

立法會
Legislative Council

LC Paper No. CB(1)269/17-18
(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 third meeting
held on Tuesday, 17 October 2017, at 10:45 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 CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon HUI Chi-fung
Hon KWONG Chun-yu
- Member attending** : Hon Holden CHOW Ho-ding
- Members absent** : Hon WONG Ting-kwong, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public Officers
attending : For item I**

Mrs Vicki KWOK, JP
Deputy Director of Environmental Protection (2)
Environmental Protection Department

Dr Samuel CHUI
Assistant Director (Nature Conservation &
Infrastructure Planning)
Environmental Protection Department

Dr SO Ping-man, JP
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
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 : Miss Cindy HO
Chief Council Secretary (1)1

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Mr Joey LO
Senior Council Secretary (1)8

Action

I. Meeting with the Administration

Matters arising from previous meetings

- (LC Paper No. CB(1)1384/16-17(01) — List of follow-up actions arising from the meeting on 7 July 2017
- LC Paper No. CB(1)1384/16-17(02) — Administration's response to the issues raised at the meeting on 7 July 2017
- LC Paper No. CB(1)1393/16-17(152) — Assistant Legal Adviser's letter dated 7 August 2017 to the Administration
- LC Paper No. CB(1)11/17-18(01) — Administration's reply to Assistant Legal Adviser's letter dated 7 August 2017
- LC Paper No. CB(1)11/17-18(02) — Administration's response to the views provided by organizations/individuals at the meeting held on 6 September 2017 or in their written submissions

Relevant papers

- 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)

Action

Discussion

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

Follow-up actions to be taken by the Administration

- Admin 2. The Administration was requested to provide the following information:
- (a) statistics on the Administration's effort to verify the validity of the export certificates of European ivory imported to Hong Kong, including the number of export certificates verified so far, the number of invalid export certificates identified and the quantities of ivory involved; and
 - (b) details of the recent legislative proposals on restriction of ivory trade in the United Kingdom and France.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)166/17-18(02) on 1 November 2017.)

3. Members noted that the next meeting would be held on 13 November 2017 at 2:30 pm.

(Post-meeting note: With the concurrence of the Chairman, the next meeting was subsequently rescheduled to be held on 8 November 2017 at 8:30 am. Members were informed of the meeting arrangement vide LC Paper No. CB(1)66/17-18 on 18 October 2017.)

II. Any other business

4. There being no other business, the meeting ended at 12:44 pm.

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

**Proceedings of the third meeting
on Tuesday, 17 October 2017, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
001017 – 001242	Chairman	Introductory remarks	
001243 – 002006	Chairman Administration	<p>Briefing by the Administration on its response to the following:</p> <p>(a) issues arising from the discussions at the meeting held on 7 July 2017; and</p> <p>(b) views provided by deputations at the meeting held on 6 September 2017 or in their submissions.</p> <p>[LC Paper Nos. CB(1)1384/16-17(02) and CB(1)11/17-18(02)]</p>	
002007 – 002510	Chairman Mr SHIU Ka-fai Administration	<p>Mr SHIU expressed the following views/suggestions:</p> <p>(a) as the Administration had continued to allow the import and re-export of pre-Convention ivory after 1990, legitimate ivory traders in Hong Kong had not been able to sell their entire ivory stock all these years. It was unfair for the Administration to impose now a total ban on ivory trade by 31 December 2021; and</p> <p>(b) whether the Administration had plans to take on board members' suggestions of buying back the unsold stock of ivory from legitimate ivory traders, including the suggestions of establishing an iconic museum for ivory arts in Hong Kong and/or providing compensation to the affected traders. Otherwise, the ivory traders might seek a judicial review against the Administration's decision to impose the ivory trade ban.</p> <p>The Administration responded that:</p> <p>(a) international trade in post-Convention ivory had been banned since 1990 whereas pre-Convention ivory was exempted by the Convention on International Trade in Endangered Species of</p>	

