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**Paper for the House Committee meeting on 19 January 2018**

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

**Purpose**

This paper reports on the deliberations of the Bills Committee on Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 ("the Bill").

**Background**

Protection of endangered species

2. Hong Kong abides by the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") and implements CITES through enforcement of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) ("the Ordinance"), which is the local legislation that gives effect to CITES.<sup>1</sup> The Ordinance provides that no person shall import, introduce from the sea, export, re-export or possess the endangered species of animals and plants specified in Schedule 1 to the Ordinance, whether alive, dead, its parts or derivatives, except under and in accordance with a licence issued in advance by the Agriculture, Fisheries and Conservation Department ("AFCD")

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<sup>1</sup> CITES is an international treaty that has been ratified by 183 Parties since it was first entered into force in 1975. The aim of CITES is to prevent species from becoming endangered or extinct because of international trade. CITES regulates more than 35 000 animal and plant species, including their parts and products, to ensure the international trade in them does not threaten their survival. CITES regulates international trade (both commercial and non-commercial) through a system of permits and certificates in which the required permits/certificates must accompany the species in question when leaving and entering a country.

or where an exemption under the Ordinance, the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (Cap. 586 sub. leg. A) ("Cap. 586A") or the Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (Cap. 586 sub. leg. B) ("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 are 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.

Existing regulatory system to control the import, re-export and domestic trade in ivory

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3. CITES provisions started to apply to elephants on 1 July 1975 for Asian elephant and on 26 February 1976 for African elephant. Ivory that was acquired before the CITES provisions started to apply to elephants is referred to as "pre-Convention ivory", while ivory acquired after the CITES application to elephants as "post-Convention ivory". Since 1990, the international trade in elephant specimens including ivory, particularly post-Convention ivory, has been virtually banned, except under certain specific and stringent circumstances. Given Hong Kong's history as a centre of ivory trade in the Asian region in 1980s, a substantial amount of ivory had been imported legally and in accordance with the CITES provisions into Hong Kong before the international trade ban on ivory in 1990. Such ivory entering Hong Kong had been registered with the then Agriculture and Fisheries Department (now AFCD). Post-Convention ivory is allowed to be traded in Hong Kong only under a Licence to Possess ("PL"). However, CITES has exempted the international trade in pre-Convention ivory accompanied by a certificate certifying its pre-Convention status. The possession or control of pre-Convention ivory for commercial purposes without a PL is permitted.

#### Recent CITES resolution

4. In the Seventeenth Meeting of the Conference of the Parties to CITES held in September to October 2016, the Parties adopted a resolution<sup>2</sup> recommending that all Parties and non-Parties in whose jurisdiction a legal domestic market for ivory exists that is contributing to elephant poaching or illegal ivory trade, should take all necessary legislative, regulatory and

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<sup>2</sup> Resolution CONF.10.10 (REV.COP17) on Trade in Elephant Specimens revised at the Seventeenth Meeting of the Conference of the Parties, Johannesburg, South Africa from 24 September to 4 October 2016.

enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency. It is the Administration's position that Hong Kong should react promptly to give effect to the recommendation in the CITES resolution<sup>3</sup>.

## **The Bill**

5. The Bill seeks to:

- (a) amend the Ordinance and its subsidiary legislation to take forward a three-stage plan to enhance regulation on import and re-export of elephant ivory ("ivory") and elephant hunting trophies and to phase out the local ivory trade ("the proposed ivory ban"); and
- (b) increase the penalties under the Ordinance to provide a stronger deterrent against the smuggling and illegal trading of endangered species.

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

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

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<sup>3</sup> According to paragraph 4 of the Legislative Council ("LegCo") Brief issued in June 2017, the 2016 Policy Address stated that the Government would kick start legislative procedures as soon as possible to ban the import and export of elephant hunting trophies and actively explore other appropriate measures, such as enacting legislation to further 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.

<sup>4</sup> "Elephant hunting trophy" is defined in section 1(1) of the new Schedule 4 to the Ordinance 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.

Stage 1

- (a) Stage 1 would take effect on the first 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 by notice published in the Gazette ("1<sup>st</sup> Commencement Date").
- (b) Starting from this stage, the following exemptions provided in the Ordinance, Cap. 586A and Cap. 586B would be dis-applied as follows:
  - (i) the exemption under section 17 of the Ordinance regarding import of pre-Convention specimens would no longer be applicable to a specimen that is an elephant hunting trophy;
  - (ii) the exemption under section 18 of the Ordinance regarding import of specimens of Appendix II species would no longer be applicable to a specimen that is an elephant hunting trophy or elephant ivory; and
  - (iii) the exemption provided in sections 5, 5(4), 7 of Cap. 586B and section 6 of Cap. 586A would be dis-applied, the effect of which is that a person would no longer be able to import or re-export a specimen that is an elephant hunting trophy or elephant ivory without a licence on the ground that the specimen is part of the personal or household effects of the person and 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 of Agriculture, Fisheries and Conservation ("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 justifying the approval.
- (d) The effect of Stage 1 is that the import and re-export of all elephant hunting trophies and post-Convention elephant ivory items are banned save and except with a licence issued in limited circumstances or for elephant ivory of personal or household effects that was acquired within the owner's usual place of residence.

- (e) Also, the possession or control of elephant ivory would be subject to stricter control in the way that 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 1<sup>st</sup> Commencement Date or there are exceptional circumstances justifying the approval.

### Stage 2

- (f) Stage 2 would take effect three months after the 1<sup>st</sup> Commencement Date.
- (g) Starting from 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 dis-applying the exemptions 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 unless the ivory is antique elephant ivory<sup>5</sup> or ivory intended for scientific, educational or law enforcement purposes, or there are exceptional circumstances justifying the approval.
- (h) Also, applications in relation to a licence for the commercial possession of non-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

- (i) Stage 3 would take effect on 31 December 2021.
- (j) Starting from this stage, possession for commercial purposes of all

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<sup>5</sup> "Antique elephant ivory" is defined in clause 27(1) of the Bill 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) not include an "elephant hunting trophy".

elephant ivory (save for antique elephant ivory) would be banned by restricting the issue of a possession licence to cases of exceptional circumstances.

