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**Legislative Council**

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**Panel on Environmental Affairs**

**Special meeting on 6 June 2017**

**Background brief on the legislative proposal to phase out the  
local trade in elephant ivory  
prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides background information on the legislative proposal to phase out trade in elephant ivory (hereafter referred to as "ivory") in Hong Kong. It also gives a brief account of the major views and concerns expressed by Members on related issues.

**Background**

Protection of endangered species

2. Hong Kong abides by the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") and implements CITES through enforcement of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) ("the Ordinance"), which is the local legislation that gives effect to CITES.<sup>1</sup> The Ordinance provides that no person shall import, introduce from the sea, export, re-export or possess any

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<sup>1</sup> CITES is an international treaty that has been ratified by 183 countries (called Parties) since it was first entered into force in 1975. The aim of CITES is to prevent species from becoming endangered or extinct because of international trade. CITES regulates more than 35 000 animal and plant species, including their parts and products, to ensure the international trade in them does not threaten their survival. CITES regulates international trade (both commercial and non-commercial) through a system of permits and certificates in which the required permits/certificates must accompany the species in question when leaving and entering a country.

endangered species, whether alive, dead, its parts or derivatives, except under and in accordance with a licence issued in advance by the Agriculture, Fisheries and Conservation Department ("AFCD").

### Existing regulatory system to control the import, re-export and domestic sale of ivory

3. CITES started to regulate the international trade in ivory in the 1970s and has banned such trade since 1990 except the "pre-Convention ivory" which is allowed to be traded when the ivory is accompanied by a pre-Convention certificate.<sup>2</sup> Given the history of Hong Kong as a trade centre of ivory in the Asian region in the 1980s, substantial amount of ivory had been imported into Hong Kong legally and in accordance with CITES provisions before the international trade ban in 1990. Such post-Convention ivory<sup>3</sup> was registered by AFCD and is allowed to be traded locally under a Possession Licence ("PL").<sup>4</sup> Any person keeping post-Convention ivory for commercial purposes must obtain a PL for each keeping premises.

4. Enforcement against smuggling of and illegal trade in ivory is carried out by AFCD in cooperation with the Customs and Excise Department and the Police. Seized specimens will be automatically forfeited upon conviction, and disposed of in the Government stockpile by incineration.<sup>5</sup> In recent years, there have been growing concerns over the poaching of elephants in Africa and the global smuggling of ivory. AFCD has devised a suite of new/enhanced measures to step up enforcement and strengthen interdepartmental collaboration. The new/enhanced measures are set out in **Appendix I**.

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<sup>2</sup> Pre-Convention ivory refers to ivory products which were acquired before 1975 for Asian elephants and 1976 for African elephants. Import and re-export of pre-Convention ivory for commercial purpose are currently allowed subject to the production of a pre-Convention certificate or meeting the relevant licensing requirement. The requirement of a Possession Licence for pre-Convention ivory, no matter for personal or commercial purposes, is currently exempted under the Ordinance.

<sup>3</sup> Post-Convention ivory was formerly referred to as "pre-ban ivory" (i.e. ivory acquired before the international trade ban in 1990) in papers submitted by the Administration and background briefs prepared by the Legislative Council Secretariat before December 2016.

<sup>4</sup> Currently, the validity period of a PL is five years, with the expiry date(s) of the recently renewed/issued PLs in the year of 2021.

<sup>5</sup> Before May 2014, seized ivory was mainly donated to schools, museums and overseas organizations for conservation, scientific, education and training, or enforcement and identification purposes. Since May 2014, with the support of the Endangered Species Advisory Committee, the Government has started to dispose of confiscated ivory in the Government stockpile by incineration.

Proposed plan for phasing out ivory trade and increasing penalties

5. In the 2016 Policy Address, the Chief Executive announced that the Government would kick start legislative procedures to ban the import and export of elephant hunting trophies and actively explore other appropriate measures, such as enacting legislation to further ban the import and export of ivory and phase out the local ivory trade, and imposing heavier penalties on smuggling and illegal trading of endangered species.

