity to control the use of nitrite in our exported EBN need no further elaboration since nitrite can cause cancer. In July 2011, Zhejiang province of China announced that the majority sample from some 30,000 cups of birds' nests from Malaysia contained nitrite level above China's health standards. In response, Malaysian Minister of MOA led his senior officials to China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) from 1st to 3rd November 2011 to resolve these issues. [174]

7.4.13 Registration and Traceability of BHs and EBN Processing Centres

The discussions on registration of both Swifts ranching premises and EBN processing centres by DVS [175] and registration of EBN processing centres as food for human and traceability by MOH Malaysia [176] are jointly discussed in this section.

The Malaysian government takes the EBN industry seriously. In order to support Malaysian EBN industry players to compete in global markets and for internal research purposes, the Malaysian government has embarked on serious research and collections of data for EBN produce in Malaysia.

In doing so, *1GP* requires the BHs and EBN Processing Centres be registered both with DVS and MOH for traceability purposes. *1GP* defines the meaning of traceability as the ability to chronologically interrelate uniquely identifiable entities in a way that is verifiable i.e. the

[174] See *'Swifts action on bird's nests issue'* article by Chow How Ban, hbchow@thestar.com.my , The Star, Malaysia newspaper, Saturday 12 November 2011 page 34.

[175] Ibid .see s 5 p 23 of *1GP*

[176] Ibid see s 7 and s 8 of *1GP* on registration and traceability of BH and EBN Processing centres, p 41 and 43

history, location or application of an item by means of documented and recorded identification.[177]

Traceability is important to the EBN industry in the following ways:-

1st The study of virology, bacteriology and parasitological aspect of swifts for public health purposes; shall there be any outbreak of diseases in any areas, the DVS and Health Ministry could easily and promptly identify the source of the outbreak from their records. This could easily narrow down the sources of outbreak and remedial action can be taken forthwith.

2nd Genetic study of the swifts, this include identification of the species and sub-species of swifts, the study of varieties of morphological traits of swifts , macroscopically examine the eternal features , body measurement , sex identification and age estimation of swifts.

3rd DNA collection data of swifts in Malaysia;

4th Studying the feed and feedings of swifts in Malaysia, swifts' nutrition and species of insects that are beneficial to the swifts.

Malaysian EBN products can be given special tagging to distinguish Malaysian products from other countries. From the above data collection, any complaints made against any Malaysian EBN products can be traced and tracked back the EBN Processing Centre.

In so doing, the governments can monitor the quality, trace the source of nests and narrow down the swifts' colonies when such a need arises. The governments can also respond to any allegations from international markets as to the authenticity of Malaysian products. In other words, Malaysian EBN industry can use traceability of Malaysian EBN products to face and refute international markets smearing against us with allegations that our products are faked.

[177] see s 7 and s 8 of *1GP* on registration and traceability of BH and EBN Processing centres at p 41 of 1GP

Since the year 2010, DVS, Malaysian Communication & Multimedia Commission (MCMC) and Royal Customs of Malaysia has worked together to develop traceability of the EBN system.

Finally, MCMC has created a system portal known as "Malaysia Animal Traceability System" [178] where public or consumers can enter the 6 digit serial number as stated in the seal of the EBN products to trace the origin of the products. Details of the BHs, the Processing Centre, the harvesting dates, the collection dates, the packing date dates are some of the information provided. Traceability of Malaysian EBN products are certainly a value added properties in international market.

7.4.14 Sharing of information.[179]

All agencies must share all information about the EBN industry and swifts with the leading agency namely DVS in this case, as and when such need arises. This information sharing mechanism is vital for both governments agencies to collect data both for statistical and scientific research and also for the EBN industry and market at large. On a wider scope, these data collections and information may be used by ASEAN swifts' industry agencies to promote and develop EBN markets for the common good of ASEAN.

7.5 The legal force of the DVS Guidelines

Though DVS guidelines may suffer from legal limitations concerning enforcement unless cruelty is involved, those guidelines issued by DVS are based on professional and scientific studies that can serve as minimal standards for the EBN industry.

[178] See http://www.dlm.gov.my/birdnests /public/pq009.asp

[179] Ibid see s 7 and s 8 of *1GP* on registration and traceability of BH and EBN Processing centres, p 41 and 43

It is commonly accepted that under administrative law in the absence of any law and regulation, any circular, order, directive, code or guideline made by the relevant authority under any statute may be applied as law by the court of law depending on the circumstances of the case. [180]

Malaysia has the strange habit of using guidelines to regulate business and banking activities. The wiser approach to adopt is to formulate rules or regulations as the applicable law.

The preface of the IGP states that this code of practice shall be used as source of reference for DVS to be practiced by all parties in the EBN industry. These guidelines shall be used as conditions of license holders issued by the local governments under the Local Government by laws.

7.6 Strength and weakness of 1GP Guidelines

In the absence of any specific legislation that regulates the EBN industry, *1GP* can be considered as embodying the most comprehensive guidelines available within the industry. Though *1GP* covers extensive areas and aspect of the industry, it is obvious that 1GP is not subsidiary legislation and may not be enforceable as regulations. Nonetheless, after examining the contents of *1GP*, we can summarise both the strengths and weaknesses of 1GP as follows.

7.6.1. The strengths of this *1GP* are as follows:-

1st: *1GP* is a comprehensive guideline that covers numerous areas that were not hitherto covered by other guidelines in particular *1GP* covers the BHs that exists before coming *1GP* and also the new BHs that come after *1GP*.*1GP* is capable of resolving

[180] See M.P. Jain, *A Treatise On Administrative Law*, 1996 Wadhwa and Company Nagpur, Chapter VIII page 190 onwards on details discussion on directions issued by the minister or department; and see M.P. Jain & S.N. Jain, *A Treatise On Administrative Law*, 6th Enlarged Edition 2007 , Wadhwa and Company Nagpur, Chapter VIII page 176 .

issues relating to nuisance and complaints made by the World Heritage Sites supporters and residents.

2nd The approval of premises license involved approval from other departments and agencies. The purpose of this is inbuilt inter-departmental checks and balances are to avoid abuse;

3rd The contents of the guidelines are much more complete and comprehensive than earlier guidelines as they put greater emphasises on minimum standards compliance in the harvesting and processing of EBN. This will better prepare the Malaysian EBN industry in facing and responding to the challenges in the global market.

4th These guidelines are comprehensive for the EBN industry, BH operators , as regards import, export, processing of EBN and also other relevant laws and regulations involved in the EBN industry .

5th The reliance of science and technology in genetic studies, research and traceability will further strengthen the Malaysian EBN in global markets.

6th By maintaining *1GP* as guidelines and not as a subsidiary legislation, *1GP* provides for " commercial wisdoms" in allowing private sectors to be the key players in their own industry with minimal interventions from the government agencies like local governments, DWL and DVS.

7th *1GP* fully takes aviation safety into consideration.

8th *1GP* is a model guideline to the world EBN industry.

7.6.2 The weaknesses of *1GP*, among others are as follows:-

1. The requirement to get approval from DCA's approval for those premises near the airports, or approval of TWGBW for those premises within World Heritage Sites, registration of BHs with DVS, Registration EBN Processing Centre with DVS and MOH, requirement that the BHs must be issued with Certificate of Completion and Compliance (CCC) will expose the applicant to many hurdles and hassles before a license can be issued by local governments. This will naturally encourage and promote corruption at various levels. So, the *1GP* should establish a one stop licensing agency and fix a short turn-over time for approval or rejection of any applications, ideally not more than 14 days from date of receipt of application.

2. There is no clear guideline to regulate the working of TWGBW. Delays may be caused by TWGBW by failing to meet and make an evaluation of the application. A fixed time frame needs to be imposed on TWGBW to come up with an evaluation report.

3. Section 4.3.2 of *1GP* made it a prerequisite for the applicant to be a member of birds' nests association as a precondition of approval of premises license by local governments. This is a clear violation of the Constitutional rights of citizen. No laws or regulation can force any citizen to be a member of any society or association. Section 4.3.2 is illegal and unconstitutional on the following grounds:

i) The position of direction as delegated power was discussed by M.P Jain as follows:-[181]

(a) *Directions cannot affect Private rights or Fundamental Rights.*

(b) *As directions are administrative in nature, the state cannot adversely affect the fundamental rights of a person mere by issuing directions.*[182]

(c) *As directions do not amount to law, no restrictions can validly be put on a person's personal liberty through directions.*[183]

[181] See M.P. Jain, *A Treatise On Administrative Law*, 1996 Wadhwa and Company Nagpur, Chapter VIII page 227

[182] *Shree Ganesh Steel Rolling Mills v India* AIR 1989 Cal.230.

[183] Kharak Singh v Uttar Pradesh, AIR 1963 SC 1295

ii) Citizens have freedom to form or join associations but no one should be compelled to become member of any association before he or she can be considered for a license. This section tantamount to promoting monopolies, cartels or oligarchies of the EBN industry among the birds' nests merchants' association members. *1GP* will certainly be used as a powerful instrument by the EBN merchant associations to achieve their motive to monopolise the industry. Section 4.3.2 of *1GP* must be removed from the *1GP* as it is unfair, unconstitutional and inhibits fair commercial competition.

4. *1GP* will remains as a guideline and nothing more. It will give rise to difficulties for courts of law to enforce the guidelines in *1GP* as it does not invoke any statute or any statue providing it with a legal basis as foundation.

5. In West Malaysia, EBN producing swifts have been removed from POWLA 1972 and WCA 2010 but in Sarawak these birds are still protected species under Sarawak WPO 1988. Inter states import and exports of EBN from East to West Malaysia or vice versa may give rise to much legal complications and conflicts unless the state and federal laws are synchronised. If *1GP* is intended to cover East Malaysia, to what extent this *1GP* contravenes the two states laws relating to the EBN industry is a question that needs further study and also that needs to be resolve d.

6. 1GP does not repeal the previous 1994, 2005 and 2007 Guidelines. *1GP* is incapable of repealing or revoking the earlier guidelines. But in the event of any conflict or contradictions between 1GP and the earlier guidelines, the provision of latest guideline i.e. *1GP* should prevail.

7. *1GP* is made by MOA but MOA has no jurisdiction to make such guidelines under WCA 2010. For reasons discussed in Para 6.4 earlier, MOA also cannot rely on the *Animals Act 1953* to confer upon itself the jurisdiction to make regulations under the Act.

7.7 SUMMARY OF 1GP

The introduction of *1GP* in 2010 has been timely. It supports the ETP launched by the governments. *1GP* is an important instrument that could expedite and facilitate the transformation of the EBN industry in Malaysia under the ETP and at the same time overcome the problems faced by the public, NGOs and the BH operators.

1GP has charted new direction for Malaysian EBN industry and practice. It has laid down important and relevant guidelines that cover many areas not previously considered. The standards set by 1GP become a foundation of our future EBN legislation that can be used as the minimal standard of compliance in our future EBN industry.

The weaknesses of the 1GP can be overcome and be remedied by making amendments to Animals Act 1953 or WCA 2010 and 1GP itself. Since the Animal Welfare Bill 2012 is pending approval and there are provisions which gave the power to the Minister and the Animal Welfare Board to enforce the law, action can be taken by the legal department of the relevant ministries. The jurisdictional weakness can be easily addressed, improved and corrected in future guidelines.

In summary, the Malaysian government has set a new mile stone for the EBN industry by its timely issue of the comprehensive guidelines for the industry.

CHAPTER 8: THE WAY FORWARD: A NATIONAL AGENDA AND BEYOND

There is great potential of developing and expanding the EBN market. Though EBN is only popular among the East Asia countries of China, Taiwan and Hong Kong, markets in Korea, Japan and within ASEAN are also worth tapping. With proper research and scientific studies on EBN, the time will come when the markets in Europe, United States and Africa will be also opened and developed. As a concluding chapter to this research project, it is sufficient for us to conclude it by brief projecting future trends at the Malaysian and ASEAN regional levels.

8.1 Malaysia

Within the Malaysian context, Malaysia since 2010 became the world's second largest exporter of EBN. With the cooperation from private and government sectors, our aim is to capture 40% of the EBN global market by 2020, and this is not a target too remote to achieve.

1GP is capable of addressing nuisance and world heritage site issues. As long as the EBN industry players comply with *1GP* and adhere to the spirit and intention of 1GP (without prejudice to the legal status of *1GP*), these guidelines are capable of serving and guiding our EBN Industry for a long time to come.

The collection and sale of the EBN and eggs can be effectively controlled by DWL and regulated by WCA 2010. While 1GP serves as guidelines to the industry, the regulative and legislative jurisdictions may be enforced by using WCA 2010. The internal issues as to whether DWL or DVS should govern matters regarding EBN industry can be easily resolved by the Cabinet. As the Animal Welfare Bill 2012 is still subject to further improvement before passing by parliament, to what extent this Bill can removes the overlapping jurisdictional

issues and other weaknesses under the Animals Act 1953 can only be assessed after the passing of the Bill.

Though we have relatively achieved remarkable success in the EBN industry by taking over Thailand as the second largest exporter of EBN in the world, we still have a long way to go before the industry reaches its maturity stage in terms of adequacy of EBN regulation and legislation.

The legislature must always be mindful that over regulating it will hinder or kill the industry.

The recent emergence of complaints about excessively high sodium nitrite contents in the processed EBN had resulted in drastic plunge of EBN prices. This issue must be seriously handled by Malaysia and all ASEAN countries jointly.[184] Prolonged delay in handling these issues will seriously harm The EBN industry in the ASEAN countries.

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[184] See http://www.cfs.gov.hk/english/programme/programme_rafs/programme_rafs_fa_02_11.html accessed on 12th April 2012. In the Government of Hong Kong Special Administrative Region website under Centre For Food, a specific article on *Nitrite in Bird's Nests* was published on September 2011 that confirmed among others that according to the results from recent local studies (presumably done in Hong Kong), any adverse health effect due to consumption of thoroughly washed, soaked and stewed bird's nests are not likely . For complete reference of these findings, the articles is reproduced below:

Nitrite in Bird's Nests

Introduction

1. In 2011, surveillance conducted by Mainland authority and local studies found that nitrite was present in various bird's nests, in particular blood-red bird's nests , available at the market.
2. Nitrite occurs in the environment, in food and water, and is produced inside living organisms. It can be used as a food additive, mainly as a preservative and colour fixative in foods such as cheese and cheese products as well as cured and fermented meats.
3. Some scientific studies have shown that nitrite may naturally form in bird's nests due to fermentation under certain temperature and humidity. Some studies also suggested that high level of nitrite in bird's nests may due to environmental contamination e.g. from bird droppings which contain high level of nitrate. However, the exact mechanism for the presence of nitrite in bird's nests is not entirely clear at this stage.

Safety and Public Health Significance

1. The safety of nitrite in food has raised concern because of its possible implication for the adverse health effects such as methaemoglobinaemia and cancers.
2. In the body, nitrite can oxidise haemoglobin in blood and make it unable to carry oxygen to the body tissues. Having insufficient oxygen, the person may develop blue or purple colouration in the lip and skin and the condition is called methaemoglobinaemia. Population subgroups such as young infants and people with glucose-6-phosphate dehydrogenase (G6PD) deficiency are more susceptible to the above condition. According to the Centre for Health Protection record, since 2003 there were two cases of nitrite related food poisoning and both were related to consumption of vegetables with high levels of nitrate in infants and young children.
3. The International Agency for Research on Cancer (IARC) of the World Health Organization has evaluated the carcinogenicity of ingested nitrite and concluded that ingested nitrite under conditions that result in endogenous nitrosation (i.e. conversion into nitroso compounds such as nitrosamines) is probably carcinogenic to humans (i.e. Group 2A). However, JECFA * considered that there was no evidence for an association between nitrite exposure in humans and the risk of cancer.
4. JECFA has evaluated the safety of nitrite and allocated an acceptable daily intake (ADI) of 0-0.07 mg per kg body weight (bw), expressed as nitrite ion and the ADI does not apply to infants below the age of 3 months. According to the results from recent

This research project has discussed and covered a wide range of topics relevant to the EBN industry. In particular, it has studied, examined and evaluated the relevant legislation related to the EBN industry and also the legal issues involved. Various problems have been discussed and suggestions were made to improve our laws. The proposals made in this research are most timely considering the huge potential and projected earnings from this industry.

The governments should only play the regulative and facilitative role without too much interference in the EBN business and the industry players should be allowed to carry out and develop their own business with minimal interference. With the joint cooperation between the government sector and the industry players, Malaysia is capable of playing a more significant role in the EBN industry.

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local studies, any adverse health effect due to the consumption of thoroughly washed, soaked and stewed bird's nests are not likely.

Regulatory Control

1. Like other countries, nitrites (potassium nitrite and sodium nitrite) are permitted preservatives in a number of food categories e.g. cured meats, fermented meats, cheeses and cheese products, but do not include bird's nests in Hong Kong. However, Section 3(10) of the *Preservatives in Food Regulation* states that it does not apply to an article of food containing any food additive that is naturally present in that food.
2. For bird's nests containing naturally formed nitrite, there is no international consensus on their reference and regulatory levels.

Recommended Preparation Method for Bird's Nests

1. In practice, dried bird's nests should be thoroughly washed and soaked before stewing. Both local and Mainland studies have showed that thoroughly washing and soaking for a few hours can in general remove substantial quantity (up to more than 90%) of nitrite in bird's nests . However, since nitrites are dissolved into the soaking water, they should be discarded after soaking. Water used for soaking bird's nests should also be replaced once or twice during the soaking process. The public can also refer to the suppliers' recommendation when preparing bird's nests.

Advice to the Public

1. Buy bird's nests from reliable premises.
2. Since nitrite is water-soluble, washing and soaking bird's nests thoroughly can in general remove up to more than 90% of nitrite.
3. Water used for soaking bird's nests should be replaced once or twice and should be discarded after use.
4. Young infants are not recommended to take bird's nests.

Advice to the Trade

1. Source bird's nests from reliable suppliers.
2. According to the Preservatives in Food Regulation, nitrites should not be added in bird's nests.
3. Provide clear instruction to consumers on proper way of preparation of bird's nests.

