

立法會
Legislative Council

LC Paper No. CB(1)347/17-18
(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 fourth meeting
held on Wednesday, 8 November 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 WONG Ting-kwong, GBS, JP
Hon Claudia MO
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon KWOK Wai-keung, 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 KWONG Chun-yu

Members absent : Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon Tanya CHAN
Hon HUI Chi-fung

**Public Officers
attending : For item II**

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. Confirmation of minutes

(LC Paper No. CB(1)50/17-18 — Minutes of the meeting held on 6 September 2017)

The minutes of the meeting held on 6 September 2017 were confirmed.

II. Meeting with the Administration

Matters arising from previous meeting

(LC Paper No. CB(1)166/17-18(01) — List of follow-up actions arising from the meeting on 17 October 2017

LC Paper No. CB(1)166/17-18(02) — Administration's response to the issues raised at the meeting on 17 October 2017)

Clause-by-clause examination of the Bill

LC Paper No. CB(3)631/16-17 — The Bill

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)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

(issued by the Environment Bureau in June 2017) Legislative Council Brief

LC Paper No. LS80/16-17 Legal Service Division Report

Action

LC Paper No. CB(1)1265/16-17(02)

Background brief prepared by
the Legislative Council
Secretariat)

Discussion

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

Follow-up actions to be taken by the Administration

Admin 3. The Administration was requested to provide supplementary information on:

- (a) the total number of export certificates of pre-Convention ivory imported to Hong Kong verified by the Administration over the past ten years, the number of invalid export certificates identified and the quantities of ivory involved;
- (b) the quantities and details of the import shipment of pre-Convention ivory corresponding to the copies of export certificates of pre-Convention ivory provided by Mr SHIU Ka-fai and Mr CHAN Han-pan respectively [LC Paper Nos. CB(1)198/17-18(01) and (02)];
- (c) complementary measures taken by the relevant authorities in France and the United Kingdom ("UK") to tie in with the implementation of their respective legislation to outlaw the trade in ivory, including:
 - (i) details of the two orders adopted by the French Government in August 2016 and May 2017;
 - (ii) the impact on the trade in France and UK and relevant measures to assist local ivory traders/practitioners on the disposal of ivory stocks before and after the trade ban; and
 - (iii) the countries/regions covered by the proposal to prohibit the import and export of ivory for sale to and from UK as referred to in paragraph 6 of the Administration's paper [LC Paper No. CB(1)166/17-18(02)];
- (d) the measures taken by the governments of the five largest exporting countries of pre-Convention ivory to Hong Kong in relation to restriction of ivory trade; and
- (e) the definitions of raw ivory vis-à-vis worked ivory adopted by the Administration in handling import shipments of pre-Convention ivory and the criteria adopted to distinguish between raw ivory and worked ivory (e.g. planed ivory tusks).

Action

4. The Legal Service Division of the Legislative Council Secretariat was requested to comment on the Administration's view that the legislative proposal set out in the Bill was in conformity with Articles 6 and 105 of the Basic Law on protection of the right of private ownership of property, in order to address members' concern about the possible effect of the Bill of limiting the property right of the ivory traders/practitioners without compensation.

(Post-meeting note: The Administration's response and the Legal Service Division's advice were issued to members vide LC Paper No. CB(1)288/17-18(02) and LS15/17-18 respectively on 28 November 2017.)

Date of next meeting

5. The Chairman informed members that the next meeting would be held on Tuesday, 21 November 2017 at 10:45 am.

(Post-meeting note: To allow more time for the Administration to prepare papers for the next meeting and with the concurrence of the Chairman, the date of the next meeting was subsequently changed to Wednesday, 29 November 2017 at 8:30 am. Members were informed of the meeting arrangement vide LC Paper No. CB(1)199/17-18 on 14 November 2017.)

