

# PROTECTION *of* ENDANGERED SPECIES

## Enhanced Enforcement Strategy

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### WHITE PAPER



November 2020

# PROTECTION<sub>of</sub> ENDANGERED SPECIES

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## PURPOSE

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1. This paper highlights the need for, and the feasibility of, making legislative amendments to specifically include wildlife crime within the scope of the Organised and Serious Crimes Ordinance) Cap. 455 (“OSCO”).
2. It reviews the role of Hong Kong’s primary legislation governing the trade of wildlife in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”), highlighting the extent and nature of the

illegal wildlife trafficking in Hong Kong and the challenges in enforcement. It proposes that existing wildlife crime offences should be added to OSCO Schedule I, if the government is to:

*provide a sufficiently strong deterrent against illicit wildlife trade, and to send a clear signal to the international and local communities that the Government is committed to the protection of endangered species and to combating endangered species smuggling.*<sup>1</sup>

## PROTECTION OF ENDANGERED SPECIES

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3. The Government implements CITES through enforcement of the Protection of Endangered Species of Animals and Plants Ordinance, Cap. 586 (“PESAPO”). The Ordinance operates on a licensing system and controls the import, export and possession of species listed under CITES (such species are documented in Appendices I, II and III of the Convention).<sup>2</sup>
4. The Agriculture, Fisheries and Conservation Department (“AFCD”) is the principal law enforcement department for PESAPO and is tasked with the investigation and prosecution of illegal import and re-export of endangered species and the monitoring of compliance with possession licensing conditions. Where contraventions of the Import and Export Ordinance, Cap. 60 (“IEO”) involving endangered species are detected, the Customs and Excise Department (“C&ED”) may initiate prosecutions. In cases involving organized and serious crime, C&ED’s Syndicate Crimes Investigation Bureau (“SCIB”) may take the lead in the investigation.

5. An inter-departmental Wildlife Crime Task Force, comprising representatives of AFCD, the Environment Bureau, C&ED and the Hong Kong Police Force (“HKPF”), was established in 2016 to develop strategies on intelligence exchange and co-ordinate joint enforcement operations. However, HKPF do not currently play a substantive role in tackling wildlife crime.
6. AFCD and C&ED may also cooperate with overseas law enforcement agencies through international joint operations and intelligence exchange to combat endangered species smuggling. Joint and targeted operations, both local and international, may be undertaken to strengthen the frontline enforcement against endangered species smuggling.

# THE ILLEGAL WILDLIFE TRADE IN HONG KONG

7. The Custom and Excise Department’s annual summary data provides the best indication of the overall volumes of wildlife seized in Hong Kong annually. The data is provided for four categories: Wood logs, Pangolin, Ivory and a catch all designation entitled ‘Other Endangered Species’. A breakdown of the constituents of the ‘Other Endangered Species’ category is not readily available, however, a review of 528 seizures<sup>3</sup> from January 2013 to December 2019 using publicly available data,<sup>4</sup> indicate hundreds of species are being illegally traded locally. Along with critically endangered Appendix I species, high value and increasingly rare reptiles, marine animals and plants are trafficked in high volumes.<sup>5</sup> Further, demand for wildlife products, particularly for use in traditional Chinese medicine, is growing.