Risk Assessment Section
Centre for Food Safety
September 2011

* Joint Food and Agriculture Organization/ World Health Organization Expert Committee on Food Additive

Malaysia has the resources, expertise and capable scientists to conduct further research on EBN and the industry. With the cooperation and commitment from all the parties involved, Malaysia is certainly able to take the EBN industry to more ambitious and greater heights in the near future. The vision to transform Malaysia into a high-income nation by 2020 is an achievable goal with the EBN industry featuring and playing a contributory role.

8.2 ASEAN

ASEAN members share quite similar geographical and climatic conditions. The Apodidae swifts' families are commonly found in abundance in the South East Asian region. Therefore, the Malaysian experience and expertise in the EBN industry can be shared amongst the ASEAN countries.

Within ASEAN, Malaysia should propose the setting up of a common research centre for EBN Swifts to study matters relating to and connecting with the swifts, genetic studies, traceability, microbial tests, heavy metals, nitrite, soluble glycol protein, amino acids, the method to counter fake EBN, scientific studies on properties EBN and its medicinal, health and nutritional value, diseases, conservation, environmental impacts and the marketing of EBN inclusive of setting a new industrial standard and usage of technique such as High Performance Liquid Chromatography (HPLC).[185]

The cooperative spirit within ASEAN and enriching neighbours' policies should be actively adopted by all EBN producing countries. The data collected by the MCMC in "Malaysia Animal Traceability System" portal as discussed in Chapter 7.4.13 above can be fully shared among ASEAN members.

[185] The Federation of Malaysian Bird's Nests Merchants Association has signed a Memorandum of Agreement on 12th April 2010 with the International Medical University of Malaysia (IMU) to work closely in conducting studies and analysis of aspects involving microbial test, heavy metals, nitrite, soluble glycol protein, amino acids on EBN. See **http://www.swiftsletecopark.com.my/knowledge_articles_crisis.htm Crisis is an Opportunity** – accessed on 12-4-2012

Further, cooperation among the competing countries should be seen as a strength rather than weakness in order for ASEAN to jointly face and counter the challenges of market manipulation by the middlemen in Hong Kong and the problems of the fake nests in the Chinese market.

In conclusion, ASEAN may benefit greatly from the Malaysian experience and its expertise in matters relating to the EBN industry. Our active, serious and committed strategy in regulating and promoting the EBN industry is most laudable and businesslike. In the years to come, Malaysia has to continuously improve the 1GP and the regulatory framework so that one day *1GP* will serve as a model for EBN development and regulation for the ASEAN region.

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REGULATING EDIBLE BIRD'S NEST (EBN) INDUSTRY IN MALAYSIA: AN EVALUATION OF THE CURRENT LEGAL FRAMEWORK

APPENDIX A:

Garis Panduan Pembangunan Industri Burung Walit (1GP)

GARIS PANDUAN
PEMBANGUNAN INDUSTRI BURUNG WALIT
(1GP)

Edisi Pertama

JANUARI 2010

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Lampiran

PRAKATA

Garis Panduan Pembangunan Industri Burung Walit bersepadu (1GP) disediakan untuk menjelaskan kriteria yang perlu dipatuhi berhubung penjagaan premis perladangan, premis pemprosesan dan kebajikan haiwan. Ia merangkumi legislatif Kerajaan sedia ada bagi urusan pelesenan dan pendaftaran premis perladangan serta pemprosesan. Di samping itu, 1GP menjelaskan standard untuk sistem rekod, pembungkusan, pelabelan, pengangkutan, import dan eksport, kawalan penyakit, spesifikasi, penggredan, fasiliti, asing singkir serta pelupusan berdasarkan tatacara Kementerian Alam Sekitar. Dokumen ini adalah dinamik dan ianya selari dengan teknologi yang sentiasa berubah, penemuan saintifik dan pengalaman kumulatif industri berkenaan.

Garis panduan juga mengandungi cadangan untuk membantu agensi berwajib atau pihak swasta iaitu pemilik dan pengusaha burung walit saling bekerjasama membuat perancangan serta pembangunan. Garis panduan ini akan diguna pakai di seluruh negara untuk semua jenis premis burung walit. Garis panduan ini juga menghuraikan lakaran peraturan, undang-undang atau kaedah tatacara pelesenan yang mesra alam dan mesra awam.

Dokumen ini menekankan Amalan Baik Penternakan Haiwan - *Good Animal Husbandry Practices* (GAHP - MS 2273:2009) iaitu tatacara pengurusan ternak dan premis, pengangkutan, amalan pentadbiran, daya jejak dan kebajikan haiwan. Dari sudut aktiviti perusahaan sarang burung walit, untuk berkembang di landasan yang baik, teratur dan terkawal maka, garis panduan ini juga membantu Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia (JPBDSM) dalam perancangan dan pembangunan yang melibatkan industri burung walit. Ini merangkumi lokasi, reka bentuk, fasad dan keadaan premis yang harmoni serta alam persekitaran bandar dan desa terpelihara dan nilai estetik terjaga. Kesejahteraan hidup orang awam dan masyarakat berhampiran adalah terjamin dengan berlandaskan 1GP ini.

Garis panduan ini juga memberi tatacara pemprosesan sarang burung walit mengikut Amalan Baik Pengilangan - *Good Manufacturing Practices* (GMP - MS 2333:2010). Ia merangkumi pemilihan, pembersihan, pembungkusan dan pelabelan dengan spesifikasi yang digariskan. Persampelan makmal juga menerangkan kaedah dan ujian-ujian yang perlu dijalankan.

Sehubungan itu, Kementerian Pertanian dan Industri Asas Tani mencadangkan penggunaan 1GP ini diperluaskan kegunaannya di luar kawasan pentadbiran Pihak Berkuasa Tempatan (PBT) bagi membina premis walit, walau bagaimanapun pendaftaran diwajibkan di bawah Jabatan Perkhidmatan Veterinar (JPV).

1GP ini adalah panduan asas untuk membantu Jabatan teknikal dan agensi Kerajaan memantau dan mengawal selia industri secara luwes bagi menjadikan industri burung walit berkembang maju, mampan dan lestari.

1. RUJUKAN

1.1 Jabatan Perkhidmatan Veterinar (JPV)

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i) MS 2334:2010 (P), *Edible-Birdnest (EBN) - Specification.*

j) Sijil Amalan Ladang Ternakan 2003 (SALT).

k) Veterinary Health Mark (VHM).

1.2 Kementerian Perumahan dan Kerajaan Tempatan (KPKT)

a) Akta Perancangan Bandar dan Desa 1976 [Akta 172] : Subseksyen 19 (1) dan Seksyen 22 (A) bagi keperluan kebenaran merancang.

b) Akta Kerajaan Tempatan 1976 [Akta 171] : Seksyen 107 dan 110 bagi tujuan pelesenan dan penguatkuasaan.

c) Akta Jalan, Parit dan Bangunan [Akta 133] : Seksyen 70 bagi keperluan permohonan pelan bangunan.

d) Undang-Undang Kecil Bangunan Seragam, 1988 yang diguna pakai oleh Pihak Berkuasa Tempatan (PBT) bagi perkara-perkara melibatkan pengubahsuaian bangunan sedia ada untuk tujuan perusahaan burung walit.

e) Undang-Undang Kecil Tred, Perniagaan dan Perindustrian yang diguna pakai oleh PBT untuk penguatkuasaan.

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1.3 Kementerian Kesihatan Malaysia (KKM)

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c) Peraturan-Peraturan Kebersihan Makanan 2009 [P.U. (A) 95/2009].

1.4 Jabatan Warisan Negara (JWN)

a) Akta Warisan Kebangsaan [Akta 645].

1.5 Jabatan Kemajuan Islam Malaysia (JAKIM)

a) MS 1500:2009, *Halal Food - Production, Preparation, Handling and Storage - General Guidelines.*

1.6 Jabatan Standard Malaysia (JSM)

a) Akta Standard 1996 (Semakan 2006) [Akta 549].

2. DEFINISI

2.1 Ajuk bunyi

Panggilan bunyi kicauan bagi tujuan memanggil burung walit dengan menggunakan alat pemanggil.

2.2 Amalan Baik Pengilangan (GMP)

Satu ketetapan peraturan, kod dan garis panduan yang digunakan bagi mengawal tatacara operasi di loji makanan sesuai untuk pengeluaran makanan yang selamat.

2.3 Amalan Baik Penternakan Haiwan (GAHP)

Ciri-ciri minimum yang dikehendaki berkaitan penetapan amalan baik penternakan haiwan untuk peningkatan dan penghasilan berlanjutan secara berterusan, jaminan kesihatan, keselamatan dan keselesaan kepada pengusaha dan haiwan tanpa menjejaskan alam sekitar.

2.4 Bahan cemar (*Contamination*)

Apa-apa agen biologikal atau bahan kimia, bendasing atau bahan lain yang bukan bertujuan untuk ditambah ke dalam makanan yang boleh menggugat kesesuaian dan keselamatan makanan.

2.5 Bahan cemar fizikal

Bahan asing di dalam EBN mentah yang belum dibersihkan seperti kotoran, rumput, ranting, kayu, bulu, kulit telur, simen, kepingan cat atau unsur-unsur nyata yang lain.

2.6 *Central Business District* (CBD - Pusat Bandar)

Kawasan atau daerah yang menjadi tumpuan pelbagai kegiatan atau tempat yang menjadi punca segala aktiviti utama dan tempat terdapat segala kemudahan untuk keperluan sesuatu daerah atau negeri.

2.7 *Certificate of Completion and Compliance* (CCC)

Sijil Perakuan Siap dan Pematuhan (CCC) adalah sijil yang dikeluarkan oleh para profesional (Arkitek atau Jurutera Profesional) yang memperakukan suatu bangunan telah siap dan selamat untuk didiami melalui pendekatan *self-regulation dan self-certification di bawah Akta 133 bermula pada April 2007 bagi menggantikan CFO.*

2.8 *Certificate of Fitness for Occupation (CFO)*

Perakuan Kelayakan Menduduki (CFO) adalah dokumen yang dikeluarkan oleh PBT kepada pemilik bangunan selepas pembinaan sesuatu bangunan siap dan selamat untuk didiami.

2.9 EBN

Sarang burung walit (*Edible-birdnest*).

2.10 EBN diproses

Edible-birdnest (EBN) mentah yang telah dibersihkan untuk kegunaan pemprosesan atau penyediaan selanjutnya sebelum boleh digunakan.

2.11 EBN ladang

Sarang burung walit yang dihasilkan dari premis buatan manusia.

2.12 EBN gua

Sarang burung walit yang dihasilkan oleh burung walit di gua.

2.13 EBN-mentah belum bersih (*Raw-unclean EBN*)

EBN yang dituai dari gua atau premis termasuk pengasingan, penggredan, perapian, penimbangan dan pembungkusan tanpa sebarang proses pembersihan.

2.14 EBN-mentah siap bersih (*Raw-clean EBN*)

EBN yang telah dibersihkan dan telah melalui proses pengasingan, rendaman, buang bulu dan kotoran, pembentukan, pengeringan, penggredan serta pembungkusan.

2.15 *Edible-nest Swiftlet*

Burung walit yang menghasilkan sarang daripada rembesan liur yang boleh diguna pakai.

2.16 Fasad

Rupa muka bahagian hadapan bangunan.

2.17 *Fledgling*

Anak burung walit dalam peringkat tumbesaran sehingga tumbuh bulu dan berupaya untuk terbang.

2.18 *Guano*

Najis burung walit.

2.19 *Hazard Analysis Critical Control Point* (HACCP)

Suatu pendekatan sistematik terhadap pengenalpastian, penilaian risiko dan kemudaratan serta kawalan hazad biologikal, kimia dan fizikal yang dikaitkan dengan amalan atau proses pengeluaran makanan tertentu.

2.20 *Jack-roof*[1]

Struktur yang dibina di atas bumbung premis burung walit untuk laluan keluar masuk burung walit.

2.21 Kad Pengenalan Premis

Dokumen pendaftaran premis burung walit dalam bentuk buku.

2.22 Kawasan perumahan sepenuhnya

Suatu kawasan yang mengandungi lebih daripada empat (4) unit rumah sebagai tempat tinggal setempat.

2.23 Kebenaran merancang

Menurut Subsekyen 19 (1), Akta Perancangan Bandar dan Desa 1976 [Akta 172] memperuntukkan tiada sesiapa pun, selain pihak berkuasa tempatan, boleh memulakan, mengusahakan atau menjalankan apa-apa pemajuan melainkan pemajuan itu telah mendapat kebenaran merancang daripada Pihak Berkuasa Perancangan Tempatan (PBPT).

2.24 Kebersihan makanan

Semua langkah dan keadaan yang perlu untuk mengawal bahaya bagi memastikan keselamatan makanan dan juga bersesuaian tujuan kegunaannya.

2.25 Ketidaktulenan (*Adulteration*)

Apa-apa agen biologikal, fizikal serta kimia, bendasing atau bahan lain yang ditambah ke dalam EBN mentah dan produknya.

2.26 *Nestlings*

Anak burung yang belum cukup matang untuk meninggalkan sarang.

2.27 Palang-palang kayu (*Batten*)[1]

Tempat burung walit membuat sarang.

2.28 Pelan bangunan

Menurut Subseksyen 70 (1) dan (2), Akta Jalan, Parit dan Bangunan [Akta 133] menyatakan tiada seseorang boleh mendirikan sesuatu bangunan tanpa mendapat kebenaran bertulis terlebih dahulu daripada pihak berkuasa tempatan dan seseorang yang bercadang mendirikan sesuatu bangunan hendaklah menyebabkan untuk dikemukakan oleh orang utama yang mengemukakan atau orang yang mengemukakan kepada pihak berkuasa tempatan apa-apa pelan dan penentuan sebagaimana yang dikehendaki oleh mana-mana undang-undang kecil yang dibuat di bawah Akta ini.

2.29 Perladangan burung walit

Penternakan di mana persekitaran yang diolahkan supaya sesuai untuk burung walit membiak dan membuat sarang di dalam premis buatan manusia.

2.30 Pelesenan premis

Menurut Seksyen 107, Akta Kerajaan Tempatan [Akta 171] ialah sesuatu lesen atau permit, sesuatu PBT boleh menetapkan bayaran bagi lesen atau permit itu dan caj bagi memeriksa atau menyelia apa-apa tred, pekerjaan atau premis yang mengenainya lesen itu diberi berhubung bangunan premis.

2.31 Pembersihan EBN

Proses-proses yang merangkumi rendaman, pembasahan, pelembapan, pengasingan kotoran dan bulu daripada EBN untuk memperoleh produk berkualiti dan selamat.

2.32 Persekitaran premis

Tahap pencemaran makanan diminimumkan di kawasan bebas unsur-unsur yang berpotensi mendatangkan kemudaratan.

[1] *Batten*

2.33 Persekutuan Persatuan Pedagang Sarang Burung Malaysia

Payung kepada pelbagai persatuan EBN di Malaysia.

2.34 Pihak Berkuasa Negeri

Pihak Berkuasa Negeri (PBN) mempunyai kuasa terhadap segala urusan berkenaan dengan tanah di negeri masing-masing termasuk pemilikan semua tanah yang belum diberi hakmilik, pemberian hakmilik, urusan jual-beli, pengambilan tanah untuk kegunaan awam dan sumber-sumber tanah.

2.35 Pihak Berkuasa Tempatan

Takrifan PBT dibuat berdasarkan 3 undang-undang PBT seperti berikut:-

i) Akta Kerajaan Tempatan 1976 (Akta 171) - PBT di Semenanjung Malaysia

Seksyen 2 : PBT ertinya mana-mana Majlis Bandaraya, Majlis Perbandaran atau Majlis Daerah dan bagi Wilayah Persekutuan ertinya Datuk Bandar Kuala Lumpur yang dilantik di bawah seksyen 3 Akta Ibu Kota Persekutuan 1960.

ii) *Local Government Ordinance 1961 (Sarawak No. 11 of 1996)* - PBT di Sarawak

"Local Authority" means -

(a) a City Administration named in Part I of the First Schedule;
(b) a Municipal Council named in Part II of the First Schedule;
(c) a District Council named in Part III of the First Schedule;

Lembaga Kemajuan Bintulu (BDA) turut dimasukkan dalam (b) di atas.

iii) *Local Authorities Ordinance 1996 (Chapter 20)* - PBT di Sabah

"Authority" means any District Council, Town Board or Municipal Council established under the provisions of Section 3.

2.36 Pihak Berkuasa Veterinar

Pegawai-pegawai yang diberi kuasa oleh Ketua Pengarah Perkhidmatan Veterinar mengikut Akta Binatang 1953 (Semakan 2006) [Akta 647].

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2.37 Premis Pemprosesan

(i) Premis yang digunakan untuk tujuan membersihkan EBN dari kekotoran, bulu dan lain-lain bendasing.

(ii) Premis yang digunakan untuk menghasilkan produk tambah nilai EBN sama ada sebagai bahan makanan dan kosmetik.

2.38 Pusat Daftar Setempat

Pusat Daftar Setempat (PDS) di mana premis burung walit diberi tanda pengenalan *Radio Frequency Identification Device (RFID)* dan didaftarkan di dalam sesawang JPV.

2.39 Pusat Tumpuan Utama Aktiviti Bandar

Satu tempat yang menjadi tumpuan pelbagai kegiatan dan aktiviti utama ekonomi atau sosial serta terdapat semua kemudahan untuk keperluan penduduk setempat. Contoh A Famosa, Tugu Negara dan Makam Mahsuri.

2.40 Skim Amalan Ladang Ternakan (SALT)

Skim yang dilaksanakan oleh Jabatan Perkhidmatan Veterinar di peringkat ladang untuk memberi pengiktirafan kepada ladang-ladang ternakan yang mengamalkan amalan penternakan dan kawalan kesihatan ternakan yang baik. Amalan yang menekankan kepada produktiviti, aktiviti perladangan mesra alam, kawalan penyakit yang baik, ladang bebas penyakit berbahaya dan menghasilkan produk berkualiti dan selamat serta sesuai dimakan.

