

立法會
Legislative Council

LC Paper No. CB(1)531/17-18
(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 sixth meeting
held on Monday, 11 December 2017, at 4:30 pm
in Conference Room 2 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 Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon KWOK Wai-keung, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon HUI Chi-fung
Hon KWONG Chun-yu
- Members absent** : Hon WONG Ting-kwong, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Claudia MO
Hon CHAN Han-pan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, 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

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Meeting with the Administration

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
- LC Paper No. CB(1)279/17-18(01) — Assistant Legal Adviser's letter dated 21 November 2017 to the Administration
- LC Paper No. CB(1)279/17-18(02) — Administration's reply to Assistant Legal Adviser's letter dated 21 November 2017
- (issued by the Environment Bureau in June 2017)* — Legislative Council Brief
- LC Paper No. LS80/16-17 — Legal Service Division Report)

Matters arising from previous meeting

- (LC Paper No. CB(1)327/17-18(01) — List of follow-up actions arising from the meeting on 29 November 2017
- LC Paper No. CB(1)327/17-18(02) — Administration's response to the issues raised at the meeting on 29 November 2017)

Action

Discussion

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

Admin 2. The Administration was requested to provide supplementary information on the following:

- (a) the reasons for Hong Kong to impose a total ban on ivory trade which was stricter than the European Union ("EU") regime where intra-EU ivory trade and re-export of ivory were allowed under specified conditions as set out in paragraph 8 of LC Paper No. CB(1)327/17-18(02);
- (b) under clause 27 of the Bill which related to the exemption permitting trade in "antique elephant ivory", the reasons for Hong Kong to adopt a stricter definition for "antique elephant ivory" (i.e. pre-1925 worked ivory) than that adopted in France (i.e. pre-1947 worked ivory);
- (c) after the implementation of a total ban on ivory trade in Hong Kong on 31 December 2021, whether any pre-Convention ivory from the EU countries could still be imported to Hong Kong; and
- (d) whether and how legislative control to ban all domestic ivory trade should be implemented by relevant Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora as specified in the relevant Council Order(s) issued by the United Nations.

(Post-meeting note: The Chinese and English versions of the Administration's response were issued to members vide LC Paper No. CB(1)408/17-18(01) on 2 and 5 January 2018 respectively.)

3. The Bills Committee completed clause-by-clause examination of the Bill. Members noted that the Administration would not propose any Committee Stage amendments to the Bill. The Chairman said that pending the Administration's provision of written response to the issues in paragraph 2 above, the Bills Committee had completed scrutiny of the Bill. He said that a further meeting with the Administration might be scheduled, if necessary, after the Administration's provision of its response to outstanding issues.

Action

II. Any other business

4. There being no other business, the meeting ended at 5:37 pm.

Council Business Division 1
Legislative Council Secretariat
26 January 2018

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

**Proceedings of the sixth meeting
on Monday, 11 December 2017, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Meeting with the Administration			
000746 – 000929	Chairman	Introductory remarks	
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)]			
000930 – 001259	Chairman Administration	<u>Clause 26 — Schedule 4 added</u> <u>Part 3 — Re-export</u> <i>6. Issue, extension, renewal and variation of licences for re-export</i> <i>7. Re-export of specimens of Appendix I species as personal or household effects acquired pre-Convention</i> <i>8. Re-export of specimens of Appendix II species as personal or household effects</i> <i>9. Re-export of specimens of Appendix II species as personal or household effects acquired pre-Convention</i> Members raised no query.	
001300 – 001859	Chairman Mr SHIU Ka-fai Administration	Mr SHIU enquired about the following issues in relation to the Administration's response to the issues raised at the meeting on 29 November 2017 (LC Paper No. CB(1)327/17-18(02)): (a) under clause 27 of the Bill which provided for exemption permitting trade in "antique elephant ivory", the reasons for Hong Kong to adopt a stricter definition for "antique elephant ivory" (i.e. pre-1925 worked ivory) than that adopted in France (i.e. pre-1947 worked ivory); and (b) the reasons for Hong Kong to impose a total ban on ivory trade which was stricter than the European Union ("EU") regime where intra-EU ivory trade and re-export of ivory were allowed	Admin (paragraph 2 (a) and (b) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>under specified conditions as set out in paragraph 8 of LC Paper No. CB(1)327/17-18(02).</p> <p>The Administration responded that:</p> <p>(a) the European Commission had adopted a guidance document requiring EU countries to stop re-export of raw ivory with effect from the 1 July 2017 and ensure strict enforcement of those EU laws regulating the approval of intra-EU ivory trade and re-export of worked ivory from EU;</p> <p>(b) the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") was implemented in EU through a set of Regulations known as the EU Wildlife Trade Regulations, namely Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora;</p> <p>(c) under the EU Wildlife Trade Regulations, import and export of ivory to and from EU, as well as intra-EU ivory trade, for commercial purposes were generally prohibited except under limited circumstances. For pre-Convention ivory obtained before the application of CITES provisions to elephants, re-export would be allowed if the ivory was issued with re-export certificates;</p> <p>(d) Hong Kong was identified as one of the places of "primary concern" by CITES. Decisive action must be taken by the Administration to respond to the matter; and</p> <p>(e) although Hong Kong's pace in banning ivory trade might be different from other cities/countries, the international community shared a common goal in restricting the ivory trade.</p>	
001900 – 003735	Chairman Mr SHIU Ka-fai Administration	<p><i>Part 4 — Possession or Control</i></p> <p><i>10. Issue, extension, renewal and variation of licences for possession or control</i></p> <p>Members raised no query.</p>	

