

The Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018

Frequently Asked Questions

The Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 (“the Amendment Ordinance”) has been passed and it commences on 1 May 2018. The Amendment Ordinance amends the Protection of Endangered Species of Animals and Plants Ordinance (“the Ordinance”) to take forward a three-step plan to enhance regulation on import and re-export of elephant ivory and elephant hunting trophies, to phase out the local ivory trade, and to increase the penalties under the Ordinance. This document aims to provide information on relevant measures and matters for reference. For the relevant statutory requirements, the provisions of the Amendment Ordinance and the Ordinance shall prevail over this document.

1. Isn’t it that the ivory trade has already been banned long time ago?

Hong Kong regulates the import, re-export and domestic sale of elephant ivory and other specimens of endangered species under the Protection of Endangered Species of Animals and Plants Ordinance (Cap 586) (the Ordinance), the local legislation that gives effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES began to regulate the international trade in Asian elephant and African elephant on 1 July 1975 and 26 February 1976 respectively. Since 18 January 1990, all elephant species have been listed in Appendix I to CITES and the international trade (i.e. import, export and re-export) in post-Convention ivory has virtually been banned. However, some ivory is still allowed by CITES to undergo local trade or import and re-export under limited circumstances. For example, pre-Convention ivory, elephant hunting trophies and certain specified ivory carvings and jewellery are still permitted to be imported and re-exported in accordance with the regulations under CITES and the Ordinance. Besides, post-Convention ivory under Licences to Possess issued by the Agriculture, Fisheries and Conservation Department (AFCD) can still be traded locally.

2. What is “pre-Convention ivory”? What is “post-Convention ivory”?

CITES started to regulate the international trade in Asian elephant and African elephant since 1 July 1975 and 26 February 1976 respectively. The ivory that was acquired before the respective dates is referred to as “pre-Convention ivory” and the ivory that was acquired on or after the respective dates is referred to as “post-Convention ivory”.

3. Why is it necessary to phase out the local trade in elephant ivory?

There have been concerns over the poaching of elephants in Africa and the global smuggling of ivory in recent years. There are growing and intensive calls from the international community for strengthened measures to control the ivory trade with a view to ensure that the survival of elephants is not threatened, in particular African elephants which are under imminent threat of extinction due to poaching and smuggling of ivory. In 2016, the Conference of the Parties to CITES adopted a resolution which recommended 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 enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency. Hong Kong has a duty to strengthen the control and ban the ivory trade with a view to support and dovetail with international efforts and practices to protect elephants.

As a matter of fact, it is widely reported that an 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. In the control buy operations conducted by AFCD in 2016 and 2017, it was found that illegal ivory was presented as legal ivory for sale. There are also frequent international criticisms against Hong Kong for providing a front for illegal ivory through possible laundering with its local trade in registered ivory. At the Sixteenth Meeting of the Conference of the Parties to CITES held in 2013, Hong Kong was listed by CITES as one of the places of primary concern regarding the poaching of elephants and illegal ivory trade. Therefore, a total ban of local ivory trade is considered necessary for elimination of any potential front for illegal ivory markets.

4. What are the details of the ivory phase-out plan?

The details of the three-step plan to phase-out the local trade in ivory are as follows:

Step 1: Ban the import and re-export of all elephant hunting trophies and those remaining post-Convention ivory items, the import, export and re-export of which are currently permissible under CITES. This step will discourage killing of live elephants, for example through sport hunting. Commence on 1 May 2018;

Step 2: Ban the import and re-export of pre-Convention ivory (save for antique ivory) and subject the commercial possession of pre-Convention ivory (save for antique ivory) in the local market to licensing control similar to the existing control on post-Convention ivory. This step will prevent possible laundering of illegal ivory. Commence on 1 August 2018; and

Step 3: Ban the possession for commercial purposes of all ivory (save for antique ivory) including pre-Convention ivory and post-Convention ivory from 31 December 2021.

To prepare for the implementation of the plan, there will be some necessary arrangements regarding licence issuance by AFCD. Possession of ivory for non-commercial purposes is currently exempted from the licensing requirement. If an owner wishes to use such ivory for commercial purposes, he/she has to apply for a Licence to Possess. To pave the way for a total ban on the local ivory trade on 31 December 2021, any application for switching the use of ivory from non-commercial to commercial purpose will not be approved for post-Convention ivory upon commencement of Step 1, and pre-Convention ivory upon commencement of Step 2.

5. Will there be any exception?

The current exceptions permitted under CITES which are limited to specific and stringent circumstances including scientific studies, education, law enforcement as well as personal or household effects (except for tourist souvenirs) will continue to be in force. In addition, antique ivory will be excepted and its trade will continue to be allowed under a stricter control regime.