6. In December 2016, the Executive Council approved a three-step plan to phase out the local trade in ivory, and the proposed implementation stages are as follows:

Step 1: ban the import and re-export of all elephant hunting trophies and remaining post-Convention ivory items, whose import, export and re-export are currently permissible under CITES.<sup>6</sup> This step will take effect on the commencement date of the amendment legislation;

Step 2: (a) ban the import and re-export of pre-Convention ivory except "antique ivory",<sup>7</sup> and (b) subject the commercial possession of pre-Convention ivory except "antique ivory" in the local market to licensing control similar to the existing control on post-Convention ivory. This step will take effect three months after the ban in Step 1; and

Step 3: ban the possession for commercial purposes of all ivory (including pre-Convention ivory and post-Convention ivory) except "antique ivory" from 31 December 2021.

7. The Administration advised that in drawing up the proposed effective date for Step 3 (i.e. a total ban of local ivory trade), it has taken into account

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<sup>6</sup> The import, export and re-export for non-commercial purposes of elephant hunting trophies and specified elephant specimens of the populations of Botswana, Namibia, South Africa and Zimbabwe (including certain ivory carvings and ornaments from Namibia and Zimbabwe) are currently allowed under CITES.

<sup>7</sup> For the purpose of the three-step plan, "antique ivory" is defined as a piece of worked ivory that had been removed from the wild and significantly altered from its natural state for jewellery, adornment, art, utility or musical instruments before 1 July 1925 (i.e. 50 years before CITES entered into force on 1 July 1975), and has since been acquired in this condition requiring no further carving, crafting or manufacturing to effect its purpose.

factors such as how much time is considered reasonably sufficient for the relevant traders to transform their businesses and the validity period of PLs. To prepare for Step 3, all PLs to be issued, extended, renewed or varied on or after 31 December 2016 will expire on or before 30 December 2021.

8. The Administration plans to introduce a bill to amend the Ordinance in 2017 to effect the above three-step plan. It also proposes to increase the penalties in the Ordinance under the same bill to strengthen the deterrent effect against wildlife crimes. A summary of the existing and proposed penalties is set out in **Appendix II**.

### **Major views and concerns expressed by Members**

9. The Panel on Environmental Affairs ("EA Panel") discussed the Administration's plan to phase out local ivory trade and enhanced enforcement measures against smuggling of ivory at the meetings on 22 February 2016, 27 June 2016, 23 January 2017 and 27 March 2017. At the Council Meeting of 2 December 2015, a motion on "Strengthening the combat against the crime of wildlife smuggling" moved by Dr Elizabeth QUAT and as amended by Ms Claudia MO was passed. At the Council meetings of 11 February and 25 November 2015, Dr Elizabeth QUAT and Dr Kenneth CHAN raised questions respectively on issues relating to regulation of ivory possession and trade. The major views and concerns expressed by Members are summarized in the ensuing paragraphs.

#### Scope of ivory trade ban

10. Members in general agreed to the proposal of phasing out local ivory trade, but some of them considered that the Administration should pay heed to the impact of the ban on the livelihood of ivory craftsmen and the preservation of traditional ivory crafting works. Some other Members expressed concern that allowing the trade in "antique ivory" after imposing the trade ban might create a loophole for laundering of "antique ivory" from illegal sources, and suggested that the Administration should issue certificates for regulating the trade in "antique ivory".

11. The Administration explained that imposing a total ban on the local ivory trade would dispense with the need to determine the age and hence the legality of ivory that would otherwise be required if the ban was only imposed on ivory of certain age (e.g. post-Convention ivory). This approach was also in line with the international call for closure of domestic markets for ivory. In particular, a resolution was reached at the Seventeenth Meeting of the Conference of the Parties to CITES held in 2016 recommending that all Parties and non-Parties in whose jurisdiction a legal domestic market for ivory existed

that was contributing to elephant poaching or illegal ivory trade, should take all necessary measures to close their domestic markets for commercial trade in raw and worked ivory.

12. Regarding the exemption of "antique ivory" from the total trade ban, the Administration explained that "antique ivory" was of much longer age than pre-Convention ivory or post-Convention ivory, and forensic tests could accurately identify the authenticity and legality of "antique ivory". Further, the level of craftsmanship would also be a clue for identifying "antique ivory". When setting the reference date for "antique ivory", the Administration had made reference to overseas practices and considered factors including the preservation of traditional ivory crafting works and enforcement facilitation. As a person in possession of "antique ivory" should be able to produce proof on the authenticity when required, the Administration did not intend to regulate the sale of "antique ivory" by means of issuing certificates.