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		<p>Wild Fauna and Flora ("CITES"), which allowed its international trade to continue under a permit system. Hong Kong implemented the provisions of CITES and therefore had continued to allow the import and re-export of pre-Convention ivory after 1990;</p> <p>(b) the affected traders had already been given advance alert regarding the proposed trade ban and a reasonable grace period of five years to dispose of the ivory in their possession; and</p> <p>(c) buy-back or compensation to ivory traders was not an option as a wrong message would be sent to lawbreakers and encourage the smuggling of illegal ivory into Hong Kong to launder with the legal stock for compensation.</p>	
002511 – 003136	Chairman Ms Claudia MO Administration	Discussion on the meaning of "徵用" as set out in paragraph 16 of the Administration's response [LC Paper No. CB(1)1384/16-17(02)].	
003137 – 004019	Chairman Mr CHAN Han-pan Administration	<p>Discussion on:</p> <p>(a) the Administration's effort to verify the validity of the export certificates of European ivory imported to Hong Kong, including the number of export certificates verified so far, the number of invalid export certificates identified and the quantities of ivory involved; and</p> <p>(b) Mr CHAN's suggestion for the Administration to take back the Possession Licences ("PLs") of the traders by providing them with an ex-gratia payment.</p>	Admin (paragraph 2 (a) of the minutes refers)
004020 – 004607	Chairman Dr Junius HO Administration	<p>While expressing support for the Bill in principle, Dr HO expressed concern that:</p> <p>(a) a total ban on ivory trade was in effect tantamount to a <i>de facto</i> expropriation of the ivory stock held by the legitimate traders, having regard to the court ruling in the case of <i>Fine Tower Associates Ltd v Town Planning Board</i>; and</p> <p>(b) the ivory traders should be given an option to surrender their existing legal ivory stock to the Government within a specified period, say until end of June 2018, in return for compensation calculated according to market prices.</p>	

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		<p>The Administration responded that:</p> <p>(a) the Government considered that the legislative proposals in respect of the Bill did not involve any formal expropriation of property or any <i>de facto</i> expropriation;</p> <p>(b) under the current legislative proposals, the owners would retain possession of their ivory and such ivory would not be denied all meaningful use; and</p> <p>(c) no form of compensation or ex-gratia payment to the traders would be considered.</p>	
004608 – 005137	Chairman Mr CHAN Han-pan Administration	<p>Discussion on Mr CHAN's suggestion for the Administration to take back the PLs of the traders by providing them with an ex-gratia payment.</p> <p>The Chairman requested that the Administration provided details of the recent legislative proposals on restriction of ivory trade in the United Kingdom and France.</p>	Admin (paragraph 2 (b) of the minutes refers)
005138 – 005743	Chairman Mr SHIU Ka-fai Administration	<p>Mr SHIU opined that the proposed trade ban would run counter to Hong Kong's principle of a free market economy.</p> <p>The Administration responded that the proposed ivory trade ban was justifiable on the grounds that such measures aimed to address the international and public concerns over the survival of elephants which were under imminent threat of extinction.</p>	
005744 – 010738	Chairman Dr Junius HO Administration	<p>Further discussion on Dr HO's proposal for providing an option for legitimate ivory traders to surrender their ivory stock to the Government before a specified deadline.</p> <p>The Administration responded that:</p> <p>(a) Dr HO's proposal would still provide a window of opportunity for the law breakers to launder their illegal ivory; and</p> <p>(b) while some members considered that the registered ivory stock in Hong Kong was legally acquired and hence the local trade in such ivory should not be relevant to the poaching of elephants in Africa or the global smuggling of</p>	