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		<p><u>Clause 27 — Schedule 4 amended (stricter regulation of elephant hunting trophies and elephant ivory)</u></p> <p>In response to Mr SHIU's enquiry on the rationale for the Administration's adoption of "pre-1925 worked ivory" as one of the criteria for defining "antique elephant ivory", the Administration advised that in order to establish the antique status of an ivory item, the ivory should be sufficiently old. The criterion for defining an "antique elephant ivory" in the EU was 50 years before the commencement date of Council Regulation (EC) No 338/97, i.e. 1947. In Hong Kong, the criterion for defining "antique elephant ivory" was 50 years before the commencement date of the CITES, i.e. 1 July 1925.</p> <p>The Administration advised that performing scientific tests on an ivory specimen to determine its age was time-consuming and would cause damage to the ivory specimen and such test had to be conducted in an overseas laboratory. On the other hand, the level of craftsmanship would also be an evidence for determining the age of worked ivory. When setting the reference date for antique elephant ivory, the Administration had made reference to overseas practices and considered factors including the preservation of traditional ivory crafting works and enforcement facilitation. Mr SHIU expressed dissatisfaction with the Administration's adoption of "pre-1925 worked ivory" in defining "antique elephant ivory". He was concerned whether a person would be allowed to bring into Hong Kong an ivory carving in his/her possession which was recognized as antique elephant ivory in France but not in Hong Kong after the ban.</p> <p>In response to Mr SHIU and the Chairman's enquiry about the possible problem caused by Hong Kong not being in line with the international standard in defining "antique elephant ivory", the Administration advised that the criterion adopted by the Mainland authorities was 100 years before present, and that of the United States was 100 years or above. The Administration considered it appropriate to set 1 July 1925 as the reference date for antique elephant ivory in Hong Kong.</p>	

