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**Paper for the House Committee Meeting  
on 16 June 2017**

**Legal Service Division Report on  
Protection of Endangered Species of Animals and Plants  
(Amendment) Bill 2017**

**I. SUMMARY**

- 1. The Bill**

The Bill seeks to amend the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) and its subsidiary legislation to increase the penalties for offences relating to the regulation of scheduled species; to provide stricter regulation for elephant hunting trophies and elephant ivory; and to make minor amendments.
- 2. Public Consultation**

The Agriculture, Fisheries and Conservation Department briefed the ivory trade about the latest control on ivory in June 2015 and the three-stage plan in phasing out the local trade in ivory and its relevant arrangements in March, June and August 2016. While the ivory traders have no major comment on the ban in stage 1 of the proposed stricter regulation, many have raised their objections to stages 2 and 3. Green groups are generally supportive of the total ban of local ivory trade and the increase in maximum penalties but some are of the view that it takes too long to effect the total ban.
- 3. Consultation with LegCo Panel**

As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted on the legislative proposal at its meetings on 22 February 2016, 27 June 2016, 27 March 2017 and 6 June 2017. Members had no objection to the introduction of the Bill into the Legislative Council but various matters were discussed.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by ivory traders on the proposal, Members may wish to form a Bills Committee to study the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 14 June 2017. Members may refer to the Legislative Council ("LegCo") Brief (with no file reference number) issued by the Environment Bureau in June 2017 for further details.

### Object of the Bill

2. The Bill seeks to amend the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) and its subsidiary legislation to increase the penalties for offences relating to the regulation of scheduled species; to provide stricter regulation for elephant hunting trophies and elephant ivory; and to make minor amendments.

### Background

3. Cap. 586 gives effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") in Hong Kong which requires that the import, introduction from the sea, export or re-export of the species listed in its three Appendices<sup>1</sup> be subject to control. No person shall import, introduce from the sea, export, re-export or possess certain endangered species of animals and plants specified in Schedule 1 to Cap. 586 (including elephant), whether alive, dead, its parts or derivatives, except under and in accordance with a licence issued by the Director of Agriculture, Fisheries and Conservation (the "Director") under Cap. 586 or where an exemption under Cap. 586, the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (Cap. 586A) or the Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (Cap. 586B) applies. Any contravention is an offence punishable by a fine at level 6 (i.e. \$100,000) and imprisonment for one year (for Appendix I species), and a fine at level 5 (i.e. \$50,000) and imprisonment for six months (for Appendices II and III species). Heavier penalties can be imposed for offences committed for commercial purposes, i.e. a fine of \$5,000,000 and imprisonment for two years for Appendix I species, and a fine of \$500,000 and imprisonment for one year for Appendices II and III species.

4. The 2016 Policy Address stated that the Administration 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

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<sup>1</sup> Appendix I: Species which are highly endangered and threatened with extinction. Appendix II: Species which, unless trade is controlled, could become threatened with extinction. Appendix III: 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 co-operation of other Parties in the control of trade.

ban the import and export of ivory and phase out the local ivory trade, and imposing heavier penalties on the smuggling and illegal trading of endangered species in order to give effect to the CITES resolution adopted in 2016 recommending that all Parties and non-Parties to CITES 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. On 21 December 2016, the Administration announced a three-stage plan to phase out local ivory trade.

## **Provisions of the Bill**

5. The major provisions of the Bill are summarized below.

### *Increase in penalties*

6. Clauses 4 to 8 seek to amend Cap. 586 to increase the maximum penalties for offences in relation to the import, introduction from the sea, export, re-export or possession or control of specimens of Appendix I species as follows:

- (a) on summary conviction – a fine of \$5,000,000 and imprisonment for two years; or
- (b) on conviction on indictment – a fine of \$10,000,000 and imprisonment for 10 years.

7. Clauses 10 to 14 seek to amend Cap. 586 to increase the maximum penalties for similar offences concerning Appendix II or III species as follows:

- (a) on summary conviction – a fine of \$500,000 and imprisonment for one year; or
- (b) on conviction on indictment – a fine of \$1,000,000 and imprisonment for seven years.

