

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1351/16-17  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/6/16/2

**Bills Committee on Protection of Endangered Species of Animals and  
Plants (Amendment) Bill 2017**

**Minutes of first meeting  
held on Friday, 7 July 2017, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Kenneth LEUNG (Chairman)  
Dr Hon Elizabeth QUAT, BBS, JP (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Claudia MO  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon CHAN Han-pan, JP  
Hon KWOK Wai-keung, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon SHIU Ka-fai  
Hon CHAN Chun-ying  
Hon Tanya CHAN  
Hon HUI Chi-fung  
Hon KWONG Chun-yu  
Dr Hon YIU Chung-yim  
Dr Hon LAU Siu-lai

**Members absent** : Hon WONG Ting-kwong, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Michael TIEN Puk-sun, BBS, JP  
Dr Hon Junius HO Kwan-yiu, JP

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public Officers  
attending : For item II**

Mr Donald TONG, JP  
Permanent Secretary for the Environment /Director of  
Environmental Protection

Mr Elvis AU, JP  
Deputy Director of Environmental Protection(2) (Acting)  
Environmental Protection Department

Dr SO Ping-man  
Deputy Director  
Agriculture, Fisheries and Conservation Department

Mr Simon CHAN  
Assistant Director (Conservation)  
Agriculture, Fisheries and Conservation Department

Mr Boris KWAN  
Senior Endangered Species Protection Officer (Acting)  
Agriculture, Fisheries and Conservation Department

Mr Peter SZE  
Senior Government Counsel  
Department of Justice

Mr Vincent FUNG  
Government Counsel  
Department of Justice

**Clerk in Attendance :** Ms Anita SIT  
Assistant Secretary General 1

**Staff in attendance :** Ms Vanessa CHENG  
Assistant Legal Adviser 5

Mr Joey LO  
Senior Council Secretary (1)8

Mr Jason KONG  
Council Secretary (1)1

Miss Mandy POON  
Legislative Assistant (1)1

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Action

**I. Election of Chairman**

Mr James TO, the member who had the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Dr Elizabeth QUAT was nominated by Mr Martin LIAO and the nomination was seconded by Mr CHAN Chun-ying. Dr Elizabeth QUAT accepted the nomination. Mr Kenneth LEUNG was nominated by Ms Tanya CHAN and the nomination was seconded by Mr Charles Peter MOK. Mr Kenneth LEUNG accepted the nomination. Mr HUI Chi-fung was nominated by Mr CHU Hoi-dick and the nomination was seconded by Dr YIU Chung-yim. Mr HUI Chi-fung accepted the nomination. Of the members present, four voted for Dr Elizabeth QUAT, five voted for Mr Kenneth LEUNG and four voted for Mr HUI Chi-fung. Mr James TO declared that Mr Kenneth LEUNG was elected Chairman of the Bills Committee.

3. Mr Kenneth LEUNG took the chair and invited nominations for the deputy chairmanship. Dr Elizabeth QUAT was nominated by Mr Martin LIAO and the nomination was seconded by Mr CHAN Chun-ying. Dr Elizabeth QUAT accepted the nomination. There being no other nominations, Dr Elizabeth QUAT was declared Deputy Chairman of the Bills Committee.

Application for late membership

4. The Bills Committee decided to accept Dr LAU Siu-lai's written application for joining the Bills Committee which was tabled at the meeting.

*(Post-meeting note: Dr LAU's application for late membership was circulated to members vide LC Paper No. CB(1)1273/16-17(01) on 7 July 2017.)*

Action

**II. Meeting with the Administration**

- (LC Paper No. CB(3)631/16-17 — The Bill  
*(issued by the Environment Bureau in June 2017)* — Legislative Council Brief
- LC Paper No. LS80/16-17 — Legal Service Division Report
- LC Paper No. CB(1)1265/16-17(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(1)1265/16-17(02) — Background brief prepared by the Legislative Council Secretariat)

Discussion

5. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Follow-up actions to be taken by the Administration

- Admin 6. The Administration was requested to:
- (a) in respect of elephant ivory ("ivory") items that were acquired before the application of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") to elephants (commonly referred to as "pre-Convention ivory") and those acquired thereafter but before the international ivory trade ban (commonly referred to as "post-Convention ivory"), provide information on when the import and export of such ivory items were prohibited in France, Germany, the Netherlands and the United Kingdom;
  - (b) provide figures on (i) the total amount of ivory items imported into Hong Kong from European countries ("European imports") since the implementation of the CITES provisions in Hong Kong, and (ii) the amount of European imports that were still possessed by traders in Hong Kong for commercial purposes;