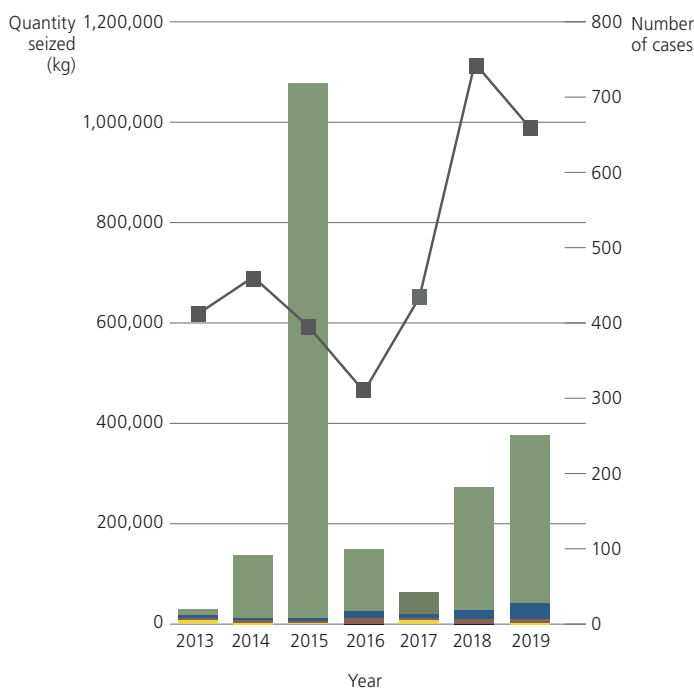
## VOLUMES

8. Both the number of cases and volume of wildlife seizures in Hong Kong are continuing to rise (Figure 1). In 2019, the volume of wood logs seized in Hong Kong increased by 36% over the previous year (2018), which itself marked an increase of 457% compared to 2017. Between 2017 and 2018, pangolin volumes increased by 123%. Under the category ‘Other endangered species’, the volume seized increased by 145% from 2017 to 2018, and increased a further 234% from 2018 to 2019 (Figure 1B).

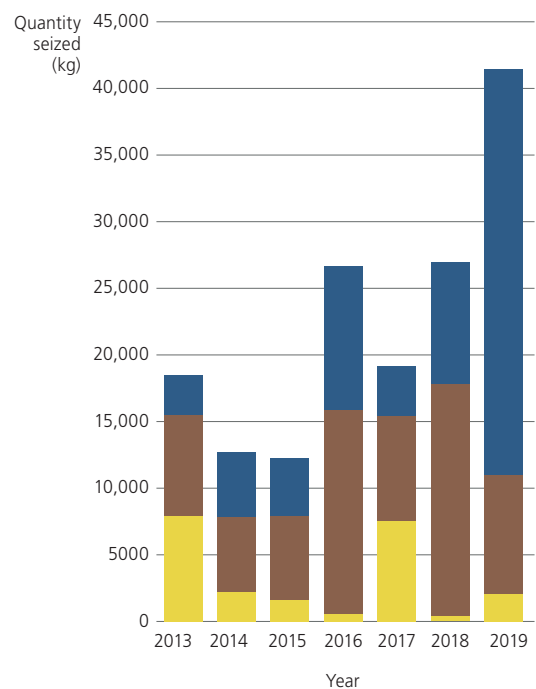
**FIGURE 1 Seizures of endangered species of wildlife in Hong Kong (2013-19)**