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		<p>ivory, it was widely reported that an increase of ivory poaching and trafficking had been observed in recent years during which Hong Kong had recorded a number of seizures of large-scale import of illegal ivory. In a control buy operation conducted by the Agriculture, Fisheries and Conservation Department in 2016, it was found that an illegal ivory was presented as a legal ivory for sale.</p>	
010739 – 011119	Chairman Administration	<p>The Chairman's enquiry and the Administration's explanation on the definition of antique ivory and the rationale for allowing the trade in antique ivory to continue.</p>	
<p>Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)631/16-17)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)1265/16-17(01)]</p>			
011120 – 011652	Chairman Administration	<p><u>Clause 1 — Short title and commencement</u></p> <p><u>Clause 2 — Enactments amended</u></p> <p>Members raised no query.</p>	
011653 – 012010	Chairman Administration	<p><u>Clause 3 — Section 2 amended (interpretation)</u></p> <p>The Chairman's enquiry and the Administration's response on the definition of "elephant" and "elephant ivory".</p>	
012011 – 013143	Chairman Administration	<p><u>Clause 4 — Section 5 amended (restriction on import of specimens of Appendix I species)</u></p> <p><u>Clause 5 — Section 6 amended (restriction on introduction from the sea of specimens of Appendix I species)</u></p> <p><u>Clause 6 — Section 7 amended (restriction on export of specimens of Appendix I species)</u></p> <p><u>Clause 7 — Section 8 amended (restriction on re-export of specimens of Appendix I species)</u></p> <p><u>Clause 8 — Section 9 amended (restriction on possession or control of specimens of Appendix I species)</u></p> <p><u>Clause 9 — Section 10 repealed (higher penalties for offences relating to specimens of Appendix I</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>species committed for commercial purposes)</u></p> <p><u>Clause 10 — Section 11 amended (restriction on import of specimens of Appendix II species and Appendix III species)</u></p> <p><u>Clause 11 — Section 12 amended (restriction on introduction from the sea of specimens of Appendix II species)</u></p> <p><u>Clause 12 — Section 13 amended (restriction on export of specimens of Appendix II species and Appendix III species)</u></p> <p><u>Clause 13 — Section 14 amended (restriction on re-export of specimens of Appendix II species and Appendix III species)</u></p> <p><u>Clause 14 — Section 15 amended (restriction on possession or control of specimens of Appendix II species)</u></p> <p><u>Clause 15 — Section 16 repealed (higher penalties for offences relating to specimens of Appendix II species and Appendix III species committed for commercial purposes)</u></p> <p>Members raised no query.</p>	
013144 – 013536	Chairman Administration	<p><u>Clause 16 — Section 17 amended (import of pre-Convention specimens)</u></p> <p>The Chairman's enquiry and the Administration's explanation on the definitions of "specimen" and "elephant hunting trophy".</p>	
013567 – 014114	Chairman Administration ALA5	<p><u>Clause 17 — Section 18 amended (import of specimens of Appendix II species)</u></p> <p>ALA5 suggested that the Administration should state the stage of the ivory trade ban to which the clause under examination referred when taking the Bills Committee through the relevant clauses.</p>	
014115 – 014330	Chairman Administration	<p><u>Clause 18 — Section 20 amended (possession or control of pre-Convention specimens)</u></p> <p><u>Clause 19 — Section 23 amended (issue of licences)</u></p> <p>Members raised no query.</p>	

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014331 – 014935	Chairman Dr Junius HO ALA5	<p>Dr HO's enquiry and ALA5's response regarding the proposing of Committee stage amendments ("CSAs"). Dr HO said he might propose CSAs to provide for a compensation arrangement regarding current ivory stock covered by PL in Schedule 4 of the Bill.</p> <p>ALA5 and the Chairman reminded Dr HO that under Rule 57(4)(a) of the Rules of Procedure, an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it related. When considering the admissibility of the proposed CSAs, the President of the Legislative Council ("LegCo") would consider, apart from whether the CSAs would have the effect of altering the subject matter of the Bill, all other relevant factors including the long title, explanatory memorandum, provisions of the Bill and the relevant Legislative Council Brief. The proposed CSAs would be subject to the ruling of the President of LegCo on whether they were admissible after taking into account all relevant considerations.</p>	
014936 – 015900	Chairman Administration	<p><u>Clause 20 — Section 24 amended (extension, renewal and variation of licences)</u></p> <p><u>Clause 21 — Part 5A added (Special Provisions for Elephant Hunting Trophies and Elephant Ivory)</u></p> <p><u>Clause 22 — Section 36 amended (power to require identification)</u></p> <p><u>Clause 23 — Part 9 heading substituted</u></p> <p>Members raised no query.</p>	
015901 – 015940	Chairman Deputy Chairman Mr Martin LIAO Administration	Discussion on the possibility of extending the meeting to complete the scrutiny of the Bill.	
015941 – 020157	Chairman Administration	<p><u>Clause 24 — Section 55A added (Transitional provisions relating to Protection of Endangered Species of Animals and Plants (Amendment) Ordinance) 2017</u></p> <p><u>Clause 25 — Schedule 3 amended (Convention instruments)</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item II – Any other business</i>			
020158 – 020340	Chairman Deputy Chairman Administration	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
24 November 2017