III. Any other business

6. There being no other business, the meeting ended at 10:44 am.

Council Business Division 1
Legislative Council Secretariat
12 December 2017

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

**Proceedings of the fourth meeting
on Wednesday, 8 November 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 — Confirmation of minutes</i>			
000830 – 001014	Chairman	The minutes of the meeting held on 6 September 2017 (LC Paper No. CB(1)50/17-18) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
001015 – 001158	Mr CHAN Han-pan Chairman	In reply to Mr CHAN, the Chairman reminded members that the Bills Committee had examined up to clause 24 of the Bill as at the last meeting on 17 October 2017.	
001159 – 001524	Chairman Administration	The Administration briefed members on its response to the issues raised at the meeting of the Bills Committee held on 17 October 2017 (LC Paper No. CB(1)166/17-18(02)).	
001525 – 002118	Chairman Mr CHAN Han-pan Administration	<p>Mr CHAN's question regarding the unit of quantity of ivory items declared on relevant export certificates and the Administration's explanation.</p> <p>Pointing out that irregularities involving a large proportion of pre-Convention ivory (i.e. 665 kg out of a total of about 800 kg) inspected had been uncovered by the Agriculture, Fisheries and Conservation Department ("AFCD") over the past two years, Mr CHAN sought information on details of these cases and asked what follow-up actions had been taken by AFCD.</p> <p>The Administration advised that it would check the validity of every export certificate against every corresponding ivory item, and verify the certificate with the issuing authority of the exporting country and/or the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") Secretariat in case of doubt and/or irregularity. If any irregularity was uncovered, the ivory would be subject to seizure for further investigation. Members were advised that in the majority of cases, the irregularities uncovered included technical issues such as discrepancies in the measurement of ivory, discrepancies in the number of ivory tusks, errors in endorsement date</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>and the missing of the original certificate copies. The specimens involved had been seized for follow-up investigation.</p> <p>Mr CHAN considered that the Administration should take more vigorous enforcement actions against illegal import activities of ivory. In his view, the Administration should stop the arrangement of importing pre-Convention ivory to Hong Kong under an export certificate issued by overseas CITES Management Authorities.</p>	
002119 – 004110	Chairman Mr SHIU Ka-fai Mr WONG Ting-kwong Administration	<p>In response to Mr SHIU's enquiry on the import control of pre-Convention ivory, the Administration reiterated that under the existing legislation, a piece of such ivory should be accompanied by a pre-Convention certificate issued by the exporting country certifying that the ivory was acquired pre-Convention. For every import shipment of pre-Convention ivory, AFCD would verify the validity of the accompanying pre-Convention certificate. At the suggestion of Mr SHIU, the Administration was requested to provide information on:</p> <p>(a) the total number of export certificates of pre-Convention ivory imported to Hong Kong verified by AFCD over the past ten years; and</p> <p>(b) the quantities and details of the import shipments of pre-Convention ivory corresponding to the copies of export certificates of pre-Convention ivory (with import shipments of "412,400 kg" and "428,160 kg" according to the respective export certificates) provided by Mr SHIU (LC Paper No. CB(1)198/17-18(01)).</p> <p>Mr SHIU considered that the Administration should put in extra efforts in verifying the export certificates of pre-Convention ivory imported to Hong Kong, as these documents were vulnerable to forgery. The Administration was also urged to take vigorous enforcement action against the laundering of illegally sourced ivory into Hong Kong's regulated ivory market.</p> <p>Referring to paragraph 2 of LC Paper No. CB(1)166/17-18(02), Mr WONG enquired under what circumstances would AFCD consider further verifying the certificate with the exporting country or the CITES Secretariat and/or conduct radiocarbon dating for the ivory. He expressed concern that the</p>	Admin (paragraph 3 (a) and (b) of the minutes refer)

