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電 郵 E-mail: hk_cites@afcd.gov.hk
圖文傳真 Fax No.: 2376 3749

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Dear Sir/ Madam,

**Control Measures for Phasing Out Elephant Ivory Trade under
The Protection of Endangered Species of Animals and Plants Ordinance**

This circular informs ivory traders of the control measure for phasing out the local trade in elephant ivory.

Currently, with the exception of antique elephant ivory¹, possession of elephant ivory for commercial purposes² has been prohibited. However, this Department has received reports from the public regarding incidents of traders displaying elephant ivory in shops and traders attempting to circumvent the trade ban by giving away ivory upon purchase of other goods.

This Department hereby reminds all traders that “commercial purposes” as defined under the Protection of Endangered Species of Animals and Plants Ordinance (the “Ordinance”) is not limited to *sale*. Enticing customers with free ivory, or displaying ivory labelled as “not for sale” in shop may also contravene the Ordinance. To avoid inadvertent breach of law, ivory shall not be displayed on commercial premises. If the storage of ivory on the premises is inevitable, all ivory must be fully shrouded and kept in an inconspicuous place to avoid causing suspicion.

As a measure to protect cultural relics, the trade in antique ivory will continue to be allowed under a control regime. To possess antique ivory for commercial purposes, traders shall prove that the ivory meet the requirements for antique ivory exception. Examples of acceptable proof of antiquity 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

¹ **Antique elephant ivory** means 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
- does not include an elephant hunting trophy;

² **Commercial purposes** means—

- (a) a purpose relating to trade or business; or
- (b) a purpose of obtaining profit or other economic benefit (whether in cash or in kind) and directed towards sale, resale, exchange, provision of a service or other form of economic use or benefit, whether direct or indirect.

methods carried out by an accredited laboratory or facility are also acceptable. **Traders who possess antique ivory for commercial purposes shall have relevant documents ready for inspection.** For the criteria of a qualified appraisal for antique ivory and other frequently asked questions, please refer to the document issued by this Department in August 2018 (Annex I). The document is also available on the Department website:

https://www.afcd.gov.hk/english/conservation/con_end/files/FAQ_on_Antique_Ivory_eng.pdf

This Department will continue to strengthen inspection on commercial premises. If irregularities are found, including display of non-antique ivory or ivory that could not be proven antique, this Department will take resolute enforcement actions and seize the ivory concerned for investigation.

The aforementioned measures aim at phasing out the local trade in ivory. Possession of ivory of personal or household effects for non-commercial purposes will not be affected and can continue to be exempted.

Any person import, re-export or possess elephant ivory in contravention of the Ordinance is liable on conviction to a maximum fine of HK\$ 10,000,000 and to imprisonment for ten years. The seized specimens will, without further order, also be forfeited to the government.

For enquiry, please contact Ms KOH (Tel: 2150 6969) or Mr. CHAN (Tel: 2150 6982) of this Department.

Yours faithfully,



(Timothy F.N. LAM)

For Director of Agriculture, Fisheries and Conservation

With enclosure:

Annex I: The Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 - Frequently Asked Questions (Antique Ivory)

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

Frequently Asked Questions

Antique Ivory

According to the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 (“the Amendment Ordinance”), import, re-export and local possession of all elephant ivory (thereafter referred as “ivory”) for commercial purposes have been banned since 1 August 2018, unless the ivory can meet the requirements of antique ivory exception or is covered by a valid Licence to Possess.¹ This document aims to provide information on relevant measures and matters of antique ivory for reference. For the relevant statutory requirements, the provisions of the Amendment Ordinance shall prevail over this document.

1. What is an antique ivory?

As defined in the Amendment Ordinance, an antique ivory means as a piece of 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
- does not include an elephant hunting trophy.

2. What is an antique ivory exception?

To protect elephants, Hong Kong has adopted a three-step plan which bans the import and re-export of ivory and elephant hunting trophy and phases out the local trade in ivory. However, as a measure to protect cultural relics, antique ivory is excepted from the plan. Antique ivory can be imported, re-exported or possessed for commercial purposes provided that it can be proven antique and all the statutory requirements are met.