### Increase in penalties

7. Clauses 4 to 8 of the Bill seek to amend the Ordinance 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.

8. Clauses 10 to 14 of the Bill seek to amend the Ordinance 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.

9. The Bill also proposes that the existing heavier penalties for offences committed for commercial purposes under sections 10 and 16 of the Ordinance be repealed. The effect is that the above revised maximum penalties would apply regardless of whether or not commercial purposes are involved. Transitional provisions are proposed in the new section 55A 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 the Ordinance would apply.

### **The Bills Committee**

10. The House Committee agreed at its meeting on 16 June 2017 to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Hon Kenneth LEUNG, the Bills Committee has held six meetings to discuss with the Administration and met

with 56 deputations/individuals at the meeting on 6 September 2017, and received 312 written submissions from deputations/individuals. A list of the organizations and individuals which/who have given oral presentation of views to the Bills Committee is in **Appendix II** while the Administration's overall response to their views is provided in LC Paper No. CB(1)11/17-18(02).

## **Deliberations of the Bills Committee**

11. The Bills Committee generally supports the policy intent of the Bill with a view to enhancing the protection of elephants. The Bills Committee notes that while deputations generally expressed broad support for the need to impose the proposed ivory ban and consider the ivory trade a major cause of the brutal killing of elephants and rangers who sacrificed their lives to protect elephants, some deputations from the trade are of the view that the local ivory traders have nothing to do with elephant poaching as they are trading with legally imported ivory obtained from elephants which died of natural causes, and that relevant traders/practitioners should be compensated for the loss of their private property and means of living as a result of the ivory ban. The issues of concern raised by members and deputations in the course of deliberation are summarized in the ensuing paragraphs.

### Need for legislating on ivory trade

12. The Bills Committee notes that Hong Kong has been identified by CITES as one of the places of primary concern regarding the poaching of elephants and illegal ivory trade.<sup>6</sup> To address the international and public concerns over the survival of elephants, it is the Administration's policy priority to phase out the local ivory trade, thereby demonstrating its determination to combat illegal ivory trade and contribute to the global efforts in protecting wild elephants.

13. The Bills Committee members have questioned why Hong Kong should impose a total ban on ivory trade that is stricter than the European Union ("EU") regime where intra-EU ivory trade and re-export of ivory from EU for commercial purposes are still allowed.

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<sup>6</sup> At the Sixteenth Meeting of the Conference of the Parties to CITES held in 2013, China (with Hong Kong Special Administrative Region included and specified), Thailand, Malaysia, the Philippines, Vietnam, Kenya, Uganda and the United Republic of Tanzania were identified by CITES as places of primary concern regarding the poaching of elephants and illegal ivory trade.

14. The Administration has explained that it is widely reported that a substantial increase of ivory poaching and trafficking has been observed in recent years during which Hong Kong has recorded a number of seizures of large-scale import of illegal ivory. As a result, Hong Kong has been identified by CITES as a major transit point. Given the history of Hong Kong as a centre of ivory trade in the Asian region in the 1980s, a substantial amount of post-Convention ivory had been imported into Hong Kong before the international trade ban in 1990. Such ivory entering Hong Kong had been registered and is allowed to be traded in Hong Kong under PL. There are frequent international criticisms against Hong Kong for providing a front for illegal ivory through possible laundering with its local trade in registered ivory. Indeed, in control buy operations conducted by AFCD in 2016 and 2017, it was found that illegal ivory items were presented as legal ivory items for sale. A total ban of local ivory trade is considered necessary by the Administration for elimination of any potential front for illegal ivory markets.

15. According to the Administration, while intra-EU ivory trade and re-export of ivory from EU for commercial purposes are allowed only under limited circumstances,<sup>7</sup> the European Commission has adopted a guidance document requiring EU countries to stop re-export of raw ivory with effect from 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. Re-export of raw ivory for commercial purposes has been prohibited by Germany since July 2014. Besides, EU has commenced consultation in September 2017 to solicit information and feedback on taking further measures to restrict or prohibit ivory trade. The Administration has stressed that an increasing number of countries and places have implemented control or even a ban on their domestic ivory trade at a pace suitable to their own situations. Further restricting or banning ivory trade has become a global trend. Both Mainland China<sup>8</sup> and France<sup>9</sup> have announced a ban on domestic trade in ivory and ivory

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<sup>7</sup> Intra-EU ivory trade and re-export of ivory from the EU for commercial purposes are allowed only under the following circumstances:

- i) For pre-ban ivory imported into EU before the listing of elephants in Appendix I to CITES (Asian elephants and African elephants on 1 July 1975 and 18 January 1990 respectively), intra-EU trade is allowed if the ivory is issued with necessary certificates. For worked ivory manufactured before 2 March 1947 (i.e. antique ivory), intra-EU trade is allowed even without certificates; and
- ii) For pre-Convention ivory obtained before the application of CITES provisions to elephants (Asian elephants and African elephants on 1 July 1975 and 26 February 1976 respectively), re-export is allowed if the ivory is issued with re-export certificates.

<sup>8</sup> According to paragraph 3 of the LegCo Brief, the State Council of the People's Republic of China already announced that the commercial processing and sale of ivory in the Mainland will be banned by phases by the end of 2017.



products, while the United Kingdom ("UK") has also conducted public consultation on such ban.

### Scope of the regulatory regime

#### *Definition of "elephant"*

16. Members note that the proposed ivory ban would apply to the species *Elephas maximus* (i.e. Asian elephants) and *Loxodonta africana* (i.e. African elephants) according to the definition of "elephant". In response to the Bills Committee's enquiry about the use of Latin to describe the concerned species, the Administration has advised that Latin is used in Schedule 1 to the Ordinance to denote scheduled species as the scientific names of species are always denoted in Latin.

#### *Definitions of "elephant hunting trophy" and "elephant ivory"*

17. The legal adviser to the Bills Committee ("Legal Adviser") has sought clarification from the Administration on whether the ivory of an elephant (under the proposed definition of "elephant ivory"<sup>10</sup> in section 1(1) of the new Schedule 4) can fall within the proposed definition of "elephant hunting trophy"<sup>11</sup> if other conditions under paragraphs (a) to (c) of the proposed definition of "elephant hunting trophy" are satisfied given that the ivory of an elephant is part of an elephant. Members have noted the Legal Adviser's views that the proposed definitions of "elephant hunting trophy" and "elephant ivory" in section 1(1) of the new Schedule 4 might not be drafted with sufficient clarity that the ivory of an elephant might be caught by the proposed definition of "elephant hunting trophy" if other conditions under paragraphs (a) to (c) of the proposed definition of "elephant hunting trophy" are satisfied. As such, the application of various provisions under the Bill relating to different regulatory control on "elephant hunting trophy" and "elephant ivory" in different stages of the proposed ivory ban would be rendered unclear and thus may cause confusion in enforcement. The Legal Adviser has sought clarification from the Administration as to whether "elephant ivory" should be expressly excluded from the definition of "elephant hunting trophy" for clarity sake.