#### Grace period for local ivory traders

13. Some Members considered that the grace period up to 30 December 2021 should be shortened or existing PLs be cancelled to advance the total ban in order to prevent laundering of ivory during the grace period. Some other Members, however, opined that a longer grace period should be given for the trade to dispose of the ivory in their possession. They urged the Administration to strike a balance between combating ivory smuggling and maintaining the livelihood of local ivory traders.

14. The Administration explained that under existing legislation, the Director of AFCD had no legal power to cancel a valid PL on the basis of implementing the ivory trade ban. Given that the expiry dates of the recently renewed/issued PLs were in 2021, the total ban of local ivory trade had to take effect after all the existing PLs had expired.

#### Enforcement measures

15. Some Members suggested that the Administration should make public the list of PL holders in Hong Kong together with their names and addresses, so that the media and wildlife conservation groups could better assist in uncovering illegal activities of ivory traders. The Administration considered it inappropriate to make public the suggested list as it would involve disclosure of personal and business information of the licensees. Disclosure of the keeping premises of ivory (be it a shop or a storage place) might also arouse security concern from the licensees.

### **Recent development**

16. EA Panel will receive public views on the legislative proposal to phase out the local trade in ivory at the special meeting on 6 June 2017.

### **Relevant papers**

17. A list of relevant papers is set out in **Appendix III**.

Council Business Division 1  
Legislative Council Secretariat  
1 June 2017

**New/enhanced measures to step up enforcement against smuggling of ivory  
and to strengthen the control of local trade in ivory**  
(as at February 2016)

- (a) Comprehensive stocktaking of registered ivory is being conducted to prevent potential laundering of licensed ivory by ivory from illegal sources. It includes checking the quantity, marking (if any) and the transaction records of ivory. In addition, a new marking system with unique tamper-proof holograms and photographic records for ivory has been introduced.
- (b) Frequency of surprise inspections to licensed shops selling ivory has been increased. Those shops located in business districts and/or holding large quantity of ivory will be inspected more frequently. Inspections of other art and crafts shops will also be carried out to check if there is any illegal selling of ivory.
- (c) The Agricultural and Fisheries Department ("AFCD") will employ radiocarbon dating to determine the legality of ivory and hence to assist enforcement.
- (d) To strengthen enforcement against, and gather intelligence on, smuggling and illegal trade in ivory, a range of enhancement measures will be taken by AFCD, the Customs and Excise Department ("C&ED") and Police. These include strengthening collaboration and coordination of efforts of the three enforcement agencies, enhancing intelligence gathering and information exchange with relevant overseas and international bodies (e.g. International Criminal Police Organization, World Customs Organization, and the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora), and strengthening liaison and cooperation with relevant non-governmental organizations.
- (e) AFCD and C&ED will step up joint operations with the support of ivory sniffer dogs to target air parcels and passengers from high risk ports at the Hong Kong International Airport, as well as north-bound passengers, vehicles and cargoes at various land boundary and railway control points. As for cases that involve organized and serious crimes under the Police and C&ED's purview, the two departments will conduct investigation and take enforcement actions as appropriate.

- (f) In order to provide a higher deterrent effect against the smuggling of endangered species and to demonstrate the commitment of Hong Kong in tackling these criminal activities, AFCD will work with the Department of Justice on how to establish and submit evidence to satisfy the courts that the offence was committed for commercial purposes so that higher penalties can be imposed.
- (g) The Administration will also review the maximum penalties to reflect the seriousness of such offence with reference to the penalties stipulated in other local legislation governing the import, export or possession of controlled items as well as the penalties imposed by other jurisdictions on the smuggling and illegal trade of endangered species.

[Source: Adapted from Annex B to the Administration's paper provided to the Panel on Environmental Affairs for the meeting held on 22 February 2016 (LC Paper No. CB(1)557/15-16(04)).]

