



# The University of Hong Kong

## Faculty of Law

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Pokfulam, Hong Kong

Hon. Tanya Chan  
Chairperson, Panel on Environmental Affairs  
Legislative Council, Hong Kong

29 May 2018

Dear Ms. Chan,

Thank you for the opportunity to provide a representation to the Panel on Environmental Affairs yesterday in LegCo. In reply to the Hon Dr Elizabeth Quat's question to me, I provided some detailed information on Cap 586 and Cap 455. I now provide a written response to that question.

The Organised and Serious Crime Ordinance (OSCO), Cap 455, provides for, amongst other things, enhanced powers of investigation and sentencing in relation to serious crimes suspected to be organized by either triad groups or other criminal gangs. It also empowers courts to forfeit the proceeds of organized crime.

Cap 586 relates to controls on possession, import and export of CITES listed species for trade.

Under the current powers provided to officers under Cap 586, there is the power to require a person to produce a permit for being in possession of endangered species, and to allow inspection of species, but there is no power investigate persons or materials in connection with organised crime. There is power to forfeit endangered species on conviction for illegal trade offences but no power to confiscate the proceeds of that crime. Under Cap 586 there is power to inspect places and premises related to suspected offences under Cap 586, but no power to issue restraint orders or charging orders of assets/instruments used in offences.

Recognising trade in endangered species as organized crime would permit investigators to use investigative powers to pursue money laundering offences in relation to wildlife crime, whether the offence occurred inside or outside Hong Kong. It would also permit prosecutors to seek enhanced sentences for members of gangs who commit wildlife offences, as is already done for incense tree thefts (theft is regarded as an OSCO offence under Schedule 1 to Cap 455).

Recently some Cap 586 offences were elevated to dual offences, allowing them, in certain circumstances, to be prosecuted as indictable crimes. Theoretically, this reclassification permits the prosecution of wildlife criminals under section 25 of Cap 455, for the offence of money laundering. In reality, this is unlikely to occur, as to lay charges of money laundering, customs officers would need to have gathered sufficient intelligence on the criminal networks behind the wildlife smuggling, to show their targeted defendants had received the proceeds of an indictable crime. Such investigations would significantly benefit from officers having the investigatory powers provided under Cap 455 to gather the evidence necessary to support their case.

In addition, adding Cap 586 offences to Schedule 1 of OSCO would not only allow the special investigative powers in OSCO to apply to wildlife crimes but, even more importantly, it would allow courts to make confiscation orders against defendants convicted of those offences. Currently, were a person to commit offences against Cap 586, if it could not be shown that he 'dealt' with the proceeds of those offences, he would not be liable for the offence of money laundering under section 25 of



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OSCO and it would not be possible for the courts to confiscate any 'benefit' he obtained from his illegal trade in endangered species.

For these reasons, offences under Cap 586 should be added to Schedule 1 of Cap 455, OSCO.

Yours sincerely

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