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<sup>9</sup> The French Government adopted two orders in August 2016 and May 2017 to outlaw the ivory trade in France and all overseas French territories.

<sup>10</sup> "Elephant ivory" is proposed to mean the ivory of an elephant.

<sup>11</sup> See the proposed definition of "elephant hunting trophy" in footnote 4.

18. The Administration has responded that a piece of ivory, depending on how it was obtained, may also be an "elephant hunting trophy". Having said that, the Administration has advised that it is not necessary to exclude "elephant ivory" from the definition of "elephant hunting trophy" because the regulation for "elephant hunting trophy" is stricter than that for elephant ivory. If a piece of ivory is also an "elephant hunting trophy", the stricter regulation for "elephant hunting trophy" will apply to that specimen. The Administration has considered that there is no ambiguity or contradictions in terms of the applicable regulatory regime.

19. In light of the Administration's response that the ivory of an elephant can fall within the definition of "elephant hunting trophy" and thus may be subject to stricter regulatory control, the Legal Adviser has sought further clarification on what items of ivory would be caught by the definition of "elephant ivory" but not "elephant hunting trophy" for the purposes of the Bill. The Administration has responded that generally speaking, stricter regulation will apply at Stage 1 if an item is an "elephant hunting trophy" or post-Convention ivory. The stricter regulation will extend to pre-Convention ivory at Stage 2. The Administration explains that the "stricter regulation" comes in the form of dis-applying certain existing exemptions available under the Ordinance or its subsidiary legislation ("target exemptions" for the purposes of this paragraph and paragraph 21)<sup>12</sup>. Such dis-applications will be cumulative rather than mutually exclusive. In other words, for an item of ivory (a) if it is an "elephant hunting trophy", then all target exemptions will no longer be available starting from Stage 1, whether it is post-Convention or pre-Convention; or (b) if it is not an "elephant hunting trophy" – (i) if it is post-Convention, then all target exemptions that are originally applicable for post-Convention specimens will no longer be available starting from Stage 1 or (ii) if it is pre-Convention, then those target exemptions originally applicable for pre-Convention specimens will still be available at Stage 1 but no longer be available starting from Stage 2. The Administration does not see any ambiguity in terms of the applicable regime (i.e. what exemptions are no longer available) for a particular item of ivory. As to the question of what items of ivory would be caught by the

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<sup>12</sup> According to the Administration's explanation (see LC Paper No. CB(1)279/17-18(02)), the stricter regulation operates by –

- (a) on commencement of Stage 1
  - (i) dis-applying all target exemptions if an item is an "elephant hunting trophy"; and
  - (ii) dis-applying certain target exemptions (e.g. those originally applicable for post-Convention specimens) if an item is "elephant ivory".
- (b) on commencement of Stage 2
  - (i) dis-applying the remaining target exemptions (i.e. those originally applicable for pre-Convention specimens) if an item is "elephant ivory".

definitions of elephant ivory but not "elephant hunting trophy", the Administration has advised that an item of ivory that is not acquired by the person who is importing it through hunting is an example.

*Definition of "antique elephant ivory"*

20. Members have also noted the Legal Adviser's view that as the proposed definition of "antique elephant ivory"<sup>13</sup> will exclude "elephant hunting trophy", it appears that "antique elephant ivory" and "elephant hunting trophy" are mutually exclusive. The Legal Adviser has raised queries with the Administration as to how such exclusion can reconcile with the Administration's explanation that "elephant hunting trophy" would also cover "elephant ivory" if the ivory was acquired by hunting and other conditions specified under the proposed definition of "elephant hunting trophy" are satisfied. The Legal Adviser has further sought clarification from the Administration as to whether the definition of "elephant hunting trophy" should exclude "antique elephant ivory" in order to reflect the policy intent that antique elephant ivory will still be allowed to be traded in Stages 2 and 3 of the proposed ivory ban, whereas trade in "elephant hunting trophy" would be banned with effect from Stage 1.

21. The Administration has advised that the definition of "antique elephant ivory" excluded "elephant hunting trophy" because if an item is "antique elephant ivory", the item will be subject to lesser control, and it is the policy that such lesser control should not be available for an "elephant hunting trophy" even if it is also "antique elephant ivory". On the other hand, the definition of "elephant hunting trophy" should not exclude elephant ivory because, the policy is that all target exemptions will no longer be available for an "elephant hunting trophy" even if it is also elephant ivory. As to the Legal Adviser's queries on how the definitions of "antique elephant ivory" and "elephant hunting trophy" would not be mutually exclusive, the Administration has explained that the concept of "elephant hunting trophy" would be relevant in the context of import and re-export only because, by definition, "elephant hunting trophy" is a whole elephant, or part or derivative of an elephant, ("item") that is raw or processed; was acquired by a person through hunting; and is being imported, exported or re-exported by or on behalf of the person as part of the transfer of an item from its place of origin to the person's usual place of residence. In other words, if an item falls within the definition of "elephant hunting trophy" when it is being imported into or re-exported from Hong Kong, such import or re-export would be subject to the stricter regulation under Parts 2 and 3 of the Bill. On the other hand, the concept of "antique elephant ivory" would be relevant in the context of licence application. Starting from Stage 2 of the ban, a piece of "antique elephant ivory" (which should not be an "elephant hunting trophy" by definition)

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<sup>13</sup> See the definition of "antique elephant ivory" in footnote 5.

can still be imported into or re-exported from Hong Kong through applying for a relevant licence from the Director. The Administration further advises that the concept of "elephant hunting trophy" would no longer be relevant after an item was imported into Hong Kong and was not intended to be re-exported. Such concept would no longer be relevant if the item would stay in Hong Kong.

22. Noting that "antique elephant ivory" in France is defined as a pre-1947 worked ivory item, some members have questioned the rationale for Hong Kong to adopt a stricter definition for "antique elephant ivory" (i.e. a pre-1925 worked ivory item) than that adopted in France.