2.41 *Veterinary Health Mark (VHM)*

Logo *Veterinary Health Mark* merupakan lambang kualiti vang dianugerahkan kepada loji-loji pemprosesan hasilan ternakan di bawah Program Pemeriksaan dan Akreditasi Veterinar Jabatan Perkhidmatan Veterinar, Kementerian Pertanian Malaysia. Logo juga menandakan bahawa loji-loji berkenaan telah akur sepenuhnya kepada syarat Keperluan Piawaian Minima *"Hygiene and Sanitation", "Quality Assurance and Food Safety"* yang ditetapkan oleh JPV dan dipastikan melalui proses pemeriksaan loji dengan penekanan kepada *"Food Safety and Quality System"* serta *"Good Manufacturing Practice Programs* (MS 2333:2010)*"*.

3. PENGENALAN

Ramai pengusaha telah cuba menerokai halaman baru dalam penuaian sarang burung walit ini dari perspektif perladangan yang berperikemanusiaan, ekonomik, lestari pada populasi burung walit serta mesra alam sekitar berbanding cara tradisi. Jadual 1 menunjukkan perbezaan di antara burung walit (*Edible-nest Swiftlet*) dengan burung layang-layang (*Swallow*).

Jadual 1 Perbezaan di antara Burung Walit (*Edible-nest Swiftlet*) dengan Burung Layang-Layang (*Swallow*)

Kategori	Burung Walit	Burung Layang-layang
Order[2]	*Apodiformes* - Tangkas terbang di udara *(Aerial agility)*	*Passeriformes* - Bertenggek di atas talian letrik di waktu petang *(gripping feet)*
Famili (Family)[3]	*Apodidae*	*Hirudinidae*
Bilangan Spesies	8	74
Habitat	Balik ke sarang *Homing behaviour (Nest-site fidelity)*	Kebanyakan berhijrah (*most species migrate*)
Komponen sarang	Rembesan liur *(Salivary exudation from the salivary gland to make the nest)*	Rumput, ranting dan bulu

[2] *Order*

In scientific classification used in biology, the order (Latin: ordo) is

1. *a taxonomic rank used in the classification of organisms. Other well-known ranks are life, domain, kingdom, phylum, class, family, genus, and species, with order fitting in between class and family.*

[3] *Family*

*In biological classification, **family** (Latin: familia) is*

Burung walit menggunakan ekolokasi (*echolocation*) untuk mengemudi dalam keadaan gelap dan untuk mengelakkan pelanggaran dengan objek-objek semasa terbang. Burung walit dapat menyesuaikan diri dengan pelbagai iklim dan habitat.

Sarang burung walit adalah sarang burung yang paling dikagumi. Sarangnya tiada berliku-liku, berwarna-warni atau menawan. Masyhurnya sarang burung walit disebabkan ianya adalah ramuan asas sup sarang burung di merata dunia. Sarang burung walit sangat berharga dan tuaian daripada premis di seluruh negara memberi hasil berjuta-juta ringgit setiap tahun bagi pengusaha premis burung walit atau premis pemprosesan di Malaysia.

4. PREMIS PERLADANGAN BURUNG WALIT

4.1 Aspek Perancangan Premis Perladangan Sedia Ada

4.1.1 Kawasan Bandar

a) Premis sedia ada yang terletak di kawasan bandar tetapi bukan di dalam pusat tumpuan utama aktiviti bandar adalah dibenarkan terus beroperasi mengikut garis panduan yang disediakan di bawah GAHP.

b) Premis sedia ada di pusat tumpuan utama aktiviti bandar adalah dibenarkan terus beroperasi sekiranya mengamalkan GAHP dan mendapat kelulusan PBT/PBN.

c) Ubah suai fasad, tambahan bangunan dan pembesaran bangunan adalah tidak dibenarkan.

d) Jack-roof perlu sesuai dan harmoni dengan bangunan persekitaran.

e) Mengemukakan permohonan pendaftaran aktiviti perladangan kepada JPV.

f) Mengemukakan permohonan lesen premis kepada Pihak Berkuasa Tempatan (PBT) yang berkaitan.

4.1.2 Kawasan Luar Bandar

a) Lokasi yang dibenarkan untuk aktiviti perladangan burung walit adalah:

i. Kawasan pertanian – kawasan ladang, perkebunan, akuakultur, aktiviti berkaitan dengan pelancongan berasaskan pertanian dan tanah pertanian kosong.

ii. Kawasan industri – kawasan industri ringan dan kluster.

b) Lokasi yang tidak dibenarkan untuk aktiviti perladangan burung walit ialah sekolah, klinik kesihatan, tempat ibadat, kawasan taman permainan, kawasan kegunaan khas, rizab utiliti dan kawasan sensitif alam sekitar, kawasan tadahan air dan hutan simpanan kekal.

c) Had ketinggian bangunan adalah tidak melebihi atau sama **12 meter.**

d) Mengemukakan permohonan pendaftaran aktiviti perladangan kepada JPV.

e) Mengemukakan permohonan lesen premis kepada Pihak Berkuasa Negeri (PBN) yang berkaitan.

4.1.3 Tapak / Bangunan Warisan

Jawatankuasa Kerja Teknikal Tapak Bangunan Warisan (TWGBW) akan bersidang untuk menilai setiap permohonan premis perladangan burung walit di kawasan warisan. Ahli-ahli TWGBW terdiri daripada Jabatan Warisan Negara (JWN), JPV, Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia (JPBDSM) dan wakil Persekutuan Persatuan Pedagang Sarang Burung Malaysia. Berdasarkan penilaian ini, surat akuan akan diberi kepada PBN/PBT untuk saranan kesesuaian aktiviti perladangan burung walit sama ada boleh diteruskan, dibatalkan atau diubahsuai berdasarkan syarat yang ditetapkan.

a) Tapak/bangunan warisan adalah seperti mana yang telah diiktiraf sebagai Tapak Warisan Dunia (*World Heritage Site*) oleh UNESCO[4] atau telah diwartakan oleh Pesuruhjaya Warisan di bawah Akta Warisan Kebangsaan 2005 [Akta 645].

b) Premis sedia ada dibenarkan terus beroperasi sehingga TWGBW bersidang dan keputusan diumumkan.

c) Sebarang bentuk aktiviti untuk mengubah apa-apa fasad dan struktur luaran atau dalaman bangunan warisan perlu mendapat kelulusan TWGBW terlebih dahulu.

4.1.4 Sekitar Lapangan Terbang

a) Sempadan zon penampan di sekitar lapangan terbang adalah berdasarkan Rancangan Tempatan kawasan berkaitan.

b) Aktiviti perladangan burung walit adalah tidak dibenarkan di sekitar 10 kilometer di kedua-dua hujung landasan kapal terbang melainkan mendapat kebenaran daripada Jabatan Penerbangan Awam Malaysia (DCA).

[4] *UNESCO : The United Nations Educational, Scientific and Cultural organization (unesco: pronounced/ju:'n sko/ yew-NESK-oh) is a specialized agency of the United Nations established on 16 November 1945. Its stated*

4.2 Aspek Perancangan Premis Perladangan Baru

4.2.1 Kawasan Bandar

a) Lokasi yang tidak dibenarkan untuk aktiviti perladangan burung walit ialah di pusat tumpuan utama aktiviti bandar.

b) Premis baru di kawasan bandar perlu mengikut GAHP.

c) Premis baru burung walit yang menggunakan bangunan sedia ada perlu mengekalkan pintu dan tingkap sedia ada. Penutupan tingkap sedia ada perlu dibuat dari bahagian dalam bangunan.

d) Laluan keluar masuk burung walit secara *top entry* adalah digalakkan.

e) Reka bentuk bangunan termasuk *jack-roof* perlu menggunakan struktur yang kukuh, bersesuaian dan harmoni dengan bangunan sekitar.

f) Zon penampan minimum **50 meter** dari kawasan perumahan sepenuhnya.

g) Mengemukakan permohonan pendaftaran aktiviti perladangan kepada JPV.

h) Mengemukakan permohonan lesen premis baru kepada PBT yang berkaitan.

4.2.2 Kawasan Luar Bandar

a) Lokasi yang dibenarkan untuk aktiviti perladangan burung walit adalah:

i. Kawasan pertanian – kawasan ladang, perkebunan, akuakultur, aktiviti berkaitan dengan pelancongan berasaskan pertanian dan tanah pertanian kosong. Hanya bangunan jenis sesebuah dibenarkan di kawasan pertanian.

ii. Kawasan industri – kawasan industri ringan dan kluster (kurang daripada 50 buah premis dalam satu-satu kawasan). Jenis bangunan yang dibenarkan di kawasan industri ialah teres, berkembar dan sesebuah.

b) Lokasi yang tidak dibenarkan untuk aktiviti perladangan burung walit ialah sekolah, klinik kesihatan, tempat ibadat, kawasan taman permainan, kawasan kegunaan khas, rizab utiliti dan kawasan sensitif alam sekitar, kawasan tadahan air dan hutan simpanan kekal.

c) Syarat tanah ialah pertanian atau industri.

d) Reka bentuk bangunan termasuk *jack-roof* perlulah menggunakan struktur yang kukuh, bersesuaian dan harmoni dengan kawasan sekitar.

e) Had ketinggian bangunan adalah tidak melebihi atau sama **12 meter**.

f) Premis baru burung walit yang menggunakan bangunan sedia ada perlu mengekalkan pintu dan tingkap sedia ada. Penutupan tingkap sedia ada perlu dibuat dari bahagian dalam bangunan.

g) Laluan keluar masuk burung walit secara *top entry* adalah digalakkan.

h) Perlu menyediakan zon penampan minimum **50 meter** dari kawasan perumahan sepenuhnya.

i) Mengemukakan permohonan pendaftaran aktiviti perladangan kepada JPV.

j) Mengemukakan permohonan kebenaran merancang, pelan/permit bangunan dan lesen premis kepada PBN yang berkaitan.

4.2.3 Tapak / Bangunan Warisan

TWGBW akan bersidang untuk menilai setiap permohonan premis perladangan burung walit di kawasan warisan. Ahli-ahli TWGBW terdiri daripada JWN, JPV, JPBDSM dan wakil Persekutuan Persatuan Pedagang Sarang Burung Malaysia. Berdasarkan penilaian ini, surat akuan akan diberi kepada PBN/PBT untuk saranan kesesuaian aktiviti perladangan burung walit sama ada boleh diteruskan, dibatalkan atau diubahsuai berdasarkan syarat yang ditetapkan.

a) Tapak/bangunan warisan adalah seperti mana yang telah diiktiraf sebagai Tapak Warisan Dunia (*World Heritage Site*) oleh UNESCO atau telah diwartakan oleh Pesuruhjaya Warisan di bawah Akta Warisan Kebangsaan 2005 [Akta 645].

b) Premis baru dibenarkan setelah TWGBW bersidang dan keputusan diumumkan.

c) Sebarang bentuk aktiviti untuk mengubah apa-apa fasad dan struktur luaran atau dalaman bangunan warisan perlu mendapat kelulusan TWGBW terlebih dahulu.

4.2.4 Sekitar Lapangan Terbang

a) Sempadan zon penampan di sekitar lapangan terbang adalah berdasarkan Rancangan Tempatan kawasan berkaitan.

b) *Aktiviti perladangan burung walit adalah tidak dibenarkan di sekitar*

4.3 Lesen Premis Perladangan

4.3.1 Keperluan Lesen

a) Mana-mana pengusaha yang menjalankan aktiviti perladangan burung walit di mana-mana tempat atau premis dalam kawasan PBT dengan terlebih dahulu mendapat lesen daripada PBT dan di luar kawasan PBT memohon lesen daripada PBN berkaitan.

b) Setiap lesen yang dikeluarkan adalah tertakluk kepada syarat-syarat yang ditetapkan atau dikenakan di dalamnya dari semasa ke semasa.

c) Setiap lesen yang dikeluarkan hendaklah menyatakan nama pemegang lesen, letaknya premis dan alamat surat-menyurat.

d) Setiap pemegang lesen hendaklah sentiasa mempamerkan salinan lesennya pada setiap masa di suatu tempat yang mudah dilihat di premis yang dilesenkan itu dan hendaklah mengemukakan lesen itu jika dikehendaki berbuat demikian oleh mana-mana pegawai yang diberi kuasa.

e) Mana-mana pemegang lesen yang tidak mempamerkan atau gagal mengemukakan lesen apabila diminta berbuat demikian oleh pegawai yang diberi kuasa adalah melakukan satu kesalahan.

4.3.2 Syarat Permohonan Lesen

a) Mendaftar dengan JPV secara atas talian atau manual di pejabat JPV terdekat.

b) Semua pengusaha yang menjalankan aktiviti perladangan burung walit perlu mengikuti kursus GAHP sekali sahaja yang diselaraskan oleh JPV dan menyertakan sijil kehadiran kursus semasa mengemukakan permohonan lesen.

c) Setiap premis burung walit perlu memperolehi CFO/CCC atau permit bangunan atau resit cukai pintu terkini.

d) Pemohon perlu menjadi ahli Persekutuan Persatuan Pedagang Sarang Burung Malaysia mengikut negeri.

4.3.3 Proses Permohonan Lesen

a) Proses permohonan lesen boleh dikemukakan melalui kaunter PBT atau secara *on-line*, (e-PBT).

b) Menyertakan perakuan/ulasan JPV kepada PBN/PBT dokumen yang

c) PBT membawa permohonan ke Jawatankuasa Pelesenan PBT berkaitan untuk pertimbangan dan kelulusan.

d) PBN/PBT memaklumkan kepada pemohon keputusan sama ada permohonan diluluskan atau ditolak.

- Rujuk Rajah 1 : Pendaftaran dan Pelesenan Premis Burung Walit Bersyarat (1 tahun)- bagi Premis Sedia Ada
- Rujuk Rajah 2 : Permohonan Pendaftaran dan Pelesenan Premis Burung Walit- bagi Premis Baru
- Rujuk Rajah 3 : Pembaharuan Lesen Premis Burung Walit.

4.3.4 Tempoh Sah Laku Lesen

a) Tempoh sah laku lesen adalah sehingga 3 tahun. Tarikh luput lesen adalah pada tarikh yang sama tahun berikutnya, iaitu sama seperti yang diamalkan bagi permohonan lesen memandu.

b) PBN/PBT boleh menurut budi bicaranya untuk tidak memberi atau memperbaharui, membatal, memotong atau menggantung sesuatu lesen, meminda atau mengubah tempoh, had dan syarat-syarat lesen setelah memberi sebab dalam tempoh yang munasabah.

c) PBN/PBT boleh dalam mana-mana kes sekiranya berlaku apa-apa pelanggaran terhadap undang-undang kecil ini atau syarat-syarat yang ditetapkan atau dikenakan ke atas sesuatu lesen, membatalkan atau menggantung lesen itu.

4.3.5 Fi Lesen

a) Fi lesen ditetapkan oleh PBN/PBT berkaitan.

b) Bayaran yang dibayar bagi sesuatu lesen tidak boleh dibayar balik apabila sesuatu lesen itu dibatalkan atau digantung.

4.3.6 Pindah Milik Lesen

Sebarang urusan yang berkaitan pindah milik lesen adalah di bawah PBN/ PBT berkaitan.

4.3.7 Tanggungjawab Pemegang Lesen

Pemegang lesen hendaklah mematuhi semua syarat pelesenan seperti yang telah ditetapkan.

4.4 Amalan Baik Penternakan Haiwan (GAHP) – Premis Perladangan Burung Walit

Ciri-ciri minimum yang dikehendaki dalam amalan penternakan burung walit ditentukan dalam *Malaysian Standard (MS 2273:2009 - Good Animal Husbandry Practice for Edible-Nest Swiftlets, Premises and Its Produce*). Ia berkaitan penetapan amalan baik penternakan haiwan untuk peningkatan dan penghasilan berlanjutan secara berterusan, jaminan kesihatan, keselamatan dan keselesaan kepada pengusaha dan haiwan tanpa menjejaskan alam sekitar.

4.4.1 Kriteria GAHP adalah seperti berikut:

4.4.1.1 Kepakaran dan Tanggungjawab Pengusaha

Pengusaha dipertanggungjawabkan untuk melatih pekerja berkenaan burung walit, cara pengendalian secara baik dan penggunaan alatan. Pekerja diberi kursus sebelum tugasan diberi berkaitan pengurusan burung walit. Pekerja perlu peka dan berkebolehan mengenal pasti perilaku yang menunjukkan haiwan yang tidak sihat atau selesa dan bila ianya perlu dilihat dengan kadar segera oleh Doktor Perubatan Veterinar. Ia adalah kewajipan pengusaha untuk memastikan kesemua pekerjanya cukup berpengetahuan bagi pengendalian haiwan di bawah jagaan mereka.

4.4.1.2 Kezaliman dan Pengabaian

Definisi adalah:

a) Menganiayakan mana-mana haiwan di bawah jagaan atau kawalseliaannya.

b) Mengabaikan mana-mana haiwan yang menyebabkan ianya mengalami kesakitan, ketidakselesaan ataupun keresahan.

c) Gagal memberi keperluan bahan-bahan makanan yang mencukupi untuk menampung berat badan dalam keadaan fisiologi biasa bagi spesies, jenis, umur serta jantina selari dengan keadaan sekeliling semasa.

d) Membuang atau mengeluarkan mana-mana bahagian daripada anatomi haiwan itu tanpa memberi ubat pelali yang mencukupi.

e) Mematikan, mengurung, memegang atau membawa mana-mana haiwan dalam keadaan yang boleh dihindarkan menyebabkan kesakitan, ketidakselesaan dan keresahan.

f) Membenarkan mana-mana haiwan untuk terus hidup, setelah disahkan bahawa ianya mengalami ketidakselesaan fizikal atau fisiologikal melainkan ianya diletak di bawah jagaan Doktor Perubatan Veterinar yang diiktiraf.

Sekiranya haiwan diabaikan, dinafikan keperluan asasnya atau dizalimi atau dianiaya, maka menjadi kewajipan dan tanggungjawab semua untuk melaporkan kepada pihak berwajib. Kejahilan adalah bukan alasan untuk melakukan kezaliman ke atas mana-mana haiwan.