## Appendix II

### Summary of existing and proposed penalties under the Protection of Endangered Species of Animals and Plants Ordinance

	Existing penalties		Proposed Penalties	
	for non-commercial purposes	for commercial purposes	for summary offences	for indictable offences
<b>Appendix I species</b> *	A fine at level 6 (\$100,000) and imprisonment for 1 year	A fine of \$5,000,000 and imprisonment for 2 years	A fine of \$5,000,000 and imprisonment for 2 years	A fine of \$10,000,000 and imprisonment for 10 years
<b>Appendix II and III species</b> *	A fine at level 5 (\$50,000) and imprisonment for 6 months	A fine of \$500,000 and imprisonment for 1 year	A fine of \$500,000 and imprisonment for 1 year	A fine of \$1,000,000 and imprisonment for 7 years

\* *Appendix I, II and III species refer to the species listed in the three appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). Appendix I species are highly endangered and threatened with extinction. Appendix II species can become threatened with extinction unless trade is controlled. Appendix III species are species identified by any Party to CITES as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade.*

[Source: Adapted from Annex A to the Administration's paper provided to the Panel on Environmental Affairs for the meeting held on 27 March 2017 (LC Paper No. CB(1)705/16-17(05)).]

Legislative proposal to phase out the local trade in elephant ivory

List of relevant papers

Date	Event	Paper
2 December 2015	Council Meeting	<p><a href="#">Motion moved by Dr Hon Elizabeth QUAT</a></p> <p><a href="#">Progress report</a></p>
22 February 2016	Meeting of the Panel on Environmental Affairs ("EA Panel")	<p>Administration's paper on "Update on the protection of endangered species and biodiversity in Hong Kong" (LC Paper No. <a href="#">CB(1)557/15-16(04)</a>)</p> <p>Background brief on "Protection of endangered species and biodiversity in Hong Kong" prepared by the Legislative Council Secretariat (LC Paper No. <a href="#">CB(1)557/15-16(05)</a>)</p> <p>Minutes of meeting (LC Paper No. <a href="#">CB(1)857/15-16</a>)</p>
29 March 2016	Special meeting of EA Panel	<p>Administration's paper on "Update on the protection of endangered species and biodiversity in Hong Kong" (LC Paper No. <a href="#">CB(1)557/15-16(04)</a>)</p> <p>Background brief on "Public consultation on Biodiversity Strategy and Action Plan for Hong Kong" prepared by the Legislative Council Secretariat (LC Paper No. <a href="#">CB(1)712/15-16(01)</a>)</p> <p>Minutes of special meeting (LC Paper No. <a href="#">CB(1)1113/15-16</a>)</p>
27 June 2016	EA Panel meeting	<p>Administration's paper on "Proposed plan for phasing out the local trade in elephant ivory" (LC Paper No. <a href="#">CB(1)1054/15-16(06)</a>)</p> <p>Background brief on "Protection of control of local trade in elephant ivory" prepared by the Legislative Council Secretariat (LC Paper No. <a href="#">CB(1)1054/15-16(07)</a>)</p>

Date	Event	Paper
		Minutes of meeting (LC Paper No. <a href="#">CB(1)1168/15-16</a> )
23 January 2017	EA Panel meeting	Administration's paper on "2017 Policy Address – Policy initiatives of Environment Bureau: Environmental protection" (LC Paper No. <a href="#">CB(1)451/16-17(01)</a> )  Minutes of meeting (LC Paper No. <a href="#">CB(1)683/16-17</a> )
27 March 2017	EA Panel meeting	Administration's paper on "Legislative proposal to phase out the local trade in ivory and progress of Government's efforts on nature conservation and marine conservation" (LC Paper No. <a href="#">CB(1)705/16-17(05)</a> )

**Hyperlink to relevant document:**

Government bureau/ department	Document
Environment Bureau, Environmental Protection Department, and Agriculture, Fisheries and Conservation Department	Legislative Council Brief on The Plan For Phasing Out The Local Trade in Elephant Ivory (File Ref.: <a href="#">EP CR 9/15/29</a> )

**Hyperlinks to relevant Council Questions:**

Date	Council Question
11 February 2015	<a href="#">Press release</a> on Council question (written) raised by Dr Elizabeth QUAT
25 November 2015	<a href="#">Press release</a> on Council question (written) raised by Dr Kenneth CHAN