23. The Administration has advised that when formulating the proposed definition of "antique elephant ivory", reference had been made to the definitions adopted by other countries or places, and it had taken into account that only aged ivory products will have antique value. According to the EU's definition of antique elephant ivory, whether an ivory product is antique elephant ivory will be determined by its coming into existence before a specified year. By this definition, all worked ivory coming into existence after the specified year will not be regarded as antique elephant ivory. In EU, the specified year is 50 years before the EU Wildlife Trade Regulations (i.e. Council Regulation (EC) No. 338/97), which give effect to CITES in EU, came into effect in 1997, i.e. 1947. The Administration is mindful of the practice of EU, but suggests that the reference date of antique elephant ivory be set at 50 years before CITES entered into force in 1975, i.e. 1 July 1925. According to the Administration, the specified year of about one hundred years ago is similar to those used by the Mainland and the United States in defining antique elephant ivory.

24. The Administration has further explained that when proposing the above reference date of antique elephant ivory, consideration had also been given to the history of ivory carving. As regards ivory products produced in China, craftsmanship in the Qing Dynasty (1644 to 1911) was in general the most exquisite and the ivory market in Hong Kong was relatively small before 1949. Scientific verification of the age of an ivory product requires sending the product sample to an overseas laboratory for conducting tests, which may lead to damages. It is thus more practicable to set the reference date at 1925 for defining antique elephant ivory, with a view to facilitating enforcement agencies' verification of the age of an ivory product with regard to its craftsmanship in carving, style and level of aging, etc.

25. In response to the Legal Adviser's queries on the proof of antique elephant ivory, in particular, whether any certification of forensic tests conducted for verifying the authenticity of antique elephant ivory would be accepted as proof, the Administration has explained that it proposes, by making

reference to the practice in some other jurisdiction, that examples of acceptable proof of antique elephant ivory include a qualified appraisal or other method that documents the age of the ivory by establishing the provenance of the article. Results of tests using scientifically approved ageing methods carried out by an accredited laboratory or facility, local or overseas, are also acceptable.

#### Impact of the ban on the trade

26. Some members, including Hon CHAN Han-pan, Hon SHIU Ka-fai, Hon Mrs Regina IP, Hon WONG Ting-kwong and Dr Hon Junius HO, have expressed concern that the proposed ivory ban might affect the livelihood of local ivory craftsmen who might rely solely on their ivory crafting skills to make a living, and that the proposed ban would deal a heavy blow to businesses related to the ivory trade. These members have explored with the Administration the feasibility of providing a voluntary licence surrender scheme for affected licensees to surrender their PLs by a specified date, or implementing a voluntary buy-out scheme, and of providing compensation to the ivory traders as well as local workers in the ivory trade. Some other members, however, are against any form of compensation to the trade lest it might convey a wrong message to the community that the poaching of elephants for ivory is justified.

27. The Administration considers it justified not to provide compensation to the trade because the proposed ivory ban did not involve confiscation of ivory and will not lead to immediate cessation of business of the traders concerned. Ivory owners could still possess ivory for non-commercial purposes. Further, the Administration explains that it is very concerned that provision of compensation in any form to the ivory trade may send a wrong message to lawbreakers that there is a prospect of compensation which may accelerate and/or intensify the proliferation of the poaching of elephants and stimulate smuggling of a large amount of illegal ivory into Hong Kong to launder with the legal stock for seeking compensation. It would not only significantly reduce the effectiveness of the proposed ivory ban, but also run contrary to the global efforts on conservation of elephants and severely damage the international image of Hong Kong. Besides, other jurisdictions which had banned the ivory trade did not provide any form of compensation to the affected traders. Based on the above considerations, the Administration considers that it should not provide compensation in any form including ex-gratia payments to the licensed ivory traders.

28. The Bills Committee has sought details about the enhanced measures adopted by other jurisdictions on restriction of local ivory trade to give effect to the CITES resolution. In particular, Hon CHAN Han-pan and Hon SHIU Ka-fai have sought information from the Administration on the complementary measures taken by the relevant authorities in overseas jurisdictions to tie in with

their implementation of legislation to outlaw the trade in ivory; and measures to assist their local ivory traders/practitioners to dispose of their ivory stocks before and after the ban on ivory trade.

29. According to the Administration, the French Government has taken steps to strengthen the legal and regulatory framework on ivory. Two orders were adopted in August 2016 and May 2017 which outlawed the trade in ivory and rhino horns in France and all overseas French territories. It follows from the above orders that the trade and commercial use of raw ivory plus the manufacture of articles using ivory, irrespective of its age, have been banned. It also prohibits the sale of ivory products manufactured after July 1975 and the restoration of ivory objects manufactured after 18 January 1990. The Administration has advised that the French Government has neither offered compensation to ivory traders nor taken any measures to help local ivory traders or practitioners dispose of their ivory stocks. On the other hand, the UK Government has conducted a consultation exercise from October to December 2017 on the proposal of banning ivory trade. The UK Government estimates that the proposed measures will affect fewer than 5 000 UK businesses in the art and antiques sector, and that banning the sale of worked ivory will have some financial impact on the UK economy. According to the Administration, the UK Government opines that the new legislation prohibits only the sale and not the possession of ivory, hence has not proposed any measures to help local ivory traders or practitioners dispose of their ivory stocks. The proposed ban on the import and export of ivory for trade in the UK Government's proposal is applicable to such trade between the UK and all countries (including both Member and Non-member States of EU). Similarly, no compensation has been proposed under the UK's proposal or consultation paper.

30. The Bills Committee is concerned about the total number of ivory craftsmen in Hong Kong and their age profile, and how the Government would assist ivory traders in their business transformation and the ivory craftsmen in meeting their employment needs.

31. According to the Administration, as ivory craftsmen are not required to register with AFCD, the Government does not have the exact figure on the number of ivory craftsmen in Hong Kong and their age profile. However, according to a survey conducted by AFCD in September to October 2016 and AFCD's communication with the ivory trade, it is estimated that there are around 100 ivory craftsmen in Hong Kong. About two-third of them are aged 60 or above and the remaining one-third are aged between 31 and 59. For the ivory craftsmen who may be affected by the ban, AFCD is working with relevant Government departments and organizations such as the Employees Retraining Board ("ERB") on suitable re-training courses to assist ivory craftsmen to switch to other employment. According to AFCD's discussion with ERB, there are

more than 700 existing retraining programmes available to the ivory craftsmen. AFCD will further consult the ivory craftsmen in order to ascertain their training needs.