4.4.1.3 Penyakit-penyakit *Avian* yang wajib lapor yang diwartakan di bawah Seksyen 31 (1), Akta Binatang 1953 [Akta 647]:

a) *Avian chlamydiosis*
b) *Avian encephalomyelitis*
c) *Avian infectious bronchitis*
d) *Avian mycoplasmosis*
e) *Avian salmonellosis*
f) *Avian spirochaetosis*
g) *Colibacillosis*
h) *Fowl cholera*
i) *Fowl pox*
j) *Fowl typhoid*
k) *Highly Pathogenic Avian Influenza (HPAI)*
l) *Infectious bursal disease*
m) *Infectious laryngotracheitis*
n) *Marek's disease*
o) *Newcastle disease*
p) *Pullorum disease*

4.4.1.4 Tanda-tanda burung walit itu sakit jika:

Apabila diperiksa atau ditangkap secara rawak:

a) Cecair keluar dari mata atau paruh
b) Tompokan atau kopeng di kaki, mata atau di paruh
c) Mata yang merah, bengkak dan mengeluarkan cecair
d) Menunjukkan kesakitan
e) Kekejangan atau tidak bermaya untuk berdiri/berjalan dsb.
f) Botak atau kehilangan bulu yang teramat
g) Murung dan tak bermaya
h) Kepala menggeletar
i) Perubahan pada pernafasan

4.4.1.5 Rekod Kesihatan

sarang dan pengeluaran guano. Tarikh, frekuensi dan tatacara mana-mana ubatan digunakan. Kad pengenalan menggunakan mikrocip yang telah diluluskan oleh Jabatan Standard Malaysia iaitu MS 11784:2003 dan MS 11785:2003 mengikut sekuens berikut:

458	1	- - -	- - - - - - - -
kod	kod	kod	sekuens
negara	haiwan	kilang	

4.4.1.6 Perihal Haiwan

Makanan dan minuman di mana boleh disediakan seperti mengadakan sumber serangga di dalam premis apabila burung walit sukar mencari serangga, contohnya semasa musim tengkujuh atau jerebu. Burung walit minum air di awan biru.

Pengendalian yang cermat dan baik akan mengurangkan tekanan kepada burung walit. Disarankan kurang dipegang untuk prosedur yang wajib seperti mengambil sampel, pemeriksaan premis dan sebagainya. Latihan untuk mengekang burung walit dengan betul disarankan. Burung walit selalunya mengawan di udara semasa terbang. Burung walit ini hanya berpasangan dengan seekor sahaja seumur hidupnya dan hanya akan mencari pasangan baru jika pasangannya mati. Pembiakan adalah singkat di aras laut rendah tetapi sebaliknya di aras tinggi.

Kedua-dua burung walit jantan dan betina membuat sarang. Sarang selalunya siap dalam masa 35 hingga 45 hari sebelum ianya mula bertelur. Apabila menetas, anak burung walit tidak berbulu dan buta selama 20 hari.

Perkara perlu diambil kira iaitu tuaian sarang hanya selepas burung walit telah cerai sarang atau tiada telur dan anak. Ini akan memastikan populasi burung walit tidak berkurangan.

Memastikan premis dan burung walit sihat adalah kewajipan pengusaha sendiri. Cara untuk memantau kesihatan gerompok (*herd health*) mesti diselaraskan oleh pihak berwajib. Rawatan atau tindakan yang wajar akan diambil. Mematikan burung walit secara perikemanusiaan hanya boleh dilakukan oleh Doktor Perubatan Veterinar yang bertauliah. Prosedur surgeri dan ubatan hanya dijalankan oleh Doktor Perubatan Veterinar yang bertauliah atau di bawah seliaannya.

4.4.1.7 Fasiliti dan Alam Sekitar

Premis walit perlu mengadakan kelembapan, kehangatan dan kegelapan tertentu untuk memastikan ianya berdaya maju. Pastikan peralatan dijaga

walit dewasa. Pastikan langkah-langkah ini dilaksanakan di ruang keluar-masuk burung walit. Tempoh dan ciri-ciri ajuk bunyi burung ditekankan di dalam GAHP.

4.4.1.8 Kebersihan

a) Rumah burung walit, persekitarannya dan mana-mana peralatan di dalamnya mesti disimpan bersih supaya haiwan selesa dan hindar dari penyakit.

b) Semua premis burung walit mesti dibersihkan dan dinyah kuman menggunakan ubat pembasmi kuman disyorkan sekurang-kurangnya sekali seminggu.

c) Alat pembersih dan disinfektan yang dipilih mesti berdasarkan kesesuaiannya, keselamatan dan efektif (pastikan disinfektan tidak bahaya pada burung walit dan telurnya). Gunakan ubat ini mengikut arahan pengilang.

d) Semua premis burung walit mesti sentiasa kering.

e) Guano (najis burung) mesti dipungut selalu dan jangan dibiarkan menimbun. Ianya boleh dijadikan tempat biaknya parasit yang boleh membawa penyakit. Guano perlu diperiksa untuk parasit luar. Jika terdapat sebarang parasit ianya perlu dibasmi dan guano dilupuskan mengikut garis panduan GAHP.

f) Semua bekas di dalam premis dinyah kuman semasa guano dipungut.

g) Fasiliti untuk membasuh perlu ada dan ianya bersambungan dengan premis. Kebersihan premis dapat menghindarkan penyakit kepada burung walit.

4.5 Kawalan Operasi (Penguatkuasaan)

4.5.1 Pelanggaran kepada Peraturan Pelesenan Premis

Pelanggaran kepada Akta Kerajaan Tempatan 1976 [Akta 171]: Seksyen 107 dan 110 bagi tujuan pelesenan dan penguatkuasaan membolehkan PBT mengambil tindakan terhadap pengusaha.

4.5.2 Pelanggaran kepada Kaedah-Kaedah Binatang (Pendaftaran Premis bagi Burung Walit) 2010

Pelanggaran kepada Kaedah-Kaedah Binatang (Pendaftaran Premis bagi

4.5.3 Pelanggaran kepada Aduan Ajuk Bunyi / Kacau Ganggu

Pengusaha yang membuat pelanggaran terhadap tempoh masa atau had ajuk bunyi seperti di bawah boleh diambil tindakan oleh PBT di bawah Seksyen 80, 81, 82 dan 84, Akta Kerajaan Tempatan 1976 [Akta 171].

a) Ajuk bunyi yang dibenarkan adalah tidak melebihi atau sama dengan 40dB[5] diukur 6 meter daripada dinding luar bangunan premis walit berkenaan.

b) Corong suara ajuk bunyi dicondongkan pada 60 darjah menghala ke atas premis walit.

c) Tempoh masa ajuk bunyi:

   (i) antara 7.00 pagi hingga 10.00 pagi dan 5.00 petang hingga 8.00 malam di Semenanjung Malaysia.

   (ii) antara 6.00 pagi hingga 9.00 pagi dan 4.00 petang hingga 7.00 petang di Sabah dan Sarawak.

5. PREMIS PEMPROSESAN SARANG BURUNG WALIT

5.1 Aspek Perancangan Premis Pemprosesan Sedia Ada

5.1.1 Kawasan Bandar

a) Premis sedia ada yang terletak di pusat tumpuan utama aktiviti bandar dan dalam kawasan bandar adalah dibenarkan terus beroperasi mengikut GMP (MS 2333:2010).

b) Ubah suai fasad, tambahan bangunan dan pembesaran bangunan dalaman berpandukan GMP (MS 2333:2010).

c) Mendaftar dengan JPV untuk mendapatkan sijil GMP (MS 2333:2010) atau sijil VHM bagi tujuan daya jejak untuk kawalan penyakit haiwan.

d) Mendaftar dengan KKM bagi tujuan persijilan HACCP dan GMP.

e) Memohon lesen premis kepada PBT berkaitan.

5.1.2 Kawasan Luar Bandar

a) Lokasi yang dibenarkan untuk aktiviti pemprosesan sarang burung walit adalah:

   i. Kawasan pertanian – kawasan ladang, perkebunan, akuakultur, aktiviti berkaitan dengan pelancongan berasaskan pertanian dan tanah pertanian kosong.

   ii. Kawasan industri – kawasan industri ringan dan kluster.

a) Lokasi yang tidak dibenarkan untuk aktiviti pemprosesan sarang burung walit iaitu di sekolah, klinik kesihatan, tempat ibadat, kawasan taman permainan, kawasan tadahan air dan hutan simpanan kekal.

b) Mendaftar dengan JPV untuk mendapatkan sijil GMP (MS 2333:2010) atau sijil VHM bagi tujuan daya jejak untuk kawalan penyakit haiwan.

c) Mendaftar dengan KKM bagi tujuan persijilan HACCP dan GMP.

d) Memohon lesen premis kepada PBN berkaitan.

5.1.3 Tapak / Bangunan Warisan

TWGBW akan bersidang untuk menilai setiap permohonan premis pemprosesan sarang burung walit di kawasan warisan. Ahli-ahli TWGBW terdiri daripada JWN, JPV, JPBDSM dan wakil Persekutuan Persatuan Pedagang Sarang Burung Malaysia. Berdasarkan penilaian ini, surat akuan akan diberi kepada PBN/PBT untuk saranan kesesuaian aktiviti pemprosesan sarang burung walit sama ada boleh diteruskan, dibatalkan atau diubahsuai berdasarkan syarat yang ditetapkan.

a) Tapak/bangunan warisan adalah seperti mana yang telah diiktiraf sebagai Tapak Warisan Dunia (*World Heritage Site*) oleh UNESCO atau telah diwartakan oleh Pesuruhjaya Warisan di bawah Akta Warisan Kebangsaan 2005 [Akta 645].

b) Premis sedia ada dibenarkan terus beroperasi sehingga TWGBW bersidang dan keputusan diumumkan.

c) Sebarang bentuk aktiviti untuk mengubah apa-apa fasad dan struktur luaran atau dalaman perlu mendapat kelulusan TWGBW terlebih dahulu.

5.2 Aspek Perancangan Premis Pemprosesan Baru

5.2.1 Kawasan Bandar

a) Aktiviti pemprosesan sarang burung walit di pusat tumpuan utama aktiviti bandar adalah dibenarkan dengan mengikut GMP (MS 2333:2010).

b) Ubah suai fasad, tambahan bangunan dan pembesaran bangunan dalaman berpandukan GMP (MS 2333:2010).

c) Mendaftar dengan JPV untuk mendapatkan sijil GMP (MS 2333:2010) atau sijil VHM bagi tujuan daya jejak untuk kawalan penyakit haiwan.

d) Mendaftar dengan KKM bagi tujuan persijilan HACCP dan GMP.

e) Memohon lesen premis kepada PBT berkaitan

5.2.2 Kawasan Luar Bandar

a) Lokasi yang dibenarkan untuk aktiviti pemprosesan sarang burung walit adalah:

i. Kawasan pertanian – kawasan ladang, perkebunan, akuakultur, aktiviti berkaitan dengan pelancongan *berasaskan pertanian dan tanah pertanian*

b) Lokasi yang tidak dibenarkan untuk aktiviti pemprosesan sarang burung walit ialah sekolah, klinik kesihatan, tempat ibadat, kawasan taman permainan, kawasan kegunaan khas, rizab utiliti dan kawasan sensitif alam sekitar, kawasan tadahan air dan hutan simpanan kekal.

c) Syarat tanah ialah pertanian atau industri.

d) Had ketinggian bangunan adalah tidak melebihi atau sama **12 meter.**

e) Mengikut keperluan yang digariskan dalam GMP (MS 2333:2010).

f) Mendaftar dengan JPV untuk mendapatkan sijil GMP (MS 2333:2010) atau sijil VHM bagi tujuan daya jejak untuk kawalan penyakit haiwan.

g) Mendaftar dengan KKM bagi tujuan persijilan HACCP dan GMP.

h) Mengemukakan permohonan lesen premis kepada PBN berkaitan.

5.2.3 Tapak / Bangunan Warisan

TWGBW akan bersidang untuk menilai setiap premis pemprosesan sarang burung walit di kawasan warisan. Ahli-ahli TWGBW terdiri daripada JWN, JPV, JPBDSM dan wakil Persekutuan Persatuan Pedagang Sarang Burung Malaysia. Berdasarkan penilaian ini, surat akuan akan diberi kepada PBN/PBT untuk saranan kesesuaian aktiviti pemprosesan sarang burung walit sama ada boleh diteruskan, dibatalkan atau diubahsuai berdasarkan syarat yang ditetapkan.

a) Tapak/bangunan warisan adalah seperti mana yang telah diiktiraf sebagai Tapak Warisan Dunia (*World Heritage Site*) oleh UNESCO atau telah diwartakan oleh Pesuruhjaya Warisan di bawah Akta Warisan Kebangsaan 2005 [Akta 645].

b) Premis baru dibenarkan beroperasi setelah diputuskan oleh TWGBW.

c) Perubahan apa-apa fasad dan struktur luaran atau dalaman dengan kebenaran TWGBW.

5.3 Lesen Premis Pemprosesan

a) Untuk tujuan pelesenan, PBN/PBT akan mendapatkan ulasan JPV dan KKM untuk mana-mana pengusaha yang mematuhi peraturan *yang telah ditetapkan. Audit premis akan dijalankan sekurang-kurang 1 kali setahun.*

b) Pihak PBN/PBT akan mengeluarkan lesen kepada pemohon yang mematuhi GMP (MS 2333:2010). Lesen perlu diperbaharui setiap tahun.

5.3.1 Keperluan Lesen

a) Mana-mana pengusaha yang menjalankan aktiviti pemprosesan sarang burung walit di mana-mana tempat atau premis di luar bandar atau bandar terlebih dahulu mendapatkan lesen daripada PBN/PBT berkaitan.

b) Setiap lesen yang dikeluarkan adalah tertakluk kepada syarat-syarat yang ditetapkan atau dikenakan di dalamnya dari semasa ke semasa.

c) Setiap lesen yang dikeluarkan hendaklah menyatakan nama pemegang lesen, letaknya premis dan alamat surat-menyurat.

d) Setiap pemegang lesen hendaklah sentiasa mempamerkan salinan lesennya pada setiap masa di suatu tempat yang mudah dilihat di premis yang dilesenkan itu dan hendaklah mengemukakan lesen itu jika dikehendaki berbuat demikian oleh mana-mana pegawai yang diberi kuasa.

e) Mana-mana pemegang lesen yang tidak mempamerkan atau gagal mengemukakan lesen apabila diminta berbuat demikian oleh pegawai yang diberi kuasa adalah melakukan satu kesalahan.

5.3.2 Syarat Permohonan Lesen

a) Mendaftar dengan JPV secara atas talian atau manual di pejabat JPV terdekat.

b) Semua pengusaha yang menjalankan aktiviti pemprosesan sarang burung walit perlu mengikuti kursus GMP sekali sahaja serta mendapatkan latihan dan khidmat nasihat daripada JPV dan KKM dan menyertakan sijil kehadiran kursus daripada JPV semasa mengemukakan permohonan lesen.

c) Setiap premis walit perlu memperolehi CFO/CCC atau permit bangunan atau resit cukai pintu terkini.

d) Pemohon perlu menjadi ahli Persekutuan Persatuan Pedagang Sarang Burung Malaysia mengikut negeri.

5.3.3 Proses Permohonan Lesen

a) Proses permohonan lesen boleh dikemukakan melalui kaunter PBT atau secara *on-line*, (e-PBT).

b) PBN/PBT menerima ulasan dan perakuan dari semua jabatan/agensi teknikal.

c) PBN/PBT membawa permohonan ke Jawatankuasa Pelesenan PBN/PBT untuk pertimbangan dan kelulusan.

d) PBN/PBT memaklumkan keputusan permohonan lesen sama ada lulus atau tolak kepada pemohon dan salinan kepada JPV.

- Rujuk Rajah 1: Pendaftaran dan Pelesenan Premis Burung Walit Bersyarat (1 tahun) - bagi Premis Sedia Ada.

5.3.4 Tempoh Sah Laku Lesen

a) Tempoh sah laku lesen adalah sehingga 3 tahun. Tarikh luput lesen adalah pada tarikh yang sama tahun berikutnya, iaitu sama seperti yang diamalkan bagi permohonan lesen memandu.

b) PBN/PBT boleh menurut budi bicaranya untuk tidak memberi atau memperbaharui, membatal, memotong atau menggantung sesuatu lesen, meminda atau mengubah tempoh, had dan syarat-syarat lesen setelah memberi sebab dalam tempoh yang munasabah.

c) PBN/PBT boleh dalam mana-mana kes sekiranya berlaku apa-apa pelanggaran terhadap undang-undang kecil ini atau syarat-syarat yang ditetapkan atau dikenakan ke atas sesuatu lesen, membatalkan atau menggantung lesen itu.

5.3.5 Fi Lesen

a) Fi lesen ditetapkan oleh PBN/PBT berkaitan.

b) Bayaran yang dibayar bagi sesuatu lesen tidak boleh dibayar balik apabila sesuatu lesen itu dibatalkan atau digantung.

5.3.6 Pindah Milik Lesen

Sebarang urusan yang berkaitan pindah milik lesen adalah di bawah *bidang kuasa PBN/PBT berkaitan.*

f) Pencahayaan

Pencahayaan mencukupi di premis pemprosesan mengikut piawaian CODEX[6] seperti mana yang dinyatakan dalam GMP.

g) Penyimpanan

Apabila perlu, kemudahan penyimpanan untuk produk hasilan, bahan *raw-unclean EBN*, bahan pembungkusan dan bahan kimia bukan makanan seperti bahan pencuci dan bahan berbahaya, disediakan secara berasingan.

h) Kawalan Operasi

Pengusaha sarang burung walit seharusnya mengawal bahaya makanan (*food hazards*) bertepatan dengan kehendak GMP.

5.4.2 Kunci Aspek Kepada Sistem Kawalan Kesihatan

5.4.2.1 Kawalan Masa dan Suhu

Adalah kritikal dipastikan suhu dikawal secara berkesan untuk menjamin mutu dan bahan nutrisi produk hasilan sarang burung walit tidak rosak. Tatacara termasuk batas toleransi (*tolerable limit*)[7] untuk variasi masa dan suhu ditentukan. EBN tercemar boleh menyebabkan pembiakan mikro organisma yang boleh menyebabkan penyakit kepada manusia. Pelaksanaan ini boleh dicapai dengan mengikuti kaedah di bawah:

a) Mengekalkan penyejukan sarang burung walit pada ≤ 4°C
b) Mengekalkan pembekuan sarang burung walit pada ≤-18°C
c) Mengekalkan hasil sarang burung walit pada ≤60°C

5.4.2.2 Kawalan Bahan Pencemar (Biologikal, Kimia, Fizikal)

Sistem pemprosesan seharusnya direka untuk mengelak kemungkinan pencemaran silang antara *raw-clean EBN* dan *raw-unclean EBN* semasa pemprosesan dan pembersihan serta program pembasmian kuman mestilah dilakukan secara berterusan.