Data source: Hong Kong Customs and Excise Department, 2019 & 2020

**A. Annual seizures by volume and number of cases**

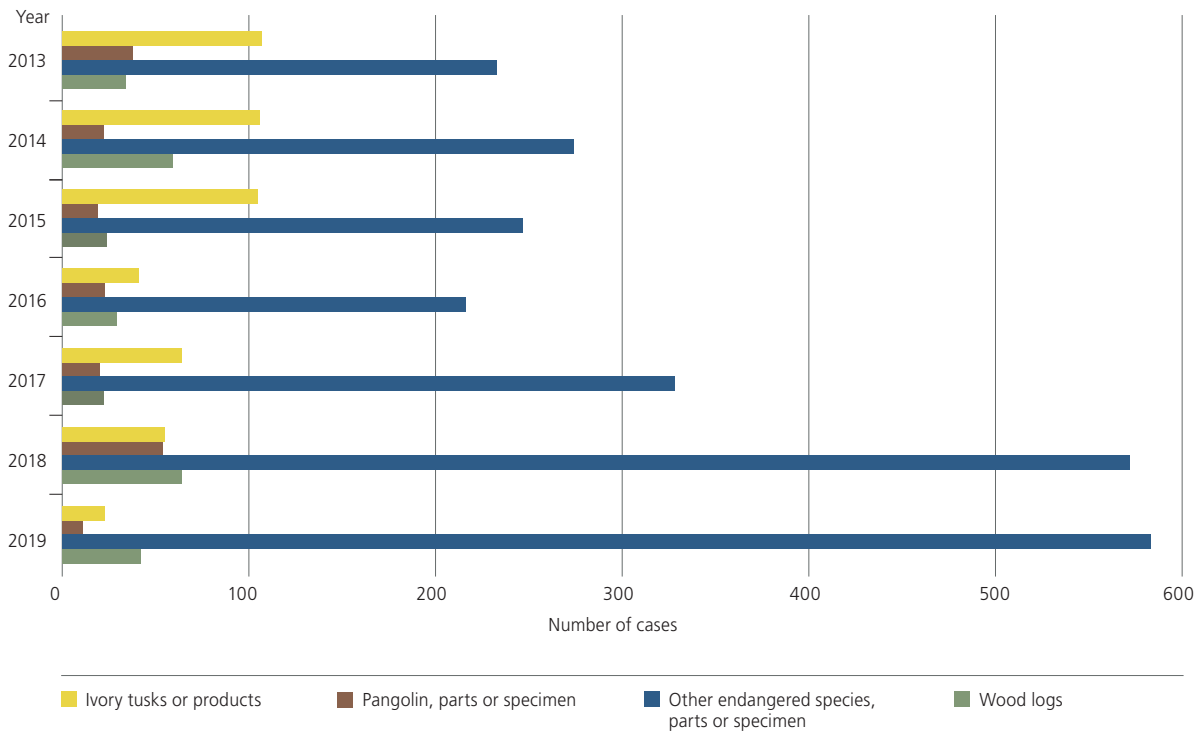


**B. Annual seizures by volume, excluding wood logs**



■ Ivory tusks or products    
 ■ Pangolin, parts or specimen    
 ■ Other endangered species, parts or specimen    
 ■ Wood logs  
—■— Number of cases

**C. Number of annual seizures**



9. In the first four months of 2019, Hong Kong broke its own seizure records when 8.3MT of pangolin scales, representing up to 13,800 pangolins, were seized from a container shipped from Nigeria (seized with 2.1MT of ivory with a total value of HK\$62 million).<sup>6</sup>
10. Between 2014 and 2018, approximately 42.9MT of pangolin scales, equivalent to up to 86,000 pangolins<sup>7</sup>, were seized in Hong Kong. This volume equates to almost a quarter (23%) of the 185MT of pangolin scales seized globally between 2014 and 2018, based on the United Nations Office on Drugs and Crime (UNODC) World WISE database<sup>8</sup>. There is widespread concern amongst the international scientific community that if trafficking on the current scale continues, all species of pangolin will become extinct within the foreseeable future.<sup>9,10</sup>

11. Four further record-breaking seizures occurred in 2019 and 2020. The first comprising 24 rhino horns (40kg)<sup>11</sup>, valued at HK\$8 million, had marked the largest such seizure to date, until a second rhino seizure in April 2019 of 82.5kg of rhino horn at Hong Kong International Airport<sup>12</sup>. The second seizure is estimated by the government to be worth HK\$16.5 million and is likely to represent the slaughter of 14 white (or 31 black) rhino. The third and fourth seizures, taking place within a week of one another (in 2020), each comprised 13MT of fins from threatened shark species arriving from Ecuador and valued at HK\$8 million in total<sup>13</sup>.