#### Grace period for local ivory traders

32. Some members consider that the grace period up to 30 December 2021 before the proposed ban of local ivory trade fully takes effect should be shortened or existing PLs be cancelled to advance the total ban in order to prevent laundering of ivory during the grace period. Some other members, however, opine that a longer grace period should be given for the trade to dispose of the ivory in their possession. They urge the Administration to strike a balance between combating ivory smuggling and maintaining the livelihood of local ivory traders.

33. The Administration explains that many of the ivory traders have already undergone business transformation or switched to the trading of other commodities not under CITES control such as mammoth ivory. The Administration considers that a grace period of around five years from late December 2016 when the proposed three-stage plan leading to a total ivory trade ban was announced, is reasonably sufficient to enable local traders to undergo business transformation and/or dispose of the ivory in their possession. In addition, the current validity period of a PL is five years. It is reasonable for the total ban of local ivory trade to take effect on a date after all existing and prospective licences expire, i.e. 31 December 2021 (which is around five years from the aforementioned announcement). The Administration has also explained that under the Ordinance, the Director has no legal power to cancel a valid PL on the basis of implementing the ivory trade ban.<sup>14</sup>

#### Conformity with Articles 6 and 105 of the Basic Law

34. The Bills Committee has sought clarification as to whether the proposed ivory ban in the Bill without compensation to affected parties would be consistent with Articles 6 and 105 of the Basic Law ("BL"). Some members are concerned whether the Bill has the possible effect of depriving or limiting the property rights of the ivory traders/practitioners and hence might be subject to legal challenge.

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<sup>14</sup> Under section 26(1) of the Ordinance, the Director may cancel a licence that is issued under section 23 or extended, renewed or varied under section 24 if (a) any condition of the licence is contravened; or (b) the Director is 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 any unlawful act of the applicant.

35. The Administration has explained that BL 6 sets out the general principle of protection of property rights under BL. BL 105 protects the right to compensation for lawful deprivation of property. While "ivory" constitutes "property" for the purpose of BL 105, the Administration has examined if the proposed ivory ban would constitute any deprivation of ivory owners' property and therefore trigger the right to real value compensation. According to the Administration, the Court of Final Appeal is yet to provide an authoritative decision on the scope of deprivation under BL 105, and that while one view is that, on the true construction of BL 105, the term "deprivation" in BL 105 should be given a narrow meaning, i.e. compulsory acquisition of property by the Government or government authority for public purposes, it was also held in *Fine Tower Associates Ltd v Town Planning Board* [2008] 1 HKLRD 553 by the Court of Appeal that to ascertain whether there had been a deprivation, the Court looked to the substance of the matter rather than to the form. Absent a formal expropriation, the question whether there had been a *de facto* deprivation of property is case specific, a question of fact and degree. The Court of Appeal held that *de facto* deprivation for the purpose of establishing a right to compensation contemplates the removal or denial of all meaningful use, or all economically viable use, of the property. In the present circumstance, the Administration considers that the legislative proposals do not involve any formal expropriation of property or any *de facto* expropriation. Under the current legislative proposals, the owners would retain possession of their ivory and there would not be any transfer of title of the owner's property. Moreover, the owners' ivory would not be denied all meaningful use. The ivory would still have other beneficial uses such as possession, donation, exhibition, etc. The ivory may also have artistic or cultural uses.

36. The Administration has examined whether the proposed ivory ban can satisfy the "proportionality test" (if applicable) under which in non-deprivation cases, any restriction on property rights is subject to a proportionality analysis which requires that the restriction must pursue a legitimate aim, be rationally connected to that legitimate aim and be no more than is necessary to accomplish that aim ("three-step test"). According to *Hysan Development Co. Ltd v Town Planning Board* [2016] 19 HKCFAR 372, the Court of Final Appeal held that where an encroaching measure had passed the above three-step test, the analysis should incorporate a fourth step, asking whether a reasonable balance had been struck between the societal benefits and protection of the individual's rights. In this regard, the Administration takes the view that the legislative proposal in the Bill has struck a reasonable balance between the societal benefits of the encroachment (i.e. to address the international and public concerns over the survival of elephants which are under imminent threat of extinction) and the protection of the individual's rights (i.e. the property rights of ivory traders) who



are not subject to unacceptably harsh burden.<sup>15</sup>

37. At the request of the Bills Committee, a paper prepared by the Legal Service Division ("LSD") has been issued to members addressing members' concern on whether the proposed ivory ban without compensation is consistent with BL 6 and BL 105.<sup>16</sup> Having considered the current legislative proposal and the legal principles laid down in the decided cases (including *Fine Tower Associates Ltd v Town Planning Board*) in determining whether there is deprivation of property,<sup>17</sup> it is LSD's advice that there appears to be no formal deprivation of ivory or expropriation as the proposal in the Bill does not involve the transfer of title of the property to the Government. The owners of ivory would retain the title and possession of their ivory. As to *de facto* deprivation, LSD considered that the proposed ivory ban in the Bill would not have rendered ivory wholly worthless and constitute removal or denial of all meaningful use or all economically viable use of ivory since the ivory may still have other uses (such as donation, display, exhibition and other artistic or cultural uses). LSD has pointed out that the proposed ivory ban would constitute restrictions on the use of property and any such restrictions should satisfy the four-step proportionality test laid down in *Hysan Development Co. Ltd v Town Planning Board*. LSD advises that it seems likely that the proposed ivory ban can satisfy the first two steps of the proportionality test. For determining whether the proposed ivory ban is no more than is necessary to accomplish the legitimate aim and whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the individual (i.e. third and fourth steps of the

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<sup>15</sup> Please refer to paragraphs 4 to 16 in LC Paper No. CB(1)11/17-18(01) for details of the legal analysis made by the Administration on whether the proposal is consistent with BL 6 and BL 105.

<sup>16</sup> See Paper for the Bills Committee on Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 (LC Paper No. LS15/17-18).