Action

- (c) explain whether pre-Convention ivory items that were available in the local market before the CITES application to elephants and those imported into Hong Kong thereafter were subject to the same regulatory control on export and local trade;
- (d) the Administration's position with detailed legal analysis on why the proposals in the Bill were considered to be in conformity with Articles 6 and 105 of the Basic Law on protection of the right of private ownership of property and the right to compensation for lawful deprivation of property of individuals and legal persons;
- (e) explain whether the Administration would consider advancing the total ivory trade ban through cancellation of existing Licences to Possess and offering ex-gratia payments to affected licensees, and the reasons if the Administration would not consider so;
- (f) provide information on (i) the total number of ivory craftsmen in Hong Kong and their age profile, and (ii) how the Administration would assist ivory traders in their business transformation and the ivory craftsmen in meeting their employment needs;
- (g) provide the total number of prosecutions made under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) ("the Ordinance") for offences related to illegal ivory in the past few years, and the following details for each case: (i) whether the offence was committed for commercial or non-commercial purposes, (ii) the amount of illegal ivory involved, (iii) whether the defendant was convicted, and (iv) the penalties handed down by the Court (if convicted); and
- (h) provide information on the starting points of sentencing (if any) for offences under the Ordinance in relation to illegal ivory.

Invitation of public views

7. Members agreed to receive public views on the Bill at the next meeting. The Secretariat would post a notice on the website of the Legislative Council and write to the 18 District Councils ("DCs") to invite views from the public and DCs on the Bill. The Chairman said that he would work out with the Clerk three proposed time slots in July, August and September respectively for the next meeting, and ask members to indicate their availability.

Action

*(Post-meeting note: Having considered members' availability, the Chairman directed that the second meeting should be held on Wednesday, 6 September 2017, from 9:00 am to 1:00 pm in Conference Room 1 to meet with deputations and the Administration. The notice of meeting was issued to members vide LC Paper No. CB(1)1288/16-17 on 12 July 2017.)*

**III. Any other business**

8. There being no other business, the meeting ended at 10:45 am.

Council Business Division 1  
Legislative Council Secretariat  
1 August 2017

**Bills Committee on Protection of Endangered Species of Animals and  
Plants (Amendment) Bill 2017**

**Proceedings of the first meeting  
on Friday, 7 July 2017, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Election of Chairman</i>			
000410 – 001042	Mr James TO Mr Charles Peter MOK Mr Kenneth LEUNG Dr Elizabeth QUAT Mr Martin LIAO Mr CHU Hoi-dick Mr CHAN Chun-ying Ms Tanya CHAN Mr HUI Chi-fung Dr YIU Chung-yim	Election of Chairman and Deputy Chairman	
<i>Agenda Item II - Meeting with the Administration</i>			
001043 – 001028	Chairman	Opening remarks	
001029 – 001746	Chairman Administration	Briefing by the Administration on the Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 ("the Bill").	
001747 – 002438	Chairman Mr CHAN Han-pan Administration	<p>Mr CHAN said that he supported the proposed total ban on local trade in ivory. He expressed the following views/concerns:</p> <p>(a) a substantial amount of ivory items had been legally imported into Hong Kong from European countries ("European imports") since the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") provisions in Hong Kong, and a large amount of European imports were still possessed by traders in Hong Kong for commercial purposes. Ivory traders would suffer great loss if such ivory items were banned from trade; and</p> <p>(b) the Administration should consider advancing the total ivory trade ban through cancellation of existing Licences to Possess ("PLs") and offering ex-gratia payments to the affected licensees.</p>	Admin (paragraph 6(a), (b), (c) and (e) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that other jurisdictions which had banned the ivory trade did not provide compensation to the affected traders, as it would convey a wrong message to the community that the Government would serve as the de facto last resort buyer of ivory and risk incentivizing further smuggling of illegal ivory into Hong Kong, leading to potentially more poaching of elephants. This would defeat the legislative objectives of the Bill.</p>	
002439 – 002800	<p>Chairman Dr YIU Chung-yim Administration</p>	<p>Dr YIU enquired whether the display of ivory items by a person or legal entity in an exhibition with an entrance fee charged (without involving any ivory transactions) would be considered as the possession of ivory for commercial purpose under the proposed ban on ivory trade.</p> <p>The Administration responded that, according to Step 3 of the proposed ban, the possession for commercial purposes of all ivory (save for antique ivory) would be banned in the sense that no PL would be issued, renewed, etc. anymore unless there were exceptional circumstances justifying the approval of the application. Accordingly, with no PL, display of ivory items for commercial purposes would be prohibited except under specific and stringent circumstances such as possession for the purpose of scientific or educational study. Any persons found to have contravened the proposed ban would be liable to prosecution.</p>	
002801 – 004739	<p>Chairman Mr CHAN Han-pan Ms Tanya CHAN Mr Charles Peter MOK Mr KWOK Wai-keung Deputy Chairman Mr HUI Chi-fung Dr LAU Siu-lai Administration</p>	<p>Discussion on the need to invite public views and the date of the meeting concerned.</p>	
004740 – 005347	<p>Chairman Mr KWOK Wai-keung Administration</p>	<p>Mr KWOK enquired about the monitoring and tracking of the ivory stocks in Hong Kong after the total ban in ivory trade in 2021.</p> <p>The Administration responded that:</p> <p>(a) it would continue to monitor and track the ivory stocks in Hong Kong after the total ban, which would greatly facilitate enforcement as there would no longer be a need to ascertain whether the ivory concerned belonged to the pre-Convention or post-Convention type; and</p>	<p>Admin (paragraph 6 (f) of the minutes refers)</p>