Time marker	Speaker	Subject(s)	Action required
		<p>illegal poaching of elephants and illegal export of ivory had adversely affected the livelihood of the innocent traders/practitioners who had been engaging in legal ivory trading all these years.</p>	
004111 – 004932	<p>Chairman Mr James TO Administration</p>	<p>Mr TO expressed the following views/concerns:</p> <p>(a) the Administration should explore the feasibility of registering legal ivory stockpile held by local traders/practitioners by means of advanced technologies (such as permanent marking or use of less intrusive means) before consideration of imposing a total ban on ivory trade; and</p> <p>(b) possible effect of the Bill of limiting the property right of the ivory traders/practitioners without compensation and whether passage of the Bill would set a precedent in law and could be subject to legal challenge.</p> <p>The Administration responded that technologies for prevention of illegal ivory laundering (e.g. hologram and radiocarbon dating) were currently available. However, there were limitations to the use of such technologies due to the small size of certain ivory items, the possible destruction caused to the ivory items and the high cost involved. Mr TO said that relevant issues should be further explored by the Administration.</p>	
004933 – 005617	<p>Chairman Mr CHAN Han-pan Administration</p>	<p>Discussion on complementary measures taken by the relevant authorities in France and the United Kingdom ("UK") to tie in with the implementation of their respective legislation to outlaw the trade in ivory.</p>	<p>Admin (paragraph 3(c) of the minutes refers)</p>
005618 – 010631	<p>Chairman Mr SHIU Ka-fai Administration</p>	<p>Mr SHIU considered that the import of pre-Convention ivory to Hong Kong under a permit system had affected the local sale of post-Convention ivory and such arrangement should be banned.</p> <p>Discussion on the procedures adopted by the Administration in checking import shipments of pre-Convention ivory.</p> <p>Mr SHIU enquired how AFCD would ascertain whether an ivory item was acquired pre-Convention or was derived from recent poaching activities.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) every shipment and the accompanying pre-Convention certificate would be checked to see whether the quantity, description and other relevant details of the shipment tallied with the information set out in the certificate; (b) depending on the type of ivory item, the shape, dimensions, and/or weight of the ivory item concerned would be clearly stated on pre-Convention certificate; (c) if any irregularity was found, the ivory would be subject to seizure for further investigation; and (d) the AFCD would verify the certificate with the management authority of the exporting country which issued the certificate or the CITES Secretariat and/or conduct radiocarbon dating for the ivory as necessary. <p>In response to the Chairman's concern about the work of the institution issuing the certificate, the Administration advised that the institution concerned would be the sole official management authority authorized by the CITES member country concerned to issue the certificate in accordance with the requirements of the CITES.</p>	
010632 – 012901	<p>Chairman Mr James TO Dr Junius HO Assistant Legal Adviser ("ALA") Administration</p>	<p>Mr TO and Dr HO expressed concern about the possible effect of the Bill of limiting the property right of the ivory traders/practitioners without compensation. They sought ALA's comments on the Administration's view that the legislative proposal set out in the Bill was in conformity with Articles 6 and 105 of the Basic Law ("BL") on protection of the right of private ownership of property.</p> <p>ALA advised that:</p> <ul style="list-style-type: none"> (a) the Administration had set out in its written response to her letter dated 7 August 2017 (LC Paper No. CB(1)11/17-18(01)) the relevant legal principles and the relevant precedent cases, and had concluded that the legislative proposal in the Bill did not involve any formal expropriation of property or any <i>de facto</i> expropriation, and was in conformity with BL 6 and 105 on protection of the right of 	<p>ALA (paragraph 4 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>private ownership of property; and</p> <p>(b) the Court of Final Appeal had yet to provide an authoritative decision on the scope of "deprivation" under BL 105.</p> <p>Dr HO's remark that his earlier proposal to move Committee Stage amendments to the Bill to provide for a compensation arrangement would have charging effect on Government expenditure. In this connection, he would not proceed with the proposed amendment.</p>	
012902 – 013617	Chairman Mr CHAN Han-pan Administration	<p>Mr CHAN agreed with Mr James TO that the Legal Service Division's comments should be sought on the Administration's view that the Bill was in conformity with BL 6 and 105.</p> <p>Discussion on the quantities and details of import shipments of pre-Convention ivory corresponding to the copies of export certificates of pre-Convention ivory provided by Mr CHAN (LC Paper No. CB(1)198/17-18(02)).</p> <p>Further discussion on the complementary measures taken by the relevant authorities in France and the UK to tie in with the implementation of their respective legislation to outlaw the trade in ivory.</p> <p>Discussion on the measures taken by the governments of the five largest exporting countries of pre-Convention ivory to Hong Kong in relation to restriction of ivory trade.</p> <p>Mr CHAN's enquiry about the definitions of raw ivory vis-à-vis worked ivory adopted by the Administration in handling import shipments of pre-Convention ivory and the criteria adopted to distinguish between raw ivory and worked ivory. The Administration was requested to provide supplementary information after the meeting.</p>	Admin (paragraph 3 (b), (c), (d) and (e) of the minutes refers)
013618 – 015734	Chairman Mr SHIU Ka-fai Mr CHAN Han-pan Dr Junius HO Administration	<p>Further discussion on the procedures adopted by the Administration in checking import shipment of pre-Convention ivory.</p> <p>To address members' concern about the certificates issued by overseas CITES Management Authorities, the Administration stressed that a unified system was established under CITES so that endangered species could be protected by the concerted</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>international efforts. The Administration assured members that before the CITES Management Authority of the exporting place/country could issue an export/re-export certificate, it must be satisfied that there were no other factors relating to the conservation of the species which prevented issuance of the export/re-export certificate; and evidence must also be presented to show that the specimens were legally acquired. In response to members' question, the Administration advised that it would not be practicable to seek verification with the CITES Secretariat for each and every import shipment of pre-Convention ivory without causing undue delay to the shipments.</p> <p>Further discussion on the quantities and details of the import shipment of pre-Convention ivory corresponding to the copies of export certificates of pre-Convention ivory provided by Mr SHIU and Mr CHAN.</p>	
015735 – 020801	Chairman Deputy Chairman Mr WONG Ting-kwong Mr CHAN Han-pan Mr SHIU Ka-fai Administration	<p>Deputy Chairman said that determining the exact age and legality of a piece of ivory required expensive hi-tech radiocarbon dating analysis and there was no technology for the detection of illegal ivory that was 100% foolproof. As long as there was a legal ivory market, illegal trade in ivory would be perpetuated, and legislation on a total ban on ivory trade would be the only way to protect the endangered elephants.</p> <p>The Chairman declared that the meeting be extended for 15 minutes.</p> <p>Discussion on measures to assist ivory traders/practitioners on the disposal of ivory stocks before and after the trade ban.</p> <p>Further discussion on actions to be taken in cases of doubtful and invalid export certificates.</p>	
<i>Agenda Item III – Any other business</i>			
021802 – 021839	Chairman Administration	Date of next meeting	