6. What are the details of the antique exception?

As a measure to protect of cultural relics, antique ivory will be excepted from the ivory phase-out plan. Antique ivory

- (a) means as 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) does not include an elephant hunting trophy.

Import of antique ivory will require a Pre-Convention Certificate issued from the previous exporting place and an Licence to Import issued by AFCD. Re-export of antique ivory will require a Licence to Re-export issued by AFCD. Possession of antique ivory for commercial purposes will not require a Licence to Possess provided that the ivory can be proven antique. The antique ivory traders have the responsibility to provide sufficient information to satisfy AFCD that the ivory meets the antique ivory exception.

7. What documentary evidence will be required to prove that a piece of elephant ivory is an antique ivory?

Examples of acceptable proof of antique may 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 aging methods carried out by an accredited laboratory or facility, local or overseas, are also acceptable.

8. Under what exceptional circumstances will AFCD approve an application for a Licence to Import, Re-export or Possess?

The Amendment Ordinance primarily aims to, *inter alia*, provide for more stringent control of elephant hunting trophies and ivory to conserve elephants. To this end, the import, re-export or possession of elephant hunting trophies and ivory will generally be prohibited. However, the Director of Agriculture and Fisheries (the Director) may approve a licence application if the Director is

satisfied that there are exceptional circumstances justifying the approval. Such exceptional circumstances shall not contravene the principle of elephant conservation, and their examples include inheritance of ivory for non-commercial purposes, fulfillment 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.

9. Will the exceptions under “scientific” and/or “educational” purposes be restricted to non-profit making or non-commercial use only?

There is no express provision in the Amendment Ordinance 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 related to scientific or educational purposes.

10. Does the Amendment Ordinance affect the trade in other ivory or hunting trophies of other animals?

No.

11. Will the Government provide compensation to the ivory trade or buy out the ivory stock?

The Government has carefully considered the compensation or buy-out issue from various policy and legal perspectives and considers that no compensation or buying out should be provided to the ivory traders.

The Government is very concerned that the provision of compensation to the ivory trade may send a wrong message to lawbreakers that there is prospect of compensation which may exaggerate the poaching of elephants and stimulate smuggling of large amount of illegal ivory into Hong Kong to launder with the legal stock for compensation or buying out. It will not only significantly reduce the effectiveness of the plan to buy the local ivory trade, but also run contrary to the global efforts on conservation of elephants and

severely damage the international image of Hong Kong. So far, the Government has not heard of any compensation or buying out provided in other countries or regions as a result of measures to enhance the control over ivory trade.

Besides, the sale of ivory in general does not constitute a substantial part of the ivory owners' business. Many ivory traders have already undergone business transformation or switched to the trading of other commodities not under CITES control. Moreover, the effective date of the total ban of ivory trade is 31 December 2021, which is five years from the announcement of the concerned policy and prior notice to the trade. There should be reasonable and sufficient time for the remaining ivory traders to undergo business transformation or dispose of the remaining ivory in their possession.

The Government will provide suitable re-employment training to assist ivory craftsmen who may be affected by the ban to switch to another job according to their situation.

12. What is the basis for determining the new level of penalties?

To determine an appropriate level of severity for the penalty, the Government has made reference 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 new penalty levels (both the 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. The Government has also made reference to the penalties of legislations implementing CITES in other jurisdictions, and the relevant references of the United Nations on wildlife trafficking. The new 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. That said, the new penalties are of an appropriate level of severity 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.

13. What are the differences between “summary offence” and “indictable

offence”?

"Summary offence" generally refers to a less serious offence, and an "indictable offence" is a more serious offence. In order to effectively deter the illegal trade in endangered species and to reflect the seriousness of the offences under the Ordinance, the Amendment Ordinance makes the offences under the Ordinance triable either summarily (for general cases) or upon indictment (for more serious cases). Factors to be considered in determining the seriousness of a case include the quantity of endangered species involved, the endangered status of the species involved, and whether organized crime was involved. The amendment is also in line with other similar local legislation such as the Import and Export Ordinance (Cap. 60), the Dangerous Drugs Ordinance (Cap. 134) and the Trade Descriptions Ordinance (Cap 362).

Summary offences are heard in the Magistrates' Courts, and the maximum penalty laid in Magistrates' Courts is imprisonment for two years and a fine of \$ 100,000 for each offence. Under some Ordinances a single offence may carry 3 years' imprisonment and a fine of \$5 million. Hearing of indictable offences is usually started in the Magistrates' Courts and the Secretary for Justice may request the case to be referred to the District Court or the Court of First Instance of the High Court, depending on the seriousness of the case. The time bar for prosecution of a summary offence is six months after the commencement of the incident (unless otherwise stated in the law). There is no specific time bar for prosecution of indictable offenses. This allows law enforcement officers to have sufficient time to investigate more complex or serious cases.

Agriculture, Fisheries and Conservation Department
5 March 2018