8. The Bill also proposes that the existing heavier penalties for offences committed for commercial purposes under sections 10 and 16 of Cap. 586 would be repealed. The effect is that the above revised maximum penalties would apply regardless of whether or not commercial purposes are involved.

9. Transitional provisions are proposed in new section 55A (as added by clause 24) which applies in place of section 101J of the Criminal Procedure Ordinance (Cap. 221) to the effect that if an offence is committed before the commencement date of the above revised maximum penalties and the person is convicted on or after that date, the pre-amended penalties of Cap. 586 would apply.

*Three-stage stricter regulation for elephant hunting trophies and elephant ivory*

10. The Bill seeks to provide for a stricter regulatory regime for elephant hunting trophies<sup>2</sup> and elephant ivory by adding a new Part 5A to Cap. 586 and a new Schedule 4 to Cap. 586 to modify the application of certain provisions of Cap. 586, Cap. 586A and Cap. 586B concerning licence applications and exemptions to elephant hunting trophies and elephant ivory. The proposed modifications would be implemented in three stages to effect the phase-out plan of the local trade in elephant ivory as follows:

Stage 1

- (a) Stage 1 would take effect on the commencement date of the Bill when it is enacted as an Ordinance, i.e. a day to be appointed by the Secretary for the Environment ("Secretary") by notice published in the Gazette ("1<sup>st</sup> Commencement Date").
- (b) Under this stage, the following exemptions provided in Cap. 586, Cap. 586A and Cap. 586B would not apply:
  - (i) the exemption under sections 17 and 18 of Cap. 586 which allows a person to import a specimen of a scheduled species upon production of a pre-Convention certificate or Convention certifying document<sup>3</sup> and to import a specimen of an Appendix II species upon production of a Convention certifying document would not be applicable to the import of a specimen that is an elephant hunting trophy and/or elephant ivory respectively; and
  - (ii) the exemption provided in sections 5, 5(4), 7 of Cap. 586B and section 6 of Cap. 586A would not apply, the effect of which is that a person would be prohibited from importing, exporting, re-exporting of a specimen that is an elephant hunting trophy or elephant ivory even if the specimen is part of the personal or

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<sup>2</sup> "Elephant hunting trophy" is defined in section 1(1) of the new Schedule 4 to Cap. 586 to mean a whole elephant, or a part or derivative of an elephant, (item) that (a) is raw or processed; (b) was acquired by a person through hunting; and (c) is being imported, exported or re-exported by or on behalf of the person as part of the transfer of the item from its place of origin to the person's usual place of residence.

<sup>3</sup> Under section 2(1) of Cap. 586, pre-Convention certificate and Convention certifying document, in relation to a specimen of a scheduled species or a specimen of a scheduled species brought into Hong Kong from a place outside Hong Kong respectively, means a certificate, permit or other document (as the case may be) (a) that is issued by a relevant authority in respect of that specimen and remains in force when relied on to show compliance with Cap. 586; (b) that conforms to the provisions applicable to such a certificate, permit or other document, as the case may be in Part 2 of Schedule 3 to Cap. 586.

household effects of the person and the specimen was legally acquired by the person.

- (c) The import or re-export licence application relating to elephant hunting trophy would only be approved by the Director if exceptional circumstances exist. For the approval of an import or re-export licence application relating to elephant ivory, the Director must be satisfied that the specimen is pre-Convention (i.e. acquired before 1 July 1975 for Asian elephants and 26 February 1976 for African elephants), is intended for scientific, educational or law enforcement purposes, or there are exceptional circumstances.
- (d) The effect of Stage 1 is that the import and re-export of all elephant hunting trophies and those remaining post-Convention elephant ivory items<sup>4</sup> are banned save and except with a licence issued in limited circumstances. Also, the possession or control of elephant ivory would be subject to stricter control as possession licence applications may only be approved if the Director is satisfied that the specimen is pre-Convention, covered by a valid licence issued before the 1st Commencement Date or there are exceptional circumstances justifying the approval.