**VALUE**

12. The growth of wildlife crime offending in Hong Kong is fuelled by the increasingly lucrative nature of the trade. In 2017, the annual wildlife products seizures in Hong Kong were valued by C&ED at HK\$150 million marking a 155% increase from 2016, and over 1,500% from 2008. In 2019, the estimated value of wildlife seizures remained high – at HK\$134 million.<sup>14</sup>

**CRIMINALITY**

13. Large volume seizures in Hong Kong typically originate from Africa and follow similar patterns of concealment. Animals are collected from and trafficked across multiple countries to an export point before being secreted and smuggled to Hong Kong. Many high value species are destined for Mainland China (Annex I). Numerous international enforcement operations including Operation Chameleon (1990s -2010), Operation Crash (started in 2011 ongoing), Operation Cobra II and III (2014 and 2015), Operations Thunderbird (2017), Thunderstorm (2018), Thunderball (2019), have highlighted that Hong Kong has been affected by wildlife criminal networks.
14. According to leading scientists and peer reviewed studies<sup>15,16,17</sup> DNA analyses of eight ivory seizures since 2006, averaging over 2.5 tons each, indicates that major transnational criminal organizations are moving large volumes of ivory to Hong Kong from both sides of the African continent. The forest elephant ivory was largely poached in the TRIDOM and exported out of Togo or Nigeria. Savannah elephant ivory was poached in and around Tanzania and exported largely from Mombasa, Kenya.
15. Earlier studies<sup>18</sup> identifying key node countries for targeted anti-smuggling enforcement and education campaigns identified China as the most important country for such efforts, and whose removal from the international trade network would cause maximum disruption to illegal wildlife trading. Analysis suggested effective prevention of smuggling to China would fragment networks in 96.7% of elephant smuggling cases and 100% of rhinoceros and tiger.

**ENFORCEMENT**

16. Despite the increasing number of investigations,<sup>19</sup> prosecutions of large volume seizures in Hong Kong are rare.<sup>20</sup> Internationally significant cases have been dropped by Hong Kong prosecutors for lack of sufficient evidence.<sup>21</sup> Currently, AFCD and not C&ED investigate the vast majority of wildlife trafficking prosecutions, despite having little investigative training/experience and limited powers to do so effectively. Prosecutions in Hong Kong are, perhaps unsurprisingly, predominantly of the carriers or ‘mules’, who are typically caught red-handed at the airport. There is no indication that any transnational criminal organisations or syndicates funding the smuggling by air of wildlife into Hong Kong have ever been prosecuted within the Territory.
17. Prosecutions of cases where large volumes of wildlife have been seized from shipping containers are scarce. Between 2013-2017, a review of 50 seizures from sea containers with a total estimated value of HK\$216.4 million, identified the initiation of just two prosecutions. Even after the 2017 record seizure of 7.2 MT of ivory and the 7.1 MT of pangolin scales seized from a container in 2018, no persons or companies were prosecuted.
18. When offenders are prosecuted, most receive minimal fines.<sup>22</sup> Increased penalties under PESAPO were recently passed (Table 1), and it is accepted that time is needed to evaluate the effectiveness, or deterrent effect, of the increase. To date, some increase in sentencing has been observed, however sentences remain far below the maximum permitted and continue to send a message internationally that Hong Kong is not taking wildlife crime seriously enough. Given the significance of the seizures made over the past 7 years, it is imperative that the Territory now demonstrates a strong commitment to international efforts to combat wildlife crime, using all the prosecution powers available in law to enforcement authorities.

# AN OVERVIEW OF OSCO

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19. **HISTORY AND INTENTION**
- The Organized and Serious Crimes Bill (which ultimately became OSCO) was introduced in 1992 to tackle the growth of organized and serious crimes in Hong Kong. The new legislation sought to improve the government's ability to investigate and prosecute organized and serious crimes by providing for a combination of enforcement and deterrent methods including: (i) additional investigation powers; (ii) confiscation measures; (iii) wider provision against money laundering; and (iv) enhancement of sentencing in respect of specified offences involving organized crime (Annex II).<sup>23</sup> OSCO came into full effect on 28 April 1995.