[6] *CODEX : The Codex Alimentarius Commission was created in 1963 by FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purposes of this Programme are protecting health of the consumers and ensuring fair trade practices in the food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations.*

[7] Batas toleransi *(Tolerable limit)*:

5.4.3 Bahan-Bahan Mentah

5.4.3.1 *Raw-Unclean EBN*

Raw-unclean EBN yang akan digunakan dalam penghasilan semestinya daripada gua atau ladang dari luar negara tetapi mestilah memenuhi kehendak pengimportan dengan pengesahan daripada JPV.

5.4.3.2 Bahan Pembungkusan

Bahan-bahan pembungkusan seharusnya nyahtoksik atau tidak karsinogenik[8].

5.4.4 Pemprosesan

5.4.4.1 Secara Umum

Kebersihan dan amalan kebersihan seharusnya dipelihara sepanjang berada dalam premis dan yang lebih penting operasi premis seharusnya dikendalikan secara betul di mana perkara-perkara berikut:

a) Penerimaan bahan-bahan mentah
b) Penyusunan
c) Pembersihan
d) Pembentukan (*moulding*)
e) Pengeringan
f) Pembungkusan dan penimbangan
g) Pengagihan

tidak tercemar dan GMP sentiasa dikekalkan.

5.4.4.2 Prosedur Kawalan Keselamatan Produk

Kawalan keselamatan produk mestilah dipatuhi oleh pengusaha selaras dengan Peraturan-Peraturan Makanan 1985.

5.4.4.3 Pembersihan dan Penyelenggaraan

Prosedur pembersihan dan penyelenggaraan kemudahan premis dan peralatan seharusnya didokumentasi dan dikekalkan.

5.4.4.4 Kawalan Haiwan Perosak

Program yang berkesan dan berterusan seharusnya disediakan untuk mengawal haiwan perosak. Racun haiwan perosak yang digunakan mestilah mengikut arahan pengilang.

5.4.4.5 Kebersihan Kakitangan

Kakitangan yang terlibat dalam pengendalian *raw-unclean EBN* dan *raw-clean EBN* harus memakai pakaian termasuk kasut yang bersih dan penutup kepala yang boleh dibasuh atau pakai buang. Amalan mencuci dan membersihkan tangan setiap kali bermulanya kerja dan apabila tangan kotor terutamanya selepas menggunakan tandas.

5.4.4.6 Latihan

Pengurus-pengurus premis seharusnya mengatur latihan yang cukup dan berterusan untuk semua pengendali makanan dalam pengendalian makanan secara bersih dan kebersihan kakitangan supaya mereka faham akan langkah berjaga-jaga yang perlu diambil untuk mengelak pencemaran makanan. Pekerja seharusnya dilatih untuk mengembangkan kemahiran dalam pemprosesan sarang burung walit.

5.4.4.7 Pemeriksaan Premis

Pihak berkuasa akan melawat premis dari masa ke semasa. Sampel akan diambil apabila perlu untuk analisis makmal.

6. EKSPORT DAN IMPORT SARANG BURUNG WALIT

6.1 Eksport

6.1.1 Syarat Eksport

Selaras dengan jaminan kualiti dan keselamatan makanan dan bukan makanan serta kebersihan premis perladangan, pengusaha-pengusaha sarang burung walit digalakkan supaya mengamalkan GAHP dan memperolehi persijilan Skim Amalan Ladang Ternakan (SALT). Bagi memastikan kualiti dan keselamatan produk, pemprosesan sarang burung walit perlu mendapat persijilan *Veterinary Health Mark* (VHM) atau mengamalkan Program Jaminan Keselamatan Makanan seperti dinyatakan di bawah Peraturan-Peraturan Kebersihan Makanan 2009.

Sarang burung walit boleh mendapatkan persijilan halal dari Jabatan Kemajuan Islam Malaysia (JAKIM) dengan mematuhi tatacara MS 1500:2009 (*Halal Food - Production, Preparation, Handling and Storage - General Guidelines*).

6.1.2 Keperluan Permit Eksport

a) Eksport sarang burung walit perlu mendapatkan permit eksport daripada JPV.

b) Permit eksport hendaklah dipohon bagi setiap konsainmen eksport sarang burung walit.

c) Setiap pemegang permit eksport perlu mempamerkan permitnya dan hendaklah mengemukakan permitnya jika dikehendaki berbuat demikian oleh mana-mana Pihak Berkuasa Veterinar atau Kastam Di Raja Malaysia.

d) Mana-mana pemegang permit eksport yang tidak mengemukakan permitnya apabila diminta berbuat demikian oleh Pihak Berkuasa Veterinar atau Kastam Diraja Malaysia adalah melakukan satu kesalahan.

e) Keperluan permit eksport untuk ***souvenir***[9] adalah dikecualikan bagi EBN **tidak melebihi 1 kilogram** dari premis yang mempunyai sijil **GAHP (MS 2273:2009)** dan/atau **GMP (MS 2333:2010)**.

6.1.3 Syarat Permohonan Permit Eksport

a) Setiap permohonan bagi sesuatu permit eksport hendaklah dibuat secara *bertulis atau on-line kepada JPV dalam borang yang ditetapkan.*

b) Pemohon perlu mengisi borang secara manual atau *on-line* dengan lengkap.

c) Pemohon juga perlu melampirkan syarat-syarat import negara pengimport untuk memudahkan proses pengeluaran **Sijil Kesihatan Veterinar** (SKV) / **Sijil Kesihatan** (SK).

6.1.4 Proses Permohonan Permit Eksport

a) Pemohon mengemukakan permohonan permit eksport dengan dokumen yang lengkap kepada pihak JPV Negeri.

b) Kelulusan permohonan akan diberitahu dalam masa 2 hari bekerja.

6.1.5 Fi Permit Eksport

a) Fi bagi setiap permit eksport adalah tertakluk kepada kadar yang telah ditetapkan oleh JPV Negeri.

b) Bayaran yang dibayar bagi sesuatu permit eksport tidak akan dikembalikan apabila sesuatu permit itu dibatalkan.

6.1.6 Tempoh Sah Laku Permit Eksport

a) Tempoh tamat atau sah laku sesuatu permit eksport adalah **30 hari** selepas permit itu dikeluarkan.

b) Pemohon perlu membuat permohonan semula sekiranya permit eksport telah tamat tempoh.

c) JPV boleh menurut budi bicaranya untuk tidak memberi atau memperbaharui, membatal, memotong atau menggantung sesuatu permit eksport, meminda atau mengubah tempoh, had dan syarat-syarat permit eksport setelah memberi sebab dalam tempoh yang munasabah.

6.1.7 Keperluan SKV/SK

a) Semua pengeksportan sarang burung walit dari negara yang memerlukan persijilan SKV adalah dikeluarkan oleh JPV Negeri; atau

b) Semua pengeksportan sarang burung walit yang memerlukan SK adalah dikeluarkan oleh Pejabat Kesihatan Daerah.

6.1.8 Fi

Semua pengeksportan sarang burung walit perlu membayar fi mengikut *undang-undang yang ditetapkan.*

6.1.9 Tempoh Sah Laku SKV/SK

Tempoh sah laku SKV/SK adalah tertakluk di bawah bidang kuasa JPV Negeri / Pejabat Kesihatan Daerah.

6.1.10 Persampelan Makmal (bergantung kepada negara pengimport)

6.1.10.1 Kekerapan Mengambil Sampel (Minimum):

a)	Premis Perladangan (MS 2273:2009)	:	2 kali setahun
b)	Premis Pemprosesan (MS 2333:2010)	:	2 kali setahun
c)	Premis SALT/Loji VHM	:	1 kali setahun
d)	Premis tanpa SALT /Loji tanpa VHM	:	per konsainan[10]

*Pihak Berkuasa Veterinar boleh pada bila-bila masa membuat persampelan ke atas premis.

6.1.10.2 Persampelan:

6.1.10.2.1: Premis perladangan burung walit: GAHP (MS2273:2009)/SALT	
Media Pengangkutan Sampel	*Bakteria: Buffered peptone water (BPW)* (10 calitan najis / 100 ml / premis) *Virus: Minimum Essential Media(MEM) + antibiotic* (5 calitan najis / 5 ml / premis)
Ujian	Mengikut keperluan negara pengimport Ujian Bakteria: *Salmonella species* Ujian Virus: *Newcastle Disease (ND)* *Highly Pathogenic Avian Influenza (HPAI)* *Low Pathogenic Avian Influenza (LPAI)*

6.1.10.2.2: Premis pemprosesan sarang burung walit: GMP (MS 2333:2010) / VHM	
Sampel	*Raw-unclean EBN* *Raw-clean EBN* *Powdered EBN* *Liquid EBN* Produk tambah nilai *EBN* (Berat sampel > 10 g atau 10 ml diambil daripada setiap jumlah pengeluaran atau per konsainan)

6.1.10.2.3: Kadar Harga Mengikut Ujian Makmal

Kaedah	Ujian Makmal	Harga*
Petri Film	*Total Plate Count (TPC)*	RM3
	Coliform	RM7
	Escherichia coli (E. coli)	RM5
	Yeast & mould	
	Staphylococcus aureus (Staph. aureus)	RM7
	Salmonella sp.	RM1,502/Kit (40 tests/kit)

* Mengikut kadar yang telah diwartakan.

6.1.10.3 Lain-lain Ujian

- Aditif Makanan (*Food Additive*)
- Pengawet (*Preservative*)
- Ketidaktulenan (*Adulteration*)
- Kandungan Kelembapan (*Moisture Content*)
- Residu Drug Veterinar (*Veterinary Drug Residue*)

6.2 Import

6.2.1 Keperluan Permit Import

a) Import sarang burung walit perlu mendapatkan permit import daripada JPV.

b) Permohonan permit import hendaklah dibuat bagi setiap konsainan import sarang burung walit.

c) Setiap pemegang permit import perlu mempamerkan permitnya dan hendaklah mengemukakan permitnya jika dikehendaki berbuat demikian oleh mana-mana Pihak Berkuasa daripada mana-mana agensi Kerajaan yang berkaitan.

d) Mana-mana pemegang permit import yang tidak mengemukakan permitnya apabila diminta berbuat demikian oleh Pihak Berkuasa

e) Pihak JPV akan mengeluarkan permit import bagi produk *raw-clean EBN* dan *raw-unclean EBN* dari negara yang bebas penyakit wajib lapor *(notifiable disease)* dan SKV/SK dari negara pengeksport.

6.2.2 Syarat Permohonan Permit Import

a) Setiap permohonan bagi sesuatu permit import hendaklah dibuat secara bertulis atau *on-line* kepada JPV dalam borang yang ditetapkan.

b) Pemohon perlu mengisi borang secara manual atau *on-line* dengan lengkap.

c) Negara pengeksport perlu mematuhi syarat-syarat import Malaysia.

6.2.3 Proses Permohonan Permit Import

a) Pemohon mengemukakan permohonan permit import dengan dokumen yang lengkap kepada pihak Ibu Pejabat JPV.

b) Kelulusan permohonan akan diberitahu dalam masa 2 hari bekerja.

6.2.4 Fi Permit Import

a) Fi bagi setiap permit import adalah mengikut kadar yang telah ditetapkan oleh undang-undang berkaitan.

b) Bayaran yang dibayar bagi sesuatu permit import tidak boleh dikembalikan apabila sesuatu permit import itu dibatalkan.

6.2.5 Tempoh Sah Laku Permit Import

a) Tempoh tamat atau sah laku sesuatu permit import adalah 30 hari selepas permit itu dikeluarkan.

b) Pemohon perlu membuat permohonan semula sekiranya permit import telah tamat tempoh.

c) JPV boleh menurut budi bicaranya untuk tidak memberi atau memperbaharui, membatal, memotong atau menggantung sesuatu permit import, meminda atau mengubah tempoh, had dan syarat-syarat permit import setelah memberi sebab dalam tempoh yang munasabah.

6.2.6 Persampelan Makmal yang perlu:

6.2.6.1 Persampelan:

6.2.6.1.1: Premis perladangan burung walit	
Media Pengangkutan Sampel	*Bakteria: Buffered peptone water (BPW)* (10 calitan najis / 100 ml / premis) *Virus: Minimum Essential Media(MEM) + antibiotic* (5 calitan najis / 5 ml / premis)
Ujian	Mengikut keperluan negara pengimport Ujian Bakteria: *Salmonella species* Ujian Virus: *Newcastle Disease (ND)* *Highly Pathogenic Avian Influenza (HPAI)* *Low Pathogenic Avian Influenza (LPAI)*
6.2.6.1.2: Premis pemprosesan sarang burung walit: GMP	
Sampel	*Raw-unclean EBN* *Raw-clean EBN* *Powdered EBN* *Liquid EBN* Produk tambah nilai *EBN* (Berat sampel > 10 g atau 10 ml diambil daripada setiap jumlah pengeluaran atau per konsainan)

6.2.6.1.3: Kadar Harga Mengikut Ujian Makmal

Kaedah	Ujian Makmal	Harga*
Petri Film	*Total Plate Count (TPC)*	RM3
	Coliform	RM7
	Escherichia coli (E. coli)	
	Yeast & mould	RM5
	Staphylococcus aureus (Staph. aureus)	RM7
	Salmonella sp.	RM1,502/Kit (40 tests/kit)

6.2.6.2 Lain-lain ujian

- Aditif Makanan (*Food Additive*)
- Pengawet (*Preservative*)
- Ketidaktulenan (*Adulteration*)
- Kandungan Kelembapan (*Moisture Content*)
- Residu Drug Veterinar (*Veterinary Drug Residue*)

7. PENDAFTARAN SERTA DAYA JEJAK[11] PREMIS PERLADANGAN BURUNG WALIT DAN PREMIS PEMPROSESAN SARANG BURUNG WALIT OLEH JPV

Pendaftaran kekal menggunakan tanda pengenalan *Radio Frequency Identification Device* (RFID)[12] akan diberi untuk setiap premis burung walit. Satu kad pengenalan premis akan dikeluarkan kepada pengusaha. Ini diperlukan untuk pengesahan tuanpunya dan daya jejak biosekuriti serta *sanitary and phytosanitary* (SPS). Data akan dikumpulkan di Pusat Daftar Setempat, Ibu Pejabat JPV, Putrajaya.

7.1 Pendaftaran Premis

7.1.1 Keperluan Pendaftaran

Setiap premis burung walit diwajibkan mendaftar dengan JPV bagi tujuan kawal selia aktiviti perladangan burung walit dan pemprosesan sarang burung walit.

7.1.2 Syarat Permohonan Pendaftaran

Pemohon disyaratkan menghadiri kursus GAHP atau GMP anjuran JPV dan mempunyai bangunan yang hendak dijadikan sebagai premis perladangan atau pemprosesan.

7.1.3 Proses Permohonan Pendaftaran

Proses permohonan pendaftaran boleh dilakukan melalui Sistem e-Permit 2 (Premis Walit) secara *on-line* di mana-mana pejabat veterinar yang terdekat.

Permohonan yang lulus semakan didaftarkan oleh JPV dan perlu membuat bayaran fi. Kad Pengenalan Premis dikeluarkan kepada pemohon. Proses permohonan ini mengambil masa 5 hari bekerja.

7.1.4 Tempoh Sah Laku Pendaftaran

Tiada had tempoh sah laku pendaftaran premis.

7.1.5 Fi Pendaftaran

Kadar bayaran fi sekali sahaja akan dikenakan oleh JPV.

[11]Daya jejak : Traceability is the ability to chronologically interrelate uniquely identifiable entities in a way that is verifiable,i.e the history, location, or application of an item by means of documented

7.1.6 Pindah Milik Pendaftaran

Jika premis dimiliki lebih daripada seorang pemilik, pendaftaran premis hendaklah dibuat oleh salah seorang pemilik premis itu sahaja. Permohonan tukar milik pendaftaran premis burung walit hendaklah dikemukakan secara bertulis kepada JPV. Pemilik baru premis burung walit yang diluluskan oleh JPV adalah bertanggungjawab ke atas premis burung walit tersebut.

7.1.7 Tanggungjawab Pemegang Pendaftaran

Seseorang pemegang pendaftaran bertanggungjawab untuk menguruskan hal ehwal berkaitan pembayaran kadar fi. Simpanan maklumat pendaftaran hanya dilakukan oleh pemegang pendaftaran. Semua rujukan pengawalseliaan dan pengurusan pendaftaran di bawah tanggungjawab pengusaha berdaftar.

7.1.8 Kad Pengenalan Premis

Kad Pengenalan Premis dikeluarkan oleh Pihak Berkuasa Veterinar kepada pengusaha premis.

7.1.9 Tanda Pengenalan Hasil dan Hasilan Burung Walit

Hasil dan hasilan yang dikeluarkan oleh sesebuah premis perladangan dan pemprosesan sarang burung walit hendaklah diberi tanda pengenalan.

8. PENDAFTARAN PREMIS PEMPROSESAN PRODUK SARANG BURUNG WALIT BAGI TUJUAN PRODUK MAKANAN UNTUK MANUSIA DAN DAYA JEJAK OLEH KKM

8.1 Pendaftaran Premis

Semua premis pemprosesan produk sarang burung walit hendaklah berdaftar dengan KKM sebagaimana dinyatakan di bawah Peraturan 3, Peraturan-Peraturan Kebersihan Makanan 2009.

8.2 Proses Permohonan Pendaftaran

Pendaftaran premis boleh dibuat sama ada secara *on-line* atau manual di Jabatan Kesihatan Negeri atau Pejabat Kesihatan Daerah yang berhampiran.

8.3 Tempoh Sah Laku Pendaftaran

Sah laku pendaftaran adalah tidak melebihi 3 tahun dari tarikh perakuan dikeluarkan.

8.4 Fi Pendaftaran

Tiada fi dikenakan untuk pendaftaran semua jenis premis makanan.