### Stage 2

- (e) Stage 2 would take effect three months after the 1<sup>st</sup> Commencement Date.
- (f) Under this stage, the ban on the import and re-export would be extended to pre-Convention elephant ivory (i.e. ivory acquired before CITES applied to it) by disapplying the exemption on the basis of production of a pre-Convention certificate or Convention certifying document or that the specimen is part of the personal or household effects of the person. Applications for licences for import, re-export and possession or control of pre-Convention elephant ivory would not be approved by the Director save for antique elephant ivory<sup>5</sup>. Also commercial possession

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<sup>4</sup> Post-Convention ivory refers to ivory acquired after the CITES provisions started to apply to elephants (on 1 July 1975 for Asian elephants and on 26 February 1976 for African elephants). According to footnote 3 of the LegCo Brief, remaining post-Convention ivory items refer to individually marked and certified ekipa incorporated in finished jewellery of the population of Namibia, and ivory carvings of the population of Zimbabwe, when being imported, exported or re-exported for non-commercial purposes.

<sup>5</sup> "Antique elephant ivory" is defined in clause 27(1) to (a) mean a piece of elephant ivory that was, before 1 July 1925 (i) removed from the wild; (ii) significantly altered from its natural state for jewellery, adornment, art, utility or musical instruments; and (iii) acquired by a person after the alteration in such altered state that required no further carving, crafting or processing to effect its purpose; and (b) to not include an elephant hunting trophy.

of antique elephant ivory may only be approved if the Director is satisfied that the specimen is covered by a valid licence issued before the 1<sup>st</sup> Commencement Date (for post-Convention ivory) or the commencement date of Stage 2 (for pre-Convention ivory), or there are exceptional circumstances justifying the approval.

### Stage 3

- (g) Stage 3 would take effect on 31 December 2021.
- (h) Under this stage, possession for commercial purposes of all elephant ivory (save for antique elephant ivory) would be banned by restricting the issue of a possession licence to cases of exceptional circumstances.

### *Use of notes*

11. The Bill seeks to add notes to the provisions modified by the new Schedule 4 to provide information which has no legislative effect (clause 3(2)) and to empower the Secretary to add or amend the notes by order published in the Gazette (new section 26A(2) as added by clause 21).

### *Other amendments*

12. The Bill contains other amendments to Cap. 586A and Cap. 586B so that for the purposes of the possession of scheduled species, the exemptions in respect of personal or household effects are also applicable to a person other than an individual. It also proposes certain textual amendments to Cap. 586.

### **Commencement**

13. The Bill, if passed, would come into operation on the 1<sup>st</sup> Commencement Date save and except that (a) provisions made to effect the ban in Stage 2 would come into operation on the expiry of 3 months after the 1<sup>st</sup> Commencement Date; and (b) provisions made to effect the ban in Stage 3 would come into operation on 31 December 2021.

### **Public Consultation**

14. According to paragraph 17 of the LegCo Brief, the Agriculture, Fisheries and Conservation Department briefed the ivory trade about the latest control on ivory in June 2015 and the three-stage plan in March, June and August 2016. While the ivory traders have no major comment on the ban in stage 1 of the proposed stricter regulation, many have raised their objections to stages 2 and 3. The Administration has explained to the ivory trade that the three-stage plan is

justifiable on the ground that such measures aim to address the international and public concerns over the survival of elephants and are necessary in light of the latest trend of elephant poaching and ivory smuggling as well as the international call for closure of domestic markets for ivory. A grace period would be given to allow the ivory trade to undergo business transformation. Green groups are generally supportive of the total ban of local ivory trade and the increase in maximum penalties but some are of the view that it takes too long to effect the total ban. Consultation with the tourism industry in March and April 2016 confirmed that the proposed ban would unlikely have any significant impact on Hong Kong's tourism industry.

### **Consultation with LegCo Panel**

15. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted on the legislative proposal to phase out the local trade in ivory and impose heavier penalties on smuggling and illegal trading of endangered species at the meetings on 22 February 2016, 27 June 2016 and 27 March 2017. The Panel further received public views on the legislative proposal at the meeting on 6 June 2017. Panel members had no objection to the introduction of the Bill into LegCo. Matters discussed at the said meetings include the length of the grace period for imposing a total ban on the local ivory trade, measures to alleviate the impacts on ivory traders, and exemptions under the total ban.

### **Conclusion**

16. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by ivory traders on the proposal, Members may wish to form a Bills Committee to study the Bill in detail.

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