<sup>17</sup> Based on decided cases, the legal principles applicable in determining whether there is deprivation of property are: (a) deprivation of property refers to cases where property is formally expropriated, i.e. where there is a transfer of title of the property; (b) deprivation may also exist where the measure complained of affects the substance of the property to such a degree that there has been a *de facto* expropriation or where the measure complained of "can be assimilated to a deprivation of possessions"; (c) the right to compensation under BL 105 was guaranteed only when there was expropriation of property by the state for some public purposes; (d) to ascertain whether there has been a deprivation, the court looks to the substance rather than to the form. Absent a formal expropriation, the question whether there has been a *de facto* expropriation is perforce case specific, a question of fact and degree. There is *de facto* deprivation under BL 105 in cases where all meaningful use or all economically viable use of the property is removed or denied; (e) the burden of establishing the removal or denial of all meaningful or economically viable use of the property resides with the party asserting a violation of BL 105.

proportionality test), LSD has pointed out that some relevant factors that may be taken into consideration including the seriousness of elephant poaching and the scale of smuggling of ivory in Hong Kong; the benefits that could be brought to the community by the implementation of the proposal; the effectiveness of the enforcement actions taken under the existing regulatory regime<sup>18</sup> and that further information would be required on these matters before it can come to a definite view in this regard.

#### Exemptions and dis-application of the exemption provisions

38. The Bills Committee notes that the Administration has retained specific exemptions applicable to antique elephant ivory and ivory of personal or household effects (except for tourist souvenirs), as well as ivory used for the purposes of scientific studies, education, and law enforcement. The Bills Committee has examined the factors to be taken into account when determining whether the circumstances are such that an exemption to the ban would apply.

39. The Administration has explained that as proposed under the Bill, save for necessary exemptions and exceptions, a total ban shall be implemented on ivory trade primarily for better conservation of elephants. Further extension of such exemptions and exceptions will merely complicate ivory control and open up potential loopholes, which in turn will impede local law enforcement and confuse the public on the purpose of the ivory trade ban. All these will not only significantly reduce the effectiveness of the ban, but also run contrary to the global efforts on conservation of elephants and severely damage the international image of Hong Kong.

40. The Bills Committee has sought information from the Administration on the exemptions allowed by the French Government whilst imposing a ban on domestic trade in ivory. The Bills Committee notes that in view of local circumstances, the French Government has allowed some limited exemptions which mainly cover antique ivory, musical instruments and tableware containing ivory, but the exemption for tableware will remain valid only until

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<sup>18</sup> Other factors include: (a) whether there are ways other than what is proposed in the Bill in order to achieve the policy objective of combating elephant poaching and smuggling of ivory in Hong Kong; what are the other alternatives that have been explored by the Administration and why these other alternatives are not considered to be feasible and cannot achieve the policy objective; (b) the quantity of undisposed ivory owned by traders/owners; (c) whether the proposal represents the minimum impairment on the property right guaranteed by BL; what are the justifications for setting the grace period for phasing out ivory trade at five years and whether the grace period could be longer; (d) whether there are any other measures to minimize the impairment or damage that may be caused to the ivory owners/traders apart from what is proposed in the Bill.

early-2018.<sup>19</sup>

41. Noting that the import, re-export or possession of elephant hunting trophies and ivory will generally be prohibited under the proposed ivory ban, the Bills Committee members have enquired what constitute the exceptional circumstances justifying the approval of the Director for an application for licence to import, re-export or possess.

42. The Administration has assured members that such exceptional circumstances shall not contravene the principle of elephant conservation, and their examples include inheritance of ivory for non-commercial purposes, fulfilment of documentation requirements of an importing party regarding the import of ivory as personal or household effects, etc. Applicants shall provide adequate information to the satisfaction of the Director that there are exceptional circumstances. To prevent abuse of this provision by applicants, the Director will carefully consider each application on its own merits. As regards the appeal mechanism, the Administration has advised that for a person whose application for a licence has been rejected, the person might appeal to the Administrative Appeals Board against the Director's decision under section 46 of the Ordinance.

43. Some members have enquired whether exemption(s) would apply if a Hong Kong resident might bring an ivory gift item out of Hong Kong. The Administration has advised that section 5 of Cap. 586A and Cap. 586B respectively provide exemptions for personal and household effects. Under all three Stages of the ban, the current exceptions permitted under CITES which are limited to specific and stringent circumstances including scientific studies,

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<sup>19</sup> The exemptions and derogations allowed by the French Government under the ban include: (i) presentation of ivory specimens for scientific or cultural purposes by museums or other institutions; (ii) keys and pulls of ivory games of musical instruments with keyboard, as well as bows of stringed instruments; (iii) antique ivory articles (i.e. pre-1947 articles), but those composed in whole or in part of ivory where the proportion of ivory in the article is over 20% of volume will be subject to a declaratory procedure for their trade; (iv) articles manufactured after 2 March 1947 and before 1 July 1975 (i.e. when CITES began to regulate elephants) consisting wholly or in part of ivory, when the mass of ivory present in the article is less than 200 grams ("g"); (v) worked objects manufactured after 2 March 1947 and before 1 July 1975 containing over 200 g of ivory are required to apply for derogation from the French authorities; and (vi) restoration of objects manufactured before 18 January 1990 made with ivory originating from raw tusks or pieces of raw ivory imported into EU before that date and legally acquired. In addition, the sale and purchase of tableware, other cutlery or smoking articles manufactured before 18 August 2016 (i.e. the publication of the first order) using ivory with seniority prior to 18 January 1990 (i.e. when CITES began to ban the international ivory trade) may continue on or before 4 February 2018 (i.e. nine months after the publication of the second order). This exemption shall cease to be in force after 4 February 2018.

education, law enforcement and personal or household effects (except for tourist souvenirs) would continue to be in force. The meaning of personal or household effects is defined in section 4 of Cap. 586A and Cap. 586B<sup>20</sup> respectively. The specimen should be personally owned or possessed by the person for non-commercial purposes only.

44. Some members have further enquired how a person might prove that ivory specimens in his/her possession are personal or household effects when he/she emigrates to another country. Hon Mrs Regina IP expresses concern that licences issued by the Director might not be recognized by overseas customs authority. The Administration has advised that carrying an ivory item as a personal property in times of emigration is generally allowed under section 5 of Cap. 586A and 586B respectively, each case to be considered on its own merits, but might be subject to the licensing requirements of the country of destination.