8.5 Pindah Milik Pendaftaran

Premis pemprosesan sarang burung walit yang berdaftar yang telah bertukar milik, maklumat tersebut hendaklah dikemas kini sama ada secara dalam talian atau manual di Jabatan Kesihatan Negeri atau Pejabat Kesihatan Daerah berhampiran.

8.6 Tanggungjawab Pemegang Pendaftaran

Pemilik premis pemprosesan sarang burung walit mesti mempamerkan perakuan pendaftaran di premis masing-masing sebagaimana dinyatakan di bawah Peraturan 8, Peraturan-Peraturan Kebersihan Makanan 2009.

8.7 Pelabelan

Semua produk sarang burung walit hendaklah dibungkus dan dilabel mengikut kehendak Akta Makanan 1983 dan Peraturan-Peraturan Makanan 1985.

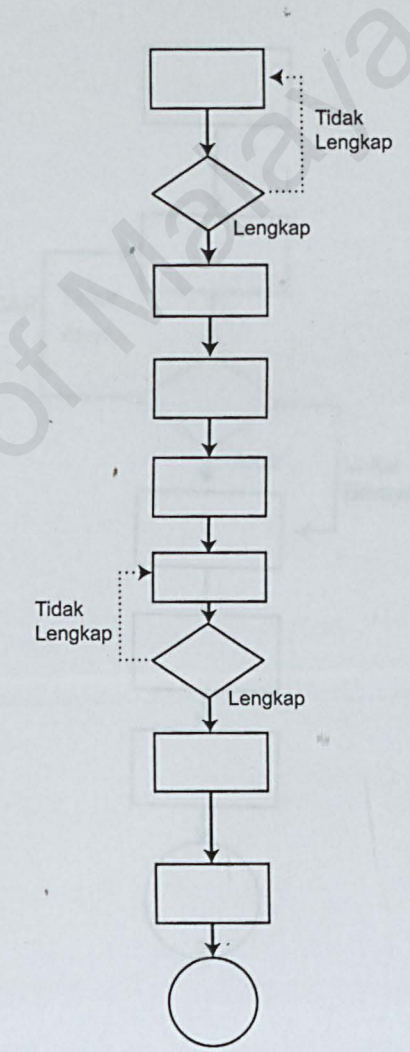
8.8 *Daya Jejak*

PERKONGSIAN MAKLUMAT

Semua agensi pelaksana perlu menyalurkan semua maklumat yang berkaitan industri burung walit kepada agensi peneraju dan sebaliknya mengikut keperluan.

Rajah 1

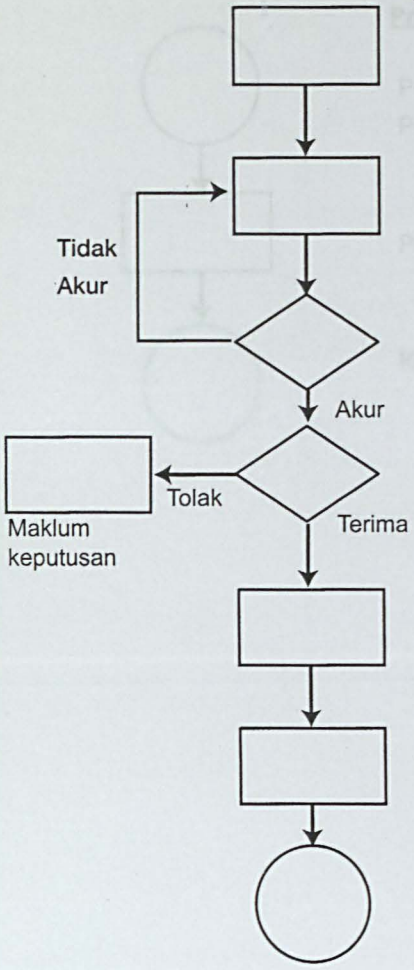
A. Pendaftaran dan Pelesenan Premis Burung Walit Bersyarat (1 Tahun) - bagi Premis Sedia Ada



Proses	Agensi	Masa
Permohonan pendaftaran (manual/e-Permit 2)	Pemohon	1 hari
Data verifikasi	JPV Negeri/ Daerah	30 minit
Didaftarkan	JPV Negeri/ Daerah	30 minit
Pembayaran	JPV Negeri/ Daerah	< 1 hari
Kad Pengenalan Premis	JPV Negeri/ Daerah	> 1 hari
Permohonan lesen premis	Pemohon	14 hari
Data verifikasi	PBT/PBN	
Notis kelulusan lesen kepada pemohon	PBT/PBN	
Pembayaran Fi (ditentukan oleh PBT/PBN)	Pemohon	
Pengeluaran lesen	PBT/PBN	

Rajah 2

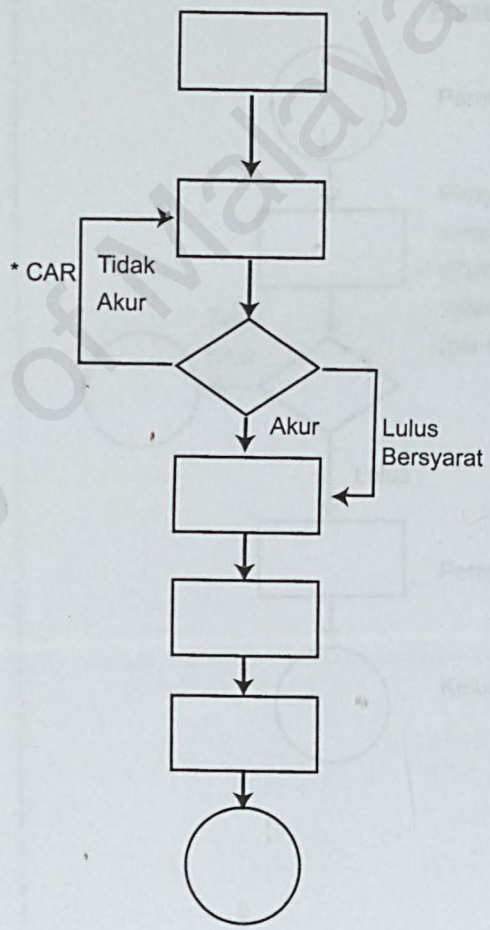
B. Permohonan Pendaftaran dan Pelesenan Premis Burung Walit - bagi Premis Baru



Proses	Agensi	Masa
Permohonan lesen premis kepada PBT	Pemohon	<1 hari
Terima & semak Daftar * rujuk Carta Alir A	PBT/PBN	
Ulasan JPV	JPV Negeri/ Daerah	< 7 hari
Permohonan diproses	PBT /PBN	14 hari
Maklum keputusan lesen kepada pemohon	PBT/PBN	< 1 hari
Bayaran lesen baru	Pemohon	
Keluar lesen	PBT/PBN	

Rajah 3

C. Pembaharuan Lesen Premis Walit

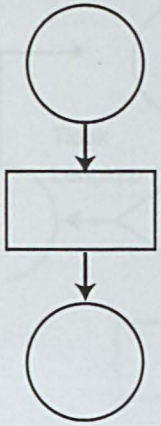


Proses	Agensi	Masa
Permohonan Pembaharuan lesen	Pemohon	1 hari
Terima Permohonan Pembaharuan lesen	PBT/PBN	1 hari
Pemeriksaan persampelan	JPV Negeri/ Daerah	14 hari
Maklumat keputusan	PBT/PBN	2-3 minggu
Notis kelulusan lesen kepada Pemohon	PBT/PBN	
Bayaran Fi	Pemohon	
Pengeluaran Lesen	PBT/PBN	

*(CAR) : Permintaan tindakan pembetulan
(Corrective action request):- Non-conformances documented by the auditor which must be satisfactorily addressed or corrected by the auditee. All CARs must be

Rajah 4

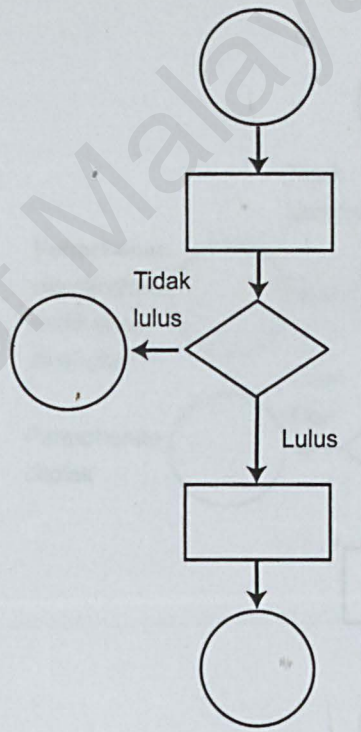
Tatacara Permohonan Sijil Kesihatan Veterinar (SKV) Sarang Burung Walit oleh Premis Bersijil SALT / GMP / VHM (MS 2333:2010)



Proses	Agensi	Masa
Permohonan SKV oleh Pengusaha	JPV Negeri	1 hari
Permohonan diproses	JPV Negeri	< 1 hari
Keluar SKV	JPV Negeri	

Rajah 5

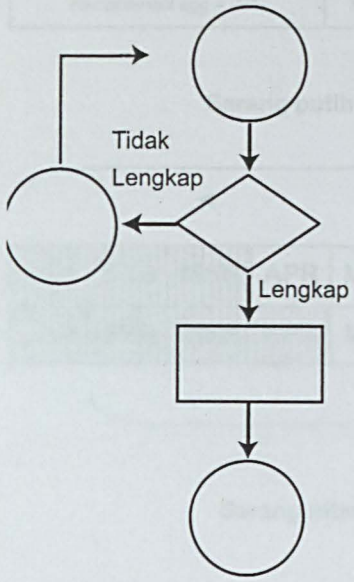
Tatacara Permohonan Sijil Kesihatan Veterinar (SKV) Sarang Burung Walit oleh Premis tidak Bersijil SALT / GMP / VHM (MS 2333:2010)



Proses	Agensi	Masa
Permohonan SKV	JPV Negeri	1 hari
Pengambilan sampel sarang burung untuk dihantar ke Makmal Veterinar Kawasan (per konsainan)	JPV Negeri	< 2 minggu
Permohonan diproses	JPV Negeri	
Keluar SKV	JPV Negeri	

Rajah 6

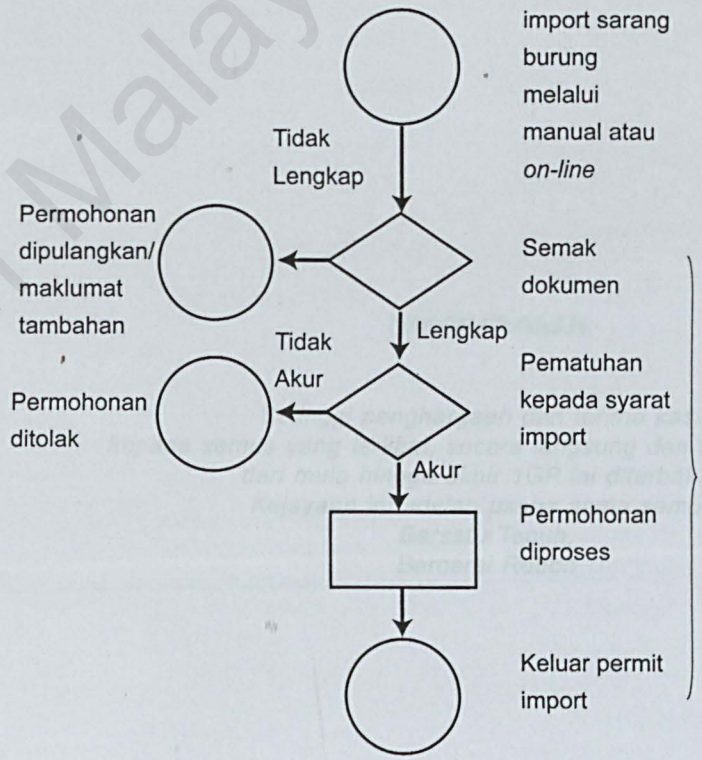
Tatacara Permohonan Permit Eksport Sarang Burung Walit



Proses	Agensi	Masa
Permohonan Eksport sarang burung melalui manual atau *on-line*	JPV Negeri	1 hari
Semak dokumen	JPV Negeri	1 hari
Permohonan diproses	JPV Negeri	<1 hari
Keluar permit eksport	JPV Negeri	

Rajah 7

Tatacara Permohonan Permit Import Sarang Burung Walit



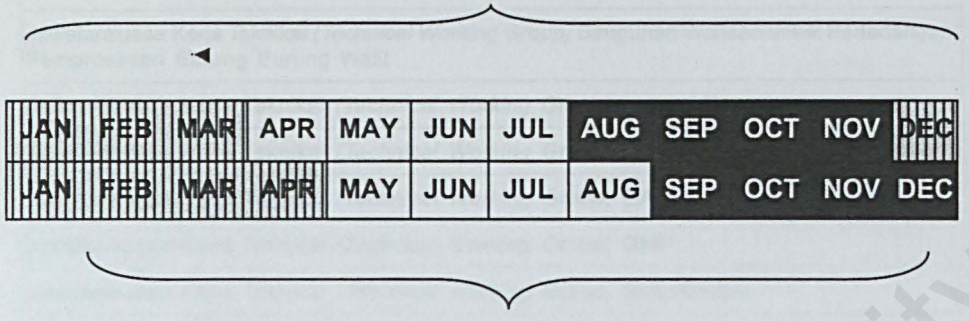
Proses	Agensi	Masa
Permohonan import sarang burung melalui manual atau *on-line*	Ibu pejabat JPV Putrajaya	1 hari
Semak dokumen		
Pematuhan kepada syarat import	Ibu pejabat JPV Putrajaya	<7 hari
Permohonan diproses		
Keluar permit import		

Rajah 8

Kitaran Tahunan Pembiakan Burung Walit

93.8% breeding *Average egg produced/pair = 1.49* *Average nestling raised/pair = 0.97* *Replacement egg = -NA-*	*59.7% breeding* *Average egg produced/pair = 0.77* *Average nestling raised/pair = 0.44* *Replacementegg = 108 ± 14 days*	*96.1% breeding* *Average egg produced/pair = 1.88* *Average nestling raised/pair = 1.32* *Replacement egg = 47 ± 10 days*

Sarang putih *(Aerodramus fuciphagus species)*



Sarang hitam *(Aerodramus maximus species)*

Replacement egg = 17 ± 3 days *Average nestling raised/pair = 0.68* *Average egg produced/pair = 1.22* *91.6% breeding*	*Replacement egg = 82 ± 20 days* *Average nestling raised/pair = 0.57* *Average egg produced/pair = 0.95* *77.8% breeding*	*Replacement egg = 19 ± 6 days* *Average nestling raised/pair = 0.79* *Average egg produced/pair = 1.35* *91.6% breeding*

Second Breeding Bout
(halfway of breeding season)

Third Breeding Bout
(period intense moult)

First Breeding Bout
(start of annual breeding season)

Sumber:
Dr. Lim Chan Kun

PENGHARGAAN

Setinggi penghargaan dan terima kasih
kepada semua yang terlibat, secara langsung dan tidak langsung
dari mula hingga akhir 1GP ini diterbitkan.
Kejayaan ini adalah usaha sama semua.
Bersatu Teguh,
Bercerai Roboh

Senarai Jawatankuasa Pembangunan Industri Burung Walit

Jawatankuasa Pemandu *(Steering Committee)* Pembangunan Industri Sarang Burung Walit
Jawatankuasa Teknikal *(Technical Committee)* Pembangunan Industri Sarang Burung Walit
Jawatankuasa Kerja Teknikal *(Technical Working Group)* Persampelan Makmal
Jawatankuasa Kerja Teknikal *(Technical Working Group)* Penyelarasan Undang-undang
Jawatankuasa Kerja Teknikal (Technical Working Group) Pembinaan Premis Walit di Sekitar KLIA *(Birdstrike)*
Jawatankuasa Kerja Teknikal *(Technical Working Group)* Bangunan Warisan untuk Perladangan/ Pemprosesan Sarang Burung Walit
Jawatankuasa Kerja Teknikal *(Technical Working Group)* Import/ Eksport
Jawatankuasa Kerja Teknikal *(Technical Working Group)* Istilah
Jawatankuasa Kerja Teknikal *(Technical Working Group)* GAHP
Jawatankuasa Kerja Teknikal *(Technical Working Group)* GMP
Jawatankuasa Kerja Teknikal *(Technical Working Group) Specification*

Jawatankuasa Pemandu *(Steering Committee)* Pembangunan Industri Sarang Burung Walit

Jawatan	Jabatan/ Agensi	Jawatan
Pengerusi	Kementerian Pertanian dan Industri Asas Tani	Ketua Setiausaha (atau wakilnya)
Ahli	Unit Perancang Ekonomi, Jabatan Perdana Menteri	Pengarah Seksyen Pertanian Unit Perancang Ekonomi
Ahli	Kementerian Kewangan	Pengarah Bahagian Pengurusan Belanjawan
Ahli	Kementerian Perdagangan Antarabangsa dan Industri	Ketua Setiausaha (atau wakilnya)
Ahli	Kementerian Perumahan dan Kerajaan Tempatan	Ketua Setiausaha (atau wakilnya)
Ahli	Kementerian Sumber Asli dan Alam Sekitar	Ketua Setiausaha (atau wakilnya)
Ahli	Kementerian Penerangan, Komunikasi dan Kebudayaan	Ketua Setiausaha (atau wakilnya)
Ahli	Kementerian Kesihatan	Ketua Setiausaha (atau wakilnya)
Ahli	Kementerian Pertanian dan Industri Makanan Sabah	Pengarah Jabatan Perkhidmatan Veterinar dan Perusahaan Ternak Sabah
Ahli	Kementerian Pemodenan Pertanian Sarawak	Pengarah Bahagian Veterinar
Ahli	Kementerian Perancangan dan Pengurusan Sumber, Sarawak	Jabatan Perhutanan Sarawak
Ahli	Penasihat Undang-Undang Kementerian Pertanian dan Industri Asas Tani	Penasihat Undang-Undang
Ahli	Jabatan Perkhidmatan Veterinar	Ketua Pengarah
Ahli	Lembaga Pemasaran Pertanian Persekutuan (FAMA)	Ketua Pengarah
Ahli	AgroBank	Presiden
Ahli	Persekutuan Persatuan Pedagang Sarang Burung Malaysia	Presiden
Ahli	Persatuan Pedagang Sarang Burung Sabah	Presiden
Ahli	Persatuan Pedagang Sarang Burung Sarawak	Presiden
Urus setia	Bahagian Industri Tanaman, Ternakan dan Perikanan (ITTP) *Kementerian Pertanian dan Industri*	*SUB*