Time marker	Speaker	Subject(s)	Action required
		<p>(b) to tie in with the ivory trade ban, the Administration was also proposing in the Bill to greatly increase the penalties under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) ("the Ordinance") to enhance the deterrent effect.</p> <p>Discussion on the enforcement actions taken by the Customs and Excise Department ("C&amp;ED") and the Agriculture, Fisheries and Conservation Department ("AFCD").</p>	
005348 – 005850	Chairman Mr CHAN Han-pan Mr Charles Peter MOK Administration	<p>Mr CHAN expressed the following views/concerns:</p> <p>(a) the five-year grace period starting from the announcement of the three-step plan to phase out the local ivory trade ("the Plan") on 21 December 2016 until the total ban on 31 December 2021 might send a wrong message to the ivory trade that wild elephants could still be poached and killed during this period; and</p> <p>(b) a more effective approach might be to shorten the grace period or impose an immediate ban to all ivory trade in Hong Kong, and to provide compensation to the affected traders who would have their licences cancelled.</p> <p>The Administration responded that:</p> <p>(a) it must not convey any ambiguous message to the community, including that it was likely to consider compensating the traders affected, as it would encourage further poaching of elephants and smuggling of illegal ivory into Hong Kong before the ban took effect. The recent seizure of 7.2 tonnes of smuggled ivory by the C&amp;ED was an indication that any uncertainties in policy could have dire consequence for the survival of the wild elephant community;</p> <p>(b) before the import and re-export ban of pre-Convention ivory in Step 2 of the Plan, there was a major difficulty in enforcement relating to the import and re-export of illegal ivory purported to be pre-Convention ivory by certain unscrupulous traders. Step 2 would convey a crystal clear message to the world that the import and re-export of all types of ivory (save for antique ivory) would be prohibited; and</p>	Admin (paragraph 6(e) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>(c) currently, the validity period of a PL was five years. All recently renewed/issued PLs were set to expire in the year of 2021 to tie in with the implementation of Step 3. It would be a prudent approach to impose the total ban after all PLs had expired so as to avoid unnecessary legal actions.</p> <p>In response to the Chairman's enquiry, the Administration advised that advancing the total ivory trade ban through cancellation of existing PLs and offering compensation to licensees was not an option under the existing laws.</p>	
005851 – 011500	Chairman Dr YIU Chung-yim Dr LAU Siu-lai Mr CHAN Han-pan	<p>Discussion on the Administration's power to cancel the PLs under existing laws.</p> <p>The Administration advised that according to section 26(1) of the Ordinance, the Director of Agriculture, Fisheries and Conservation ("the Director") might only cancel a licence that was issued under section 23 or extended, renewed or varied under section 24 of the Ordinance if: (a) any condition of the licence was contravened; or (b) the Director was satisfied that the licence was issued, extended, renewed or varied as a result of a false representation of any fact made by the applicant or an unlawful act of the applicant. The Director had no legal power to cancel a valid PL unless the above conditions were met.</p> <p>Discussion on the total amount of ivory items imported into Hong Kong since the implementation of the CITES provisions in Hong Kong.</p>	Admin (paragraph 6 (b) of the minutes refers)
011501 – 011950	Chairman Mr CHAN Han-pan Ms Tanya CHAN Assistant Legal Adviser 5 ("ALA5") Administration	<p>Discussion on whether Committee Stage amendments ("CSAs") providing for the cancellation of existing PLs and the offering of ex-gratia payments to licensees would be compatible with the long title and scope of the Bill.</p> <p>ALA5 advised that subject to the actual contents and wordings of proposed CSAs to be submitted by a Member, it appeared that CSAs to the above effect might not be compatible with the long title which might have implication on the scope of the Bill. Any proposed CSAs would be subject to the rulings of the President of the Legislative Council. On a related note, ALA5 pointed out that there was a legal issue as to whether the total ban on ivory trade would be in conformity with Articles 6 and 105 of the Basic Law on</p>	Admin (paragraph 6 (d) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>protection of the right of private ownership of property and the right to compensation for lawful deprivation of property of individuals and legal persons.