45. In considering whether a specimen is intended for use for scientific or educational purposes, the Legal Adviser has sought clarification on whether the intended use should be on a non-commercial or non-profitable basis and the relevant factors that would be taken into account by the Administration. The Administration has responded that there is no express provision requiring that the intended use for scientific or educational purposes should be on a non-commercial or non-profitable basis. The main factor for consideration is whether the intended use of the specimen is primarily for scientific or education purposes.

### Penalty

46. Regarding the proposed increase in 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 and Appendices II and III species set out in paragraphs 7 and 8 above, the Bills Committee notes that the Legal Adviser has sought written clarification from the Administration on whether reference has been made to penalties of similar offences in other jurisdiction(s) and other legislation in Hong Kong, whilst proposing the revised maximum penalties.

47. According to the Administration, reference has been made to the penalties of local ordinances governing the import, export or possession of controlled items including the Import and Export Ordinance (Cap. 60) and the Dangerous Drugs Ordinance (Cap. 134). The proposed penalty levels (both the

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<sup>20</sup> Under section 4 of Cap. 586A and 586B, a specimen shall be treated as part of the personal or household effects of a person if (a) the specimen is personally owned or possessed by the person for non-commercial purposes only; and (b) where the specimen is being imported, exported or re-exported – (i) it is worn or carried by the person or included in his personal baggage; or (ii) the import, export or re-export forms part of a household move of the person.

amount of fine and imprisonment terms) are generally in line and consistent with the penalties of other local ordinances governing the import, export or possession of controlled items.

48. According to the Administration, it is mindful that the proposed penalties, particularly the imprisonment terms, are more stringent than the references from the United Nations on wildlife crimes and are on the high side in comparison with the international norm.<sup>21</sup> According to AFCD's research, a number of jurisdictions impose a maximum imprisonment of 10 years or more.<sup>22</sup> Taking into account all the relevant considerations, the Administration is of the view that the proposed penalties are of an appropriate level of severity, given the necessity to pitch the revised penalties at a level that is severe enough to provide a strong deterrent against illicit wildlife trade and to show that the Government is very serious about deterring these crimes.

49. As stipulated in section 10 of the Ordinance, if a person has been convicted of an offence with respect to illegal import, introduction from the sea, export, re-export or possession of CITES Appendix I species and the court is satisfied that the act is for commercial purposes, that person, is liable to a higher penalty of fine of \$5,000,000 and to imprisonment for two years. According to the Administration, its experience reveals that the burden of proof for the act to be carried out for commercial purposes is not easy to discharge. Besides, whether the court considers that offence is for commercial purposes is not expressed in the sentence. The Administration has explained that the proposal to unify the penalty for both commercial and non-commercial offences and to increase the penalties are intended to address the burden of proof issue above and provide a stronger deterrent against illicit wildlife trade.

50. The Bills Committee notes that the revised penalties will apply to all scheduled species under the Ordinance in addition to elephants. A summary of the existing and proposed penalties is set out in **Appendix III**.

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<sup>21</sup> The Administration has also made reference to the penalties of legislation implementing CITES in other jurisdictions, and the relevant references of the United Nations on wildlife trafficking. The United Nations' resolution on *Tackling Illicit Trafficking in Wildlife* adopted on 30 July 2015 urged member countries to consider the trafficking of protected species involving organized criminal groups as a "serious crime", and the maximum penalty of a "serious crime" as defined by the United Nations Convention Against Transnational Organized Crime shall be imprisonment of at least four years.

<sup>22</sup> To the Administration's knowledge, Greece, Australia and Botswana impose a maximum penalty of 10 years of imprisonment; and Mexico, Namibia and Zimbabwe, of 20 years of imprisonment. In China and Kenya, offenders may be subject to a maximum penalty of life imprisonment for very serious cases. The imprisonment terms in other jurisdictions under research range from 6 months to 8 years.

## Enforcement

51. Some members including Hon Mrs Regina IP, Mr SHIU Ka-fai and Mr CHAN Han-pan consider that the Administration has failed to take effective enforcement actions against the smuggling and sale of illegal ivory. They have pointed out that according to the trade, as much as 500 tonnes of pre-Convention raw ivory materials (e.g. ivory tusks) and ivory products from the European countries have been imported to Hong Kong since 1990, thus affecting the local sale of post-Convention ivory. The Administration has explained that trading of pre-Convention ivory locally and internationally is still allowed under a permit system in accordance with the provisions of CITES. The Administration has further explained that a large proportion of the pre-Convention ivory has been re-exported after being imported into Hong Kong, implying that Hong Kong is not the target market of such pre-Convention ivory. The Administration has advised that the import of pre-Convention ivory to Hong Kong will be prohibited three months after the 1<sup>st</sup> Commencement Date (i.e. the implementation of Stage 2 of the proposed ivory ban) except with a licence, which may still be issued for antique elephant ivory as defined by the Bill. It will greatly help the enforcement agencies in their enforcement actions, as there is no longer a need to ascertain whether the ivory belongs to the pre-Convention or post-Convention types.

52. Some members and deputations are of the views that the enforcement against illegal trade in ivory should be stepped up as soon as possible. According to the Administration, AFCD has already reviewed the regulatory regime and introduced a suite of enhanced measures to step up enforcement against smuggling of ivory and to strengthen the control of local trade in ivory in cooperation with the Customs and Excise Department ("C&ED") and the Hong Kong Police Force ("HKPF"). These measures include a comprehensive stocktaking of registered ivory, using tamper-proof holograms to mark ivory, increasing the frequency of surprise inspections of licensed shops selling ivory, using radiocarbon dating to determine the legality of ivory, deploying sniffer dogs at borders to detect smuggled ivory, strengthening collaboration and co-ordination of efforts of the enforcement agencies, enhancing intelligence gathering and information exchange with relevant overseas and international bodies, as well as strengthening liaison and cooperation with relevant non-governmental organizations. Meanwhile, various departments including AFCD, C&ED and HKPF will continue to take vigorous enforcement actions against smuggling and illegal trade in ivory.