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		<p><i>9A. Possession or control of pre-Convention specimens</i></p> <p>Regarding the Chinese heading of section 9A under the new Schedule 4, the Chairman queried that the English and Chinese versions of the defined term "pre-Convention" (《公約》前標本) did not seem to tally with each other. He sought clarification whether the phrase "屬《公約》前標本的標本" should be amended to read "屬《公約》前的標本".</p> <p>The Administration confirmed that the English and Chinese versions of the defined term "pre-Convention" ("《公約》前標本") tallied with each other. As "《公約》前標本" was used as the Chinese equivalent of "pre-Convention" in the new Schedule 4 for better readability and comprehensibility, "屬《公約》前標本的" corresponded to the adjective "pre-Convention", while "標本" corresponded to "specimens", which the adjective "pre-Convention" qualified.</p>	
003736 – 004624	Chairman Assistant Legal Adviser ("ALA") Administration	<p><u>Clause 28 — Section 4 amended (meaning of personal or household effects)</u></p> <p><u>Clause 29 — Section 6 amended (exemption in respect of export or re-export of personal or household effects acquired pre-Convention)</u></p> <p><u>Clause 30 — Section 4 amended (meaning of personal or household effects)</u></p> <p><u>Clause 31 — Section 5 amended (exemption in respect of import, etc. of Appendix II species as personal or household effects)</u></p> <p><u>Clause 32 — Section 7 amended (exemption in respect of export or re-export of personal or household effects acquired pre-Convention)</u></p> <p>For Clauses 28 and 30, the Administration's explanation that for the purposes of the control regime on the possession of scheduled species, the exemptions provided under section 7 of the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (Cap. 586A) and section 8 of the Protection of Endangered Species of Animals and Plants</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(Exemption for Appendices II and III Species) Order (Cap. 586B) would also be applicable to a person other than an individual (e.g. a legal entity).</p> <p>ALA pointed out that she had sought written clarification earlier on from the Administration on the inconsistency between the English text of "pre-Convention" and its Chinese text of "《公約》前標本" in section 1(1) and in the heading of section 2 of the new Schedule 4. ALA further pointed out that "pre-Convention specimens" was rendered as "《公約》前標本" in Chinese in existing sections 17 and 20 of Cap. 586 and raised queries with the Administration as to whether amendments should be made to align the Chinese and English texts of the defined term "pre-Convention" in the new Schedule 4.</p> <p>The Administration responded that the English and Chinese versions of the defined term "pre-Convention" ("《公約》前標本") tallied with each other. In the Chinese text, "《公約》前標本" was used because it fitted the sentence flow of the Chinese text better than "《公約》前" did and thus "《公約》前標本" was chosen as the Chinese equivalent of "pre-Convention". Further, the Administration pointed out that as the term "pre-Convention" ("《公約》前標本") defined in section 1(1) of the new Schedule 4 applied only to the new Schedule 4, the label pre-Convention ("《公約》前標本") did not apply to the headings of the existing sections 17 and 20 of Cap. 586 and there would not be any confusion.</p>	
004625 – 005147	Chairman Administration	<p>The Chairman concluded that the Bills Committee had completed clause-by-clause examination of the Bill.</p> <p>The Administration briefed members on its response to the issues raised at the meeting of the Bills Committee held on 29 November 2017 (LC Paper No. CB(1)327/17-18(02)).</p>	
005148 – 011024	Chairman Mr SHIU Ka-fai Administration	Mr SHIU expressed concern about the different approaches of implementing ivory trade ban in Hong Kong and in the EU countries. He enquired about the reasons for Hong Kong's adoption of a stricter approach for imposing the ivory trade ban vis-à-vis the EU countries, in that while import and re-export of pre-Convention ivory was proposed to be banned	Admin (paragraph 2 (a), (c) and (d) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>in step 2 of the three-step plan to phase out local ivory trade in Hong Kong, intra-EU trade and re-export of pre-Convention ivory accompanied by a re-export licence under specified conditions was hitherto allowed to continue.</p> <p>The Chairman enquired whether and how legislative control to ban all domestic ivory trade should be implemented by relevant Parties to CITES as specified in the relevant Council Order(s) issued by the United Nations.</p> <p>The Administration responded that:</p> <p>(a) at the Seventeenth Meeting of the Conference of the Parties to CITES held in September and October 2016, the Parties adopted revisions to resolution 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 legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency; and</p> <p>(b) the countries and territories of "primary concern" identified by CITES included Hong Kong, Kenya, Uganda, Tanzania, Malaysia, the Philippines and Vietnam.</p> <p>Noting that EU countries had not been specifically included in the list of countries or territories of "primary concern" by CITES, Mr SHIU queried why Hong Kong was identified as a place of "primary concern" since the re-export volume of ivory from Hong Kong was not large compared to EU countries.</p> <p>The Chairman enquired whether any pre-Convention ivory from the EU countries could still be imported to Hong Kong after the implementation of a total ban on ivory trade in Hong Kong by the end of 2021.</p> <p>The Administration advised that after the implementation of step 2 of the three-step plan to phase out the local ivory trade in Hong Kong, the import and re-export of all pre-Convention ivory (save for antique elephant ivory) would be banned.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>In response to the Chairman's enquiry, the Administration advised that no Committee Stage amendments ("CSAs") to the Bill would be proposed by the Administration. The Chairman said that, if so requested by members, he was willing to coordinate an informal session for members to exchange views with the Administration regarding the concerns of the trade which should more appropriately be tackled outside the context of the Bill. The Chairman also said that members could propose CSAs to the relevant provisions of the Bill if they were not convinced by the Administration's explanation.</p>	
<i>Agenda Item II – Any other business</i>			
011025 – 011141	Chairman Administration	Meeting arrangement Legislative timetable	