</p> <p>Ms Tanya CHAN expressed objection to any form of ex-gratia payment. If any ex-gratia payments were to be provided, the legislative process concerned might further delay the commencement of the ivory trade ban. Given that the Mainland had announced a total ban on ivory trade by the end of 2017, Hong Kong risked becoming a distribution centre for illegal ivory if any wrong message was conveyed.</p>	
011951 – 014840	<p>Chairman Ms Claudia MO Deputy Chairman Mr SHIU Ka-fai Administration</p>	<p>Discussion on the Administration's rationale for providing a grace period of five years and not considering compensation.</p> <p>The Administration advised that the ivory trade should be provided with sufficient time to prepare for the new control regime, including not entering into any contractual commitments which would become affected by the Plan. The grace period of five years would allow the traders to dispose of the ivory in their possession and/or to undergo business transformation, and the ivory craftsmen to find alternative employment opportunities. The Administration considered that the Plan would not have any significant impact on the ivory trade or lead to immediate cessation of business of the trade. Having regard to the above reasons and the need to avoid sending a wrong message that might result in further poaching of the elephants, the Administration considered that no compensation should be given to the ivory trade.</p> <p>Deputy Chairman said that there was already rumour circulating overseas that the Government of the Hong Kong Special Administrative Region would compensate ivory traders for cancelling their PLs. It was important for the Administration to step up enforcement against illegal smuggling, especially during the grace period. She was against Hong Kong compensating ivory traders because it would set a very bad precedent for the international community.</p> <p>Mr SHIU expressed strong objection to the Administration's stance to impose the trade ban on ivory which was the traders'/craftsmen's asset without providing any compensation to them in return. The Administration advised that there was no international precedent in providing compensation to affected parties for ivory trade ban.</p>	<p>Admin (paragraph 6 (e) and (f) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>In response to Ms MO's enquiry, the Administration advised that there were currently about 100 ivory craftsmen in Hong Kong. AFCD would liaise with relevant Government departments and the Employees Retraining Board to work out suitable re-employment training courses to assist the affected ivory craftsmen to switch to other employment.</p>	
014841 – 015800	<p>Chairman Mr SHIU Ka-fai Ms Tanya CHAN Administration</p>	<p>Discussion on the existing penalties under the Ordinance and the actual penalties handed down by the Court for past convictions of illegal ivory trade.</p> <p>The Chairman extended the meeting for 15 minutes.</p>	<p>Admin (paragraph 6 (g) and (h) of the minutes refers)</p>
015801 – 021648	<p>Chairman Deputy Chairman Mr HUI Chi-fung Mr SHIU Ka-fai Ms Claudia MO Administration</p>	<p>Discussion on exceptions and the exercise of discretion by the Director.</p> <p>The Administration advised that the exceptions under the Ordinance (including those existing exceptions and exemptions to the requirement to obtain a licence, as well as the exceptions by which a licence may still be issued, renewed, etc. under the proposed ban) and permitted under CITES would be limited to specific and stringent circumstances including scientific studies, education, law enforcement and personal or household effects (except for tourist souvenirs).</p> <p>Deputy Chairman took the chair in place of the Chairman who had other commitments.</p> <p>Discussion on the Government buy-back suggestion by Mrs Regina IP as relayed by Mr SHIU Ka-fai.</p> <p>Discussion on the tracking of ivory stocks held by Hong Kong traders.</p>	
<b><i>Agenda Item III - Any other business</i></b>			
021649 – 021700	Chairman	Closing remarks	