Bengkel Industri Burung Walit

1.	Kementerian Pertanian dan Industri Asas Tani
2.	Kementerian Perumahan dan Kerajaan Tempatan
3.	Kementerian Kesihatan Malaysia
4.	Jabatan Perkhidmatan Veterinar Putrajaya
5.	Jabatan Perkhidmatan Veterinar Negeri-Negeri
6.	Jabatan Perlindungan Hidupan Liar dan Taman Negara, Semenanjung Malaysia (PERHILITAN)
7.	Jabatan Hidupan Liar Sabah
8.	Jabatan Perhutanan Semenanjung Malaysia
9.	Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan)
10.	Jabatan Warisan Negara
11.	Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia
12.	Jabatan Penerbangan Awam Malaysia
13.	Jabatan Pertanian
14.	Majlis Perbandaran Negeri-Negeri
15.	Lembaga Sumber Asli dan Alam Sekitar Sarawak
16.	Institut Penyelidikan dan Kemajuan Pertanian Malaysia
17.	Lembaga Pemasaran Pertanian Persekutuan (FAMA)
18.	Agrobank
19.	Persekutuan Persatuan Pedagang Sarang Burung Malaysia
20.	Persatuan Pedagang Sarang Burung Negeri-Negeri
21.	Institut Piawaian dan Penyelidikan Perindustrian Malaysia
22.	Malaysia Airport Sepang

Jawatankuasa Teknikal *(Technical Committee)* Pembangunan Industri Sarang Burung Walit

Jawatan	Jabatan/ Agensi	Jawatan
Pengerusi	Ibu Pejabat Perkhidmatan Veterinar	Ketua Pengarah Perkhidmatan Veterinar Malaysia
Ahli	Ibu Pejabat Perkhidmatan Veterinar	Timbalan Ketua Pengarah Perkhidmatan Veterinar (Kesihatan Veterinar)
Ahli	Ibu Pejabat Perkhidmatan Veterinar	Timbalan Ketua Pengarah Perkhidmatan Veterinar (Pembangunan)
Ahli	Bahagian Industri Tanaman, Ternakan dan Perikanan, Kementerian Pertanian dan Industri Asas Tani	Setiausaha Bahagian (SUB)
Ahli	Bahagian Pengairan dan Saliran Pertanian, Kementerian Pertanian dan Industri Asas Tani	Setiausaha Bahagian (SUB)
Ahli	Jabatan Warisan Negara	Ketua Pengarah Jabatan Warisan
Ahli	Bahagian Kawalan Penyakit, Kementerian Kesihatan Malaysia	Pengarah Bahagian
Ahli	Bahagian Keselamatan dan Kualiti Makanan, Kementerian Kesihatan Malaysia	Pengarah Bahagian
Ahli	Kementerian Perumahan & Kerajaan Tempatan	KPKT
Ahli	Jabatan Perumahan Negara	Ketua Pengarah Jabatan Kerajaan Tempatan
Ahli	Jabatan Perancangan Bandar & Desa Semenanjung Malaysia (JPBDSM)	Ketua Pengarah JPBDSM
Ahli	Jabatan PERHILITAN	Ketua Pengarah PERHILITAN
Ahli	Lembaga Pemasaran Pertanian Persekutuan (FAMA)	Ketua Pengarah FAMA
Ahli	Persatuan Veterinar Malaysia (VAM)	Presiden VAM
Ahli	Jabatan Perkhidmatan Veterinar dan Perusahaan Ternak Sabah	Pengarah Jabatan Perkhidmatan Veterinar dan Perusahaan Ternak Sabah
Ahli	Bahagian Veterinar, Jabatan Pertanian Sarawak	Pengarah Bahagian Veterinar
Ahli	*Bahagian Perancangan*	*Pengarah Bahagian Perancangan*

Ahli	Bahagian Pembangunan Industri Hiliran	Pengarah Bahagian Pembangunan Industri Hiliran
Ahli	Pengarah Bahagian Penyelidikan	Pengarah Bahagian Penyelidikan
Ahli	Bahagian Diagnostik dan Kepastian Kualiti (DKK)	Pengarah Bahagian DKK
Ahli	Bahagian Khidmat Pengurusan	Pengarah Bahagian Khidmat Pengurusan
Ahli	Bahagian Biosekuriti & SPS	Pengarah Bahagian Biosekuriti & SPS
Ahli	Bahagian Latihan & Pembangunan Kerjaya	Pengarah Bahagian Latihan & Pembangunan Kerjaya
Ahli	Pengarah Bahagian Penguatkuasa	Pengarah Bahagian Penguatkuasa
Ahli	Unit Undang-undang	Ketua Unit Undang-undang
Ahli	Jabatan Perhutanan Sarawak	Pengarah Jabatan Perhutanan Sarawak
Ahli	Jabatan Hidupan Liar Sabah	Pengarah Jabatan Hidupan Liar Sabah
Ahli	Jabatan Perhutanan Malaysia	Ketua Pengarah Jabatan Perhutanan Malaysia
Ahli	Agro-Bank	Pengarah Bahagian Ternakan Agro-Bank
Ahli	Institut Penyelidikan dan Kemajuan Pertanian Malaysia (MARDI)	Ketua Pengarah MARDI
Ahli	Persekutuan Persatuan Pedagang Sarang Burung Malaysia	Presiden
Ahli	Persekutuan Persatuan Pedagang Sarang Burung Sabah	Presiden
Ahli	Persekutuan Persatuan Pedagang Sarang Burung Sarawak	Presiden
Urus setia	Bahagian Pembangunan Komoditi Ternakan	Ketua Seksyen Aneka Industri Nilai Tinggi

1GP
KEMENTERIAN PERTANIAN DAN INDUSTRI ASAS TANI MALAYSIA

Jawatankuasa Kerja Teknikal (TWG) Penyelarasan Undang-undang

Bil.	Nama	Jabatan/Agensi
1.	Y.Bhg Dato' Ahmad Suhaimi bin Omar	Timbalan Ketua Pengarah Perkhidmatan Veterinar (Kesihatan Veterinar)
2.	Dr Chin Vei Ching	Bahagian Veterinar Jabatan Pertanian Sarawak
3.	Zarinah binti Mat Jailani	Kementerian Perumahan dan Kerajaan Tempatan (KPKT)-Bahagian Undang-undang
4.	IR Fong Tian Yong	KPKT
5.	Zainuddin bin Isma Yatim	Unit Undang-undang, JPV
6.	Zaharinan bin Abd Aziz	Bahagian Penguatkuasaan, JPV
7.	Niran Tan Kran	Penasihat Undang-undang, MOA
8.	Norhasnita binti Abd Samad	Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia (JPBD SM)
9.	Dr Fadzilah A'ini binti Abd Kadir	Ketua Seksyen Aneka Industri Nilai Tinggi (SAINT)
10.	Dr Yahasmida binti Yaacob	SAINT
11.	Shamsuddin bin Osman	Jabatan Perlindungan Hidupan Liar dan Taman Negara (PERHILITAN)
12.	Y.H Dato' Dr Mohamad Azmie bin Zakaria	Pengarah Bahagian Biosekuriti dan SPS
13.	Dr Idris bin Kadir	Pengarah BPKT
14.	Mohamed Radzuan bin Malek	Pengarah Bahagian Penguatkuasa JPV
15.	Sue Suet Chin	Penasihat Undang-undang, MOA
16.	Silvester Saimin	Sabah *Wildlife Dept*
17.	Wong Yor Yee	NREB, Sarawak
18.	Ainu Nizla binti Kasman	JKPTG Putrajaya
19.	Wan Roslina binti Wan Abdullah	ITTP, MOA
20.	A. Gogilavani	Penasihat Undang-undang, MOA
21.	Ong Yen Li	Ketua Unit Undang-undang JPV
22.	Jamadi bin Badri	Bahagian Penguatkuasa JPV
23.	Jamal a/l George	SAINT

Jawatankuasa Kerja Teknikal (TWG) Persampelan Makmal

Bil.	Nama	Jabatan/Agensi
1.	Y.Bhg Dato' Ahmad Suhaimi bin Omar	Timbalan Ketua Pengarah Perkhidmatan Veterinar (Kesihatan Veterinar)
2.	Dr Fadzilah A'ini binti Abd Kadir	Ketua Seksyen Aneka Industri Nilai Tinggi (SAINT)
3.	Dr Marzuki bin Zakaria	Makmal Veterinar Kawasan (MVK) P.Pinang
4.	Dr Ismail Khan bin Gulzar Mohd	JPV Pulau Pinang
5.	Dr Aziah binti Abdul Aziz	Makmal Kesihatan Awam Veterinar (MKAV) Salak Tinggi
6.	Dr Rashidah binti Che Muda	MVK Johor Bahru
7.	Dr Juliana binti Abu Sani	MVK Johor Bahru
8.	Dr Yahasmida binti Yaacob	SAINT
9.	Dr Idris bin Kadir	Pengarah Bahagian Pembangunan Komoditi Ternakan (BPKT)
10.	Hjh Azizon binti Abdullah	MVK Kota Bharu
11.	Norazean binti Mohamd Falal	Seksyen Kuarantin dan Import/ Eksport
12.	Dr Rozita binti Abdul Rahman	MVK Kuantan
13.	Dr Madihah Rauza binti Ahmad Salimi	SAINT
14.	Dr Zurina binti Ramli	Bahagian Diagnostik dan Kepastian Kualiti (DKK)
15.	Dr Akma binti Ngah Hamid	MVK Petaling Jaya
16.	Dr Liaw Shu Lan	MVK Bukit Tengah
17.	Ahmad Daud	Seksyen Pemeriksaan Veterinar (SPV)
18.	Dr Aida binti Muhid	Bahagian Pembangunan Industri Hiliran

1GP
KEMENTERIAN PERTANIAN DAN INDUSTRI ASAS TANI MALAYSIA

Jawatankuasa Kerja Teknikal (TWG) Pembinaan Premis Walit di Sekitar KLIA *(Birdstrike)*

Bil.	Nama	Jabatan/Agensi
1.	Y. Bhg. Dato' Dr. Ahmad Suhaimi bin Omar	Timbalan Ketua Pengarah Perkhidmatan Veterinar (Kesihatan Veterinar)
2.	Norhasnita binti Abd Samad	JPBD Sem Malaysia
3.	Alias bin Mohd Yassin	TSUB ITTP, MOA
4.	Nadia binti Mohd Najib	ITTP, MOA
5.	Mohd Nasir bin Hj Abu Hassan	Jabatan Perhutanan Semenanjung Malaysia
6.	Azman bin Hj Othman	PERHILITAN
7.	Rohaizad bin Ariffin	Jabatan Penerbangan Malaysia (DCA)
8.	Mohd Razlie bin Che Arshad	Malaysia Airport (Sepang) Sdn Bhd
9.	Cheng Ling Peng	Malaysia Airport (Sepang) Sdn Bhd
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11.	Dr Yahasmida binti Yaacob	SAINT
12.	IR Fong Tian Yong	KPKT
13.	Muhammad Ezhar bin Yusuf@Antik	Jabatan Perhutanan Malaysia
14.	Azmah binti Abas	Jabatan Pertanian
15.	Wong Ding Hook	DCA Sarawak
16.	Azmi bin Murad	Malaysia Airport (Sepang) Sdn Bhd
17.	Badriyah binti Noordin	Malaysia Airport (Sepang) Airside Ops
18.	Rosmayuzie binti Mahmod	Malaysia Airport (Sepang) Airside Ops
19.	Helmi bin Manap	Malaysia Airport (Sepang) Airside Ops
20.	Zanita binti Zakaria	*Head Of Operation* (Malaysia Airport Sepang)
21.	Nazim	Malaysia Airport Sepang *(Engineering)*
22.	Ida Irwany binti Selamat	Malaysia Airport Sepang *(Engineering)*

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3.	IR Fong Tian Yong	KPKT
4.	Norhasnita binti Abd Samad	JPBD Sem Malaysia
5.	Dr Rohaya binti Mohd Ali	JPV Melaka
6.	Dr Ismail Khan bin Gulzar Mohd	JPV Pulau Pinang
7.	Azura Azreen binti Yusof	ITTP,MOA
8.	Jamal bin Abu	Majlis Bandaraya Melaka Bersejarah
9.	Norazman bin Arshad	Majlis Bandaraya Melaka Bersejarah
10.	Lavernt Chen Vun Wo	Persekutuan Persatuan Pedagang Sarang Burung Melaka
11.	Wee Hui Kui	Persekutuan Persatuan Pedagang Sarang Burung Melaka
12.	Jean Ng	Persekutuan Persatuan Pedagang Sarang Burung Melaka
13.	Lim Chin Huat	ASNI,Pulau Pinang
14.	Carole Loh Chooi Lean	ASNI,Pulau Pinang
15.	Brendan Moey	ASNI,Pulau Pinang
16.	Tan Lin Han	Majlis Perbandaran Pulau Pinang
17.	Khalid Syed Ali	Jabatan Warisan Negara
18.	Dr Fadzilah A'ini binti Abd Kadir	Ketua SAINT
19.	Dr Yahasmida binti Yaacob	SAINT,JPV

Jawatankuasa Kerja Teknikal (TWG) Import/ Eksport

Bil.	Nama	Jabatan/Agensi
1.	Dr Fadzilah A'ini binti Abd Kadir	Ketua SAINT
2.	Ong Yen Li	Ketua Unit Undang-undang
3.	Dr Naseem binti Malik	MAQIS
4.	Ahmad Daud bin Ramtan	Seksyen Pemeriksaan Veterinar (SPV)
5.	Dr Yahasmida Yaacob	SAINT
6.	Dr Nur Hafizan Sharudin	Seksyen Perkhidmatan Kuarantin dan Import/ Eksport

Jawatankuasa Kerja Teknikal (TWG) Penetapan Penggunaan Perkataan Burung Walit Untuk *Edible-Birdnest Swiftlet* (EBN)

Bil.	Nama	Jabatan/Agensi
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2.	Dr Ungku Chulan Ungku Mohsin	IIUM Kampus Kuantan
3.	Ratna Inzah Mohd Asri	Dewan Bahasa dan Pustaka
4.	Julianah Kuli	Dewan Bahasa dan Pustaka
5.	Rasedee Abdullah	Falkuti Perubatan Veterinar, UPM
6.	Tengku Azmi Ibrahim	Falkuti Perubatan Veterinar, UPM
7.	Saleha Abdul Aziz	Falkuti Perubatan Veterinar, UPM
8.	Abd Rahman Mohd Yasin	MARDI
9.	Zainuddin Isma Yatim	Unit Undang-undang, JPV
10.	Dr Fadzilah Aini Abdul Kadir	Ketua Seksyen Industri Nilai Tinggi (SAINT)
11.	Dr Yahasmida Yaacob	SAINT
12.	Azliza Ruyanty Azahari	SAINT

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Ms Maria Christina Stephensons (Secretary)	SIRIM Berhad
Mr Suhaimi Sarpan/Mr Haslan Hamzah	*Department of Town Planning Melaka*
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Dr Lim Khun Hiong	*Department of Veterinary Services Malaysia*
Mr Azman Hj Othman	*Department of Wildlife and National Parks Peninsular Malaysia*
Ir Fong Tian Yong	*Ministry of Housing and Local Government*
Mr Chen Vun Wo	*Multiform Food Supply Co Sdn Bhd*
Mr Tan Yoke Tian	*Perak Bird's Nest Merchants Association*
Mr Tiong Sui Jin	Persatuan Sarang Burung Negeri Sarawak
Dato' Tok Teng Sai	Persekutuan Pedagang Sarang Burung Terengganu
Dr Tan Boon Siong	Persatuan Pengusaha Sarang Burung Industri Negeri Johor
Dato' Beh Heng Seong/Mr Ku Teng Choon	Persekutuan Persatuan Pedagang Sarang Burung Malaysia
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Ms S. Thavamanithevi/Ms Sarifah Rejab	SIRIM Berhad *(Environment and Bioprocess Technology Centre)*
Dato' Seri Dr Abdullah Fadzil Che Wan/Mr Loke Yeu Loong	*Swiftlet Eco Park Group of Companies*
Mr Lee Ting Hun	Universiti Teknologi Malaysia
Dato Dr Vincent Ng/Dr W. Sasindran Dass	*Veterinary Association Malaysia*
Mr Nik Zulkifli Nik Omar	*Walit World Sdn Bhd*

1GP
KEMENTERIAN PERTANIAN DAN INDUSTRI ASAS TANI MALAYSIA

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Mr Mah Swee Lye	Negeri Selangor
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Jawatankuasa Kerja Teknikal *(Technical Working Group)* *Specification*

Nama	Jabatan/Agensi
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Dr Zaliha Abdullah/Dr Zurina Ramli/	
Dr Yahasmida Yaacob/Hjh Azizon Abdullah/ Dr Adrian Susin Ambud (Sarawak)/ Dr Lim Khun Hiong (Sabah)	*Department of Veterinary Services*
Mr Azman Hj Othman	*Department of Wildlife and National Parks Peninsular Malaysia*
Ir Fong Tian Yong	*Ministry of Housing and Local Government*
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Mr Mah Swee Lye	Persatuan Pengusaha Sarang Burung Industri Negeri Selangor
Dato' Tok Teng Sai	Persekutuan Pengusaha Pedagang Sarang Burung Terengganu
Dato' Beh Heng Seong/Mr Ku Teng Choon	Persekutuan Persatuan Pedagang Sarang Burung Malaysia
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Sidang Reduksi 1GP Industri Sarang Burung Walit Negara

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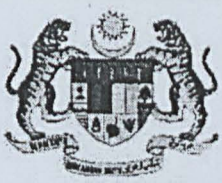
REGULATING EDIBLE BIRD'S NEST (EBN) INDUSTRY IN MALAYSIA: AN EVALUATION OF THE CURRENT LEGAL FRAMEWORK

APPENDIX B:

Standard Operation Procedure (Sop) On the Controls of the Safety of Raw-Edible Bird's Nest along the Food Supply Chain.