53. Members have sought information on the total number of prosecutions made under the Ordinance for offences related to illegal ivory in the past few years. According to the information provided by the Administration, the number of ivory smuggling cases detected, quantity of ivory seized, number of

convictions and the maximum and minimum penalties imposed by the court during 2014-2017 (up to end of July) are tabulated below:

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017 (Jan to Jul)<sup>23</sup></b>
Number of cases	106	105	4	39
Quantity of ivory seized	2,200 kg and 35 pieces	1,600 kg	530 kg	7,385 kg
Number of persons convicted	65	30	25	26
Maximum penalty / Quantity involved	8 months*/ 3 cases: 15.6 kg, 35 kg and 36 kg respectively	6 months*/ 2 cases: 19.9 kg and 19 kg respectively	8 months^/ 47.36 kg	3 months/ 61.88 kg
Minimum penalty / Quantity involved	\$10,000/ 2 cases: 1.21 kg and 9.18 kg respectively	\$30,000/ 2 cases: 8.4 kg and 8.8 kg respectively	\$2,000/ 0.2 kg	\$2,000/ 0.044 kg

Note:

- \* - The penalty of the convicted case was a fine. In default of payment, the offender was sentenced to an imprisonment for the specified period.
- ^ - The penalty was laid concurrently with the conviction of the offence under Import and Export Ordinance (Cap. 60).

54. In response to members' enquiry about the starting points of sentencing for offences under the Ordinance in relation to illegal ivory, the Administration has advised that there is no precedent set by a higher court on the starting point of sentencing for offences under the Ordinance.

#### Ambiguity in the Chinese rendition

55. The Legal Adviser has sought clarification 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. The Legal Adviser has further pointed out that "pre-Convention specimens" is rendered as "《公約》前標本" in Chinese in existing sections 17 and 20 of the Ordinance 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.

<sup>23</sup> Some cases are still under investigation and hence verdict results are not yet available.

56. The Administration has confirmed that the English and Chinese versions of the defined term "pre-Convention" ("《公約》前標本") tally with each other. In the Chinese text, "《公約》前標本" is used because it fits the sentence flow of the Chinese text better than "《公約》前" does. The sentence "該標本[即]屬《公約》前標本" reads better than "該標本[即]屬《公約》前". Hence, "《公約》前標本" is chosen as the Chinese equivalent of "pre-Convention". As "《公約》前標本" is 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" corresponds to the adjective "pre-Convention", while "標本" corresponds to "specimens", which the adjective "pre-Convention" qualifies. Further, the Administration has pointed out that as the term "pre-Convention" ("《公約》前標本") defined in section 1(1) of the new Schedule 4 applies only to the new Schedule 4, the label "pre-Convention" ("《公約》前標本") does not apply to the headings of the existing sections 17 and 20 of the Ordinance and there would not be any confusion.

### **Committee Stage amendments**

57. No Committee Stage amendments to the Bill have been proposed by the Administration or the Bills Committee.

### **Resumption of Second Reading debate on the Bill**

58. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 31 January 2018.

### **Advice sought**

59. Members are invited to note the Bills Committee's deliberations set out above.



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

**Membership list\***

**Chairman** Hon Kenneth LEUNG

**Deputy Chairman** Dr Hon Elizabeth QUAT, BBS, JP

**Members** Hon James TO Kun-sun  
Hon WONG Ting-kwong, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
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

(Total : 19 members)

**Clerk** Miss Cindy HO

**Legal Adviser** Ms Vanessa CHENG

\* Changes in membership are shown in Annex to Appendix I.

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

**Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Hon Michael TIEN Puk-sun, BBS, JP	Up to 9 July 2017
Hon Alvin YEUNG	Up to 16 October 2017

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.

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

**Organizations/individuals which/who have given oral presentation of views  
to the Bills Committee**

1. ADM Capital Foundation
2. Animals Asia Foundation Limited
3. Chinese Ivory Arts and Culture Alliance
4. Conservation Forensics Laboratory, University of Hong Kong
5. Conservation International
6. Democratic Alliance for the Betterment and Progress of Hong Kong
7. Dr Yvonne SADOVY
8. Endangered Species Advisory Committee, Agriculture, Fisheries and  
Conservation Department
9. Global March for Elephants and Rhinos, Inc.
10. Green Sense
11. Guardian
12. Hong Kong and Kowloon Ivory Manufacturers Association Limited
13. Hong Kong Chef Union
14. Hong Kong Ivory Industry and Commerce Association
15. Hong Kong Racing School for Motorsports
16. Hong Kong Veterinary Association Limited
17. Humane Society International
18. Lam Tsuen Wishing Square
19. Miss CHENG Ching-yi
20. Miss CHENG Chui-ha
21. Miss Hayley CHAN
22. Miss Janissa ZHAO
23. Miss Jasmin SOU
24. Miss LAU Ying-ting
25. Miss Sofia HESSION
26. Miss ZHAO Rou
27. Mr Barlow CRISPIAN
28. Mr CHU Chun-pong
29. Mr CHU Kee-wun
30. Mr CHUNG Kin-wah
31. Mr Edwards GAVIN
32. Mr LAM Ho
33. Mr LAU Kwok-hung
34. Mr LEE Kai-wan
35. Mr Martin HAIGH

36. Mr MONG Wai-hung
37. Mr NG Yu-hin
38. Mr Pierce DUFFY
39. Mr WU Thomas
40. Ms Anne-margaret COPELAND
41. Ms IP Sheung-ching
42. Ms LIU Ying-laam
43. Ms Margaux CHALABI
44. Ms Rosana NG
45. Ms Susan SUM
46. New People's Party
47. Professor Amanda WHITFORT
48. Professor NG Yau-ka
49. Professor WEE Lian-hee
50. Save the Elephants
51. The Last Animals
52. The Society for the Prevention of Cruelty to Animals (Hong Kong)
53. Veterinary Specialty Hospital of Hong Kong
54. WildAid Hong Kong
55. World Wide Fund For Nature Hong Kong
56. 香港象牙合法持牌人聯會

**Appendix III**

**SUMMARY OF THE EXISTING AND PROPOSED PENALTIES UNDER THE PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS ORDINANCE, CAP. 586**

	Existing Penalties		Proposed Penalties	
	for non-commercial purposes	for commercial purposes	for summary offences	for indictable offences
<b>Appendix I species</b>	A fine at level 6 (\$100,000) and imprisonment for 1 year	A fine of \$5,000,000 and imprisonment for 2 years	A fine of \$5,000,000 and imprisonment for 2 years	A fine of \$10,000,000 and imprisonment for 10 years
<b>Appendices II and III species</b>	A fine at level 5 (\$50,000) and imprisonment for 6 months	A fine of \$500,000 and imprisonment for 1 year	A fine of \$500,000 and imprisonment for 1 year	A fine of \$1,000,000 and imprisonment for 7 years