¹ The Amendment Ordinance amends the Protection of Endangered Species of Animals and Plants Ordinance to, *inter alia*, take forward a three-step ivory phase-out plan. For more information, please see circular letter no. ES 02/18 dated 9 March 2018.

3. How do I prove that an ivory is an antique ivory?

The person claiming the benefit of the antique ivory exception must prove to the satisfaction of the Director of Agriculture, Fisheries and Conservation (thereafter referred to as “the Director”) that the ivory meets the definition of antique ivory (see (1)). The burden of proof is on that person.

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 ivory. The provenance may be determined through a detailed history of the ivory, including but not limited to family photos, ethnographic fieldwork, or other information that authenticates the article and assigns the work to a known period of time or, where possible, to a known artist. Results of tests using scientifically approved aging methods carried out by an accredited laboratory or facility, local or overseas, are also acceptable.

Notarized statements or affidavits by the person or a CITES² pre-Convention certificate alone are not necessarily adequate proof that the ivory meets the antique ivory exception.

4. What will the Agriculture, Fisheries and Conservation Department (AFCD) accept as a qualified appraisal?

An appraisal submitted as documentary evidence of an ivory’s eligibility under the antique ivory exception must meet the following criteria:

- The person executing the appraisal either has earned an appraisal designation from a recognized professional appraiser organization for demonstrated competency in appraising the type of property being appraised, or can demonstrate verifiable education and experience in assessing the type of property being appraised.
- The person executing the appraisal is not the importer, exporter, buyer, recipient, or seller of the ivory and does not benefit from the results of the appraisal (other than for the cost of the appraisal); is not a party to any of the transactions associated with the ivory (including any person acting as an agent for the

² The Convention on International Trade in Endangered Species of Wild Fauna and Flora

transaction); is not an employee of any business that is a party to the transaction; and is not related to the person claiming the exception.

- The facts that AFCD will examine in determining the reliability of the appraisal include but are not limited to the followings:
 - A description of the ivory that is detailed enough for a person who is not generally familiar with the type of ivory to determine that the appraisal is about the ivory in question.
 - The name and address of the qualified appraiser, or if the appraiser is a partner, an employee, or an independent contractor engaged by a person other than the person claiming the exception, the name and address of the partnership or the person who employs or engages the appraiser.
 - The qualifications of the appraiser who signs the appraisal, including the background, experience, education, and any membership in professional appraiser associations.
 - The date on which the ivory was appraised.
 - The scientific, or other, method in detail used to determine the age and species.
 - Descriptive information on the ivory, including but not limited to: the size of the ivory, the medium, the artist or culture, approximate date the ivory was created, and a professional quality image of the ivory.
 - A detailed history of the ivory, including proof of authenticity.
 - The facts on which the appraisal was based including analyses of similar works by the artist on or around the creation date.

5. How can I import/ re-export antique ivory into/ out of Hong Kong?

To import an antique ivory, a Pre-Convention Certificate issued by the previous exporting place and a Licence to Import (IL) issued by AFCD are required. Re-export of an antique ivory requires a Licence to Re-export (RL) issued by AFCD.³ Antique ivory must be inspected by an authorized officer upon arrival in Hong Kong or before departure.

6. Can I sell antique ivory in Hong Kong?

³ The application method for IL/ RL for antique ivory is at Annex II to circular letter no. ES 02/18 dated 9 March 2018.

Possession of antique ivory for commercial purposes is allowed and does not require a Licence to Possess (PL) provided that the ivory can be proven to meet the requirements for antique exception.⁴

Please note that the term “commercial purposes” does not restrict to sale only but it has a broader meaning. "Commercial purposes" means—

- (a) a purpose relating to trade or business; or
 - (b) a purpose of obtaining profit or other economic benefit (whether in cash or in kind) and directed towards sale, resale, exchange, provision of a service or other form of economic use or benefit, whether direct or indirect,
- and "non-commercial purposes" shall be construed accordingly.

Agriculture, Fisheries and Conservation Department
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⁴ A person may possess an antique ivory if he proves to the satisfaction of the Director—
(a) that he possesses a pre-Convention certificate in respect of the antique ivory;
(b) that the antique ivory was imported before 6 August 1976; or
(c) if the antique ivory was imported on or after that date, the import was not in contravention of any provision of the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (repealed) or the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586), whichever was in force at that time.