Lampiran 1



FOOD SAFETY AND QUALITY DIVISION

MINISTRY OF HEALTH MALAYSIA

STANDARD OPERATING PROCEDURE ON THE CONTROL OF THE SAFETY OF RAW EDIBLE BIRD'S NEST ALONG THE FOOD SUPPLY CHAIN

Approved by:	
Name:	NORAINI BINTI DATO' MOHD OTHMAN
Designation:	Senior Director Food Safety and Quality Ministry of Health Malaysia
Date:	12 March 2012

NO.	DATE OF AMENDMENT	REVISION NO.	AMENDMENT REFERENCE
1.	20 February 2012	01	Para 2. Scope Replaced with a new scope. Para 4.1.2 Words **"draught-free", "moisture"** and **"heat"** are deleted. Para 4.1.4 (i) Statement **"Bird house shall be cleaned after each guano removal"** is deleted. Para 4.1.6 (i) Statement **"be medically examined and vaccinated by a registered medical practitioner"** is deleted. Para 4.1.6 (v) A phrase **"or clean water"** is included. Para 4.7 A new para **"Monitoring and Surveillance Programme"** is included.

1. INTRODUCTION

The Food Safety and Quality Division (FSQD) under the Ministry of Health Malaysia is the Competent Authority for food safety along the supply chain in Malaysia. The control of the safety of edible bird's nest (EBN) along the supply chain is regulated under the Food Act 1983 and its regulations. The Food Regulations 1985 prescribes the standard and labelling requirements for all foods whilst, the Food Hygiene Regulations 2009 prescribes the hygiene requirements for all foods and processing establishment producing animal products including EBN and transportation of the animal products.

On the other hand, Department of Veterinary Services (DVS) under the Ministry of Agriculture and Agro-based Industry Malaysia is responsible for the control of animal diseases along the supply chain as regulated under the Animal Act 1953 and its regulations.

2. SCOPE

This standard operating procedure (SOP) describes the food safety control on raw EBN along the supply chain.

3. DEFINITION

3.1 Raw unclean EBN

EBN harvest from cave and ranches which may include but not limiting to sorting, drying, grading, trimming, weighing and packing but, without any cleaning process. There are still visible feathers and impurities.
(MS 2334:2011)

3.2 Raw clean EBN

EBN that has undergone cleaning process which may include but not limiting to sorting, drying, soaking, picking of feathers and impurities, moulding, drying, grading and packing. (MS 2334:2011)

3.3 Processing establishment

Processing establishment means premises used for or in connection with the preparation, packaging and/or storage of raw EBN including sorting, softening and cleaning.

4. THE FOOD SAFETY CONTROLS ALONG THE RAW EBN SUPPLY CHAIN

The food safety controls of the raw EBN shall be carried out along the supply chain as follows:

4.1 Bird house

FSQD carries out food safety control on bird houses which are registered with DVS as well as controlled by DVS from the aspect of animal diseases. The bird's houses shall comply with the following requirements:

4.1.1 Bird houses shall be designed to facilitate regular cleaning.

4.1.2 Bird houses shall have adequate ventilation to prevent the build up of ammonia and dust.

4.1.3 The surfaces of batten area shall be made with material which is impervious and solid. Joints and corners shall be properly sealed.

4.1.4 Birds house, its surroundings and equipment used shall be kept clean to prevent cross contamination to the EBN:

i. Guano shall be removed regularly and shall not be allowed to accumulate.

ii. Cleaning equipment shall be cleaned before and after each use and stored at an appropriate place.

iii. Tools used to collect EBN shall be kept clean before and after each use and stored at an appropriate place.

iv. Containers used to hold EBN shall be made from non-toxic materials and easy to clean. Containers used shall be kept clean before and after each use and stored at an appropriate place.

v. Chemical shall not be stored in the bird house. Chemicals shall be kept separately and under lock and key.

vi. Cleaning schedule and records shall be made available.

4.1.5 Pest control:

Pesticide may be used to control pests. However, the use of pesticides shall be controlled to prevent contamination to EBN. Prohibited pesticides shall not be used. Records on pest control shall be made available.

4.1.6 EBN handlers shall maintain personal hygiene and shall:

i. wear clean, suitable and proper clothing including shoes which shall not contribute to any contamination of the EBN.

ii. maintain personal cleanliness which includes the keeping of short and clean fingernails.

iii. wash hands before entering the bird house and after using the toilet. Hand washing facilities with liquid soap shall be provided.

iv. only use potable water or clean water, whenever necessary to prevent contamination.

4.1.7 EBN handlers who suffers from, or is a carrier of food-borne diseases or suspected to be suffering from, or to be a carrier of food-borne diseases shall:

i. not be allowed to enter bird's house or handle EBN;

ii. immediately report to the management of bird's house pertaining to his health condition; and

iii. be suspended from working in the bird's house until he is certified cured from the disease and medically fit to work by a registered medical practitioner before he is allowed to enter the bird's house or handle EBN.

4.1.8 Employers are responsible for ensuring that EBN handlers are adequately trained and knowledgeable in food safety requirement.

4.1.9 All records on the above requirements shall be maintained and made available.

4.2 Transport vehicle

Transport vehicles used to transport EBN shall comply with the requirements stated in Part VI of the Food Hygiene Regulations 2009.

4.3 Middlemen / Trader

All middlemen / trader involved in EBN supply chain shall:

i. register with Ministry of Health;

ii. implement food traceability system as required in Regulation 10 of the Food Hygiene Regulations 2009;

iii. ensure all food handlers comply with the requirement in Part IV of the Food Hygiene Regulations 2009 ;

iv. ensure storage of edible bird' nest comply with Regulation 25 of the Food Hygiene Regulations 2009.

4.4 Processing Establishment

4.4.1 Processing establishments for EBN shall comply with the requirements of the Food Hygiene Regulations 2009.

4.4.2 All processing establishments shall:

i. be registered with Ministry of Health Malaysia as required under Regulation 3 of the Food Hygiene Regulations 2009;

ii. implement food safety assurance programme as required under Regulation 9 of the Food Hygiene Regulations 2009;

iii. implement a food traceability system as required under Regulation 10 of the Food Hygiene Regulations 2009;

iv. ensure all food handlers comply with the requirement in Part IV of the Food Hygiene Regulations 2009;

v. comply with the general requirements for food premises as required under Regulations 12 to 29 of the Food Hygiene Regulations 2009; and

vi. ensure EBN comply with the requirement of the Food Regulations 1985.

4.5 Import of EBN

Imported EBN shall comply with the requirements as stated in Section 29 of the Food Act 1983 and Food Regulations 1985 and shall have import licence from Department of Veterinary Services to ensure EBN is free from animal disease.

4.6 Export of EBN

Export of EBN shall comply with the requirements as stated in this SOP. It is also the responsibility of the exporters of edible bird' nest to comply with the importing countries requirements.

4.7 Monitoring and Surveillance Programme

FSQD shall implement the food safety control system for EBN along the supply chain which includes annual monitoring and surveillance verification programme.

References

Malaysian Standard 2273:2010 Good Animal Husbandry Practice - Edible Birdnest Swiftlet Ranching and Its Premises

Malaysian Standard 2334:2011 Edible Birdnest (EBN) – Specification

Food Act 1983 (Act 281) & Regulations

Food Hygiene Regulations 2009

REGULATING EDIBLE BIRD'S NEST (EBN) INDUSTRY IN MALAYSIA: AN EVALUATION OF THE CURRENT LEGAL FRAMEWORK

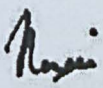
APPENDIX C:

Standard Operation Procedure on the Controls Of Nitrite Level Edible Bird's Nest.

FOOD SAFETY AND QUALITY DIVISION

MINISTRY OF HEALTH MALAYSIA

STANDARD OPERATING PROCEDURE ON THE CONTROL OF NITRITE LEVEL IN EDIBLE BIRD'S NEST

Approved by:	
	
Name:	NORAINI BINTI DATO' MOHD OTHMAN
Designation:	Senior Director Food Safety and Quality Ministry of Health Malaysia
Date:	12 March 2012

1. INTRODUCTION

The Food Regulations 1985 prescribes the standard and labelling requirements for all foods whilst the Food Hygiene Regulations 2009 prescribes the hygiene requirements for all foods and processing establishments including those of animal products which include edible bird's nest (EBN).

The Ministry of Health has conducted a study on the nitrite level in EBN produced in Malaysia. The conclusions were reported as follows:

a) The natural occurrence of nitrite in EBN is contributed by various factors such as the natural presence of nitrite in bird saliva; formation of ammonia in the bird's nest; presence of ammonia, derived from bird droppings, in the bird's house or cave environment which is finally converted to nitrite in EBN; and bird droppings containing nitrite which contaminate the EBN; and

b) The preparation processes prior to consumption i.e. soaking and rinsing significantly reduce the level of nitrite in EBN as nitrite is highly soluble in water.

2. OBJECTIVE

This standard operating procedure (SOP) describes the requirements for the reduction of the nitrite level in raw EBN during primary production and processing of raw clean EBN.

3. DEFINITION

3.1 Raw unclean EBN

EBN harvest from cave and ranches which may include but not limiting to sorting, drying, grading, trimming, weighing and packing but, without any cleaning process. There are still visible feathers and impurities. (MS 2334:2011)

3.2 Raw clean EBN

EBN that has undergone cleaning process which may include but not limiting to sorting, drying, soaking, picking of feathers and impurities, moulding, drying, grading and packing. (MS 2334:2011)

3.3 Softening

Softening is a process wherein the raw unclean EBN is dipped, immersed or added with a certain amount of clean water for a certain period of time.

3.4 Cleaning

Cleaning is a process of removal of impurities including feathers from the raw unclean EBN by various means such as picking or brushing and rinsing.

4. POINT OF CONTROL

4.1 Bird House

Bird house operators are to undertake the following measures, where appropriate:

(i) to keep any facilities used in connection with primary production and associated operations clean such as equipment, containers, crates, vehicles and vessels;

(ii) guano shall be removed regularly and shall not be allowed to accumulate;

(iii) to use potable water, or clean water, whenever necessary to prevent contamination;

(iv) to prevent contamination caused by animals and pests;

(v) to store and handle waste and hazardous substances in a manner so as to prevent contamination; and

(vi) to keep records on cleaning schedule.

4.2 Transport vehicle

Vehicles used in the transportation of EBN, be it in the form of raw unclean or raw clean, shall comply with the requirements of the Food Hygiene Regulations 2009.

The causative factors that contribute to nitrite contamination in EBN include:

a) Cross contamination from crates and trucks used to transport food products;

b) Cross contamination with other products;

c) Product damage due to rough handling and improper stacking; and

d) Exposure to the surrounding and pest.

4.3 Processing Establishment

Processing establishments for raw EBN shall comply with the requirements of the Food Hygiene Regulations 2009. For compliance to the requirement for implementation of food safety assurance programme, the Guidelines on "Skim Keselamatan Makanan 1Malaysia" (SK1M) may be used as a guide.

The level of nitrite in EBN can be significantly reduced through appropriate softening and cleaning. Hence, industry must implement appropriate softening and cleaning procedures.

The raw unclean house or cave EBN should be sorted and graded according to their degree of cleanliness and impurities. The table below is a guide on the grading of raw unclean EBN according to various attributes:

Grade	Shape	Size	Feathers	Color	Droppings
I	180°	> 4 cm	< 10 spots	White	Absent
II	180°	> 4 cm	Heavy, >10 spots	White/Slightly Yellow	Present
	135°	> 4 cm	Heavy, >10 spots	White/Slightly Yellow	Present
III	90°	-	Heavy, >10 spots	White/Slightly Yellow	Present

5.0 SOFTENING AND CLEANING

Processing of raw EBN which involves softening and cleaning process to reduce the level of nitrite shall be carried out as follows:

i. The raw unclean EBN shall be softened using clean water e.g. filtered water, alkaline water etc., for easy removal of feathers and impurities.

ii. The volume of water, duration and frequency of softening and cleaning of raw unclean EBN shall be determined by the processing establishments.

iii. The appropriate softening and cleaning processes may be determined based on the type, grade or texture of raw unclean EBN.

iv. During the process of softening, raw unclean EBN may be kept for a certain period of time and at a particular temperature as determined by the processing establishments. This process shall be carried out under hygienic condition to ensure the safety of the raw unclean EBN.

v. Raw unclean EBN which has been softened shall be cleaned by using tweezers, brush or other appropriate cleaning tools. Raw unclean EBN may be dabbed with clean and highly absorbent material so as to absorb water from the raw unclean EBN.

vi. A minimum of 2 bowls of clean water shall be used in the cleaning process i.e. (A) 1 bowl for cleaning of tweezers, brush or other appropriate cleaning tools and the other (B) 1 bowl for rinsing the raw unclean EBN.

vii. Cleaning water shall be changed regularly and the processing establishments shall determine the maximum time for changing of cleaning water.

viii. Processing establishments shall establish a standard procedure for softening and cleaning taking into account the above criteria based on the parameters in the table below.

Grade	Time to dip raw EBN in water for softening process (min)	Maximum Time to Change Water		Rinsing frequency during cleaning of raw EBN
		Bowl A (for cleaning tweezers) Volume(*l*):....	Bowl B (for cleaning of raw EBN) Volume(*l*):.....	
I				
II				
III				
Others				

Note:

1. A standard cleaning procedure based on the above parameters is to be established for different types and grades of raw EBN by each processing establishment.
2. Processing establishment may include other additional parameters, if necessary.

ix. Processing establishment shall establish procedures for verification which include laboratory testing to confirm that the standard cleaning procedures that have been established and implemented are working effectively to reduce the level of nitrite in raw clean EBN.

x. Samples for testing of nitrite in raw clean EBN shall be sent to laboratories that use ion chromatography method with limit of detection (LOD) 2 mg/kg or below.

xi. Processing establishments shall establish appropriate records.

References

Malaysian Standard 2273:2010 Good Animal Husbandry Practice - Edible Birdnest Swiftlet Ranching and Its Premises

Malaysian Standard 2334:2011 Edible Birdnest (EBN) – Specification

Food Act 1983 (Act 281) & Regulations

Food Hygiene Regulations 2009

Skim Keselamatan Makanan 1Malaysia (SK1M)

REGULATING EDIBLE BIRD'S NEST (EBN) INDUSTRY IN MALAYSIA: AN EVALUATION OF THE CURRENT LEGAL FRAMEWORK

APPENDIX D:

Bleaching Process of

Edible Birds' Nests

24 May 2008

Bird's Nest processed with bleach!

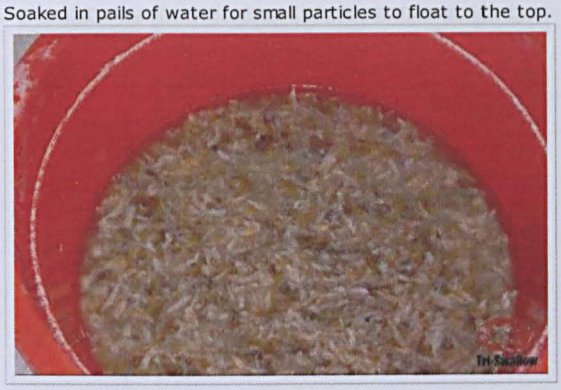
After seeing these pictures, I seriously will not buy cheap and lousy brands of Bird's Nest anymore because they actually use BLEACH to process their Bird's Nest!!!

Nest before any processing

Staff removing fine feathers, dirt and grass.

Then the nests are cut into smaller pieces for further washing.

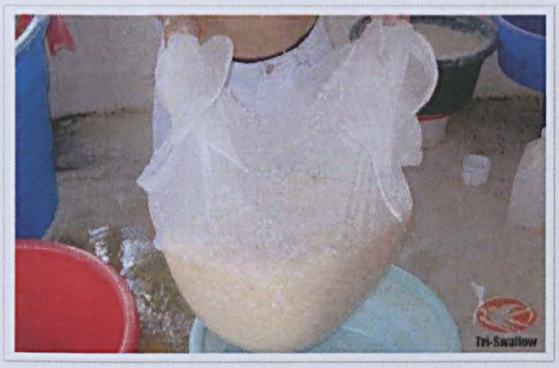
Soaked in pails of water for small particles to float to the top.



Then they are soaked in bleach.

The bleaching agent becomes cloudy after reacting.

After bleaching, hot boiling water is used to get rid of the smell of bleaching agent.



Parts of the birds' nests which cannot be bleached will be taken out.

Now it's the time to mould them into shapes

After moulding them into shapes, they are dried.

After drying them for one day and one night, the birds' nests are ready.

And they become this:

BEFORE

REGULATING EDIBLE BIRD'S NEST (EBN) INDUSTRY IN MALAYSIA: AN EVALUATION OF THE CURRENT LEGAL FRAMEWORK

APPENDIX E:

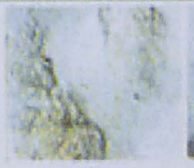
Differentiating Pure And

Fake Edible Birds' Nest

APPENDIX E

http://birdnests farm.wordpress.com/2009/03/20/how-to-differentiate-real-bird-nests -and-fake-bird-nests /

Differentiating Pure Bird Nest and Fakes

Characteristics	The Real Stuff	The Fakes
Before soaking into water...		
Transparency	Semi-transparent 	 Not transparent, and might be reflective.
Fragility	Very fragile, and breaks into small specks, dust-sized pieces. 	 Very fragile and breaks into large chunks.
After soaking in water for 30 minutes...		
Shape & Appearance	No distinctive shape, with the nest fibres easily recognizable, with an occassional feather stuck within the fibres. 	 Bumpy surface arranged uniformly, with slight smell of medication or highly transparent.
Absorbtivity	Bloated to about twice its original size. 	 No significant growth in size. Evident sign of foreign particles.
Coloring	Water remains clear throughout. 	 Discoloring of the nest color into the water due to artificial colorings.
Foams	Stirring of bird nest in water causes foaming to appear on the surface, while water remains clear throughout. 	 Stirring does not produces foaming, water remains murky and clouded.
Structural Observation under Microscope	Unevenly structured. 	 Coarsely distributed and transparent.