20. **DEFINING ORGANIZED CRIME**
- The enhanced powers provided by OSCO may arise in cases where the crime alleged constitutes an "organized crime" or a "specified offence". A crime is an "organized crime" where it is one of the specified offences listed in Schedule 1 of OSCO ("Schedule 1") (see Annex III) and, in addition:
- (1) is connected to triad activities; or
  - (2) is related to the activities of 2 or more persons associated together for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves "substantial planning and organization"; or
  - (3) is committed by 2 or more persons, involves "substantial planning and organization" *and* involves
    - i) of loss of the life of any person, or a substantial risk of such a loss; or
    - ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or
    - iii) serious loss of liberty of any person.<sup>24</sup>

21. For the purposes of this paper, Schedule 1 offences relevantly include:
- (1) offences under IEO (Cap.60) including the offence of importing or exporting certain prohibited articles and unmanifested cargo;
  - (2) offences under the Dangerous Drugs Ordinance (Cap.134), and offences under the Theft Ordinance (Cap. 210); and
  - (3) money laundering by dealing with property known or believed to represent proceeds of an indictable offence.<sup>25</sup>

- ENHANCED POWERS**
22. Certain enhanced investigative and punitive powers are granted to authorities by virtue of the applicability of OSCO. These include:
- (1) **Use of coercive investigative powers to gather intelligence.** Under section 3, prosecutors may apply to the Court of First Instance for a special order to investigate a person or persons involved in organised crime; and under section 4, prosecutors may apply to the Court for a special order to make available certain materials related to organised crime or the proceeds of a specified offence (and a target may be required to produce or permit access to materials).
  - (2) **Power to confiscate proceeds of crime in District Court and Court of First Instance.** Under section 8, a judge may order that the benefits of a specified crime are confiscated (if the proceeds are at least HK\$100,000).

23. (3) **Power to issue restraint orders and charging orders.** Under section 15, a Court of First Instance judge may make an order to prohibit a person from dealing with specified realizable property and under section 16, a judge may make a charging order against any realisable property to satisfy a confiscation order or for the value of the property.
- (4) **Power for courts to impose enhanced sentences.** Under section 27, on conviction of a defendant, prosecutors may demonstrate a specified offence was linked to organised crime and seek an enhanced penalty in the District Court and the Court of First Instance (as is already being utilized for theft of incense trees).
- (5) **Money laundering charges for indictable crimes.** Section 25 permits prosecutors to pursue money laundering offences against persons dealing with the proceeds of indictable crime.
- Currently, Cap. 586 offences are not included in Schedule 1 to OSCO as ‘specified crime’. This has several very significant repercussions:
- (1) CED cannot utilise the investigative powers under section 4 of OSCO to gain access to materials related to the proceeds of wildlife crime.
- (2) Where a person has been convicted of a wildlife crime, the Courts are not empowered to use section 8 of OSCO to confiscate the proceeds of that crime, nor can judges use OSCO to issue restraint or charging orders over property representing the benefits of wildlife crime.
24. (3) The Courts are not permitted to pass enhanced sentences for wildlife crimes charged under Cap. 586. Only the theft of incense trees is able to attract an enhanced sentence as theft is a ‘specified crime’ under Schedule 1 of OSCO.
- Even the recent amendment to Cap. 586, making some wildlife crimes indictable does not assist. While theoretically charges can now be brought under section 25 for money laundering offences related to wildlife crime, it is very unlikely they could succeed, with the law as it now stands. Without access to the coercive investigative powers available under OSCO section 4, C&ED are unlikely to gather sufficient evidence to effectively pursue charges against offenders for dealing with the proceeds of wildlife crimes under section 25.
25. Further, not all serious wildlife offences, where defendants have benefited from the proceeds of their crime, fit within the definition of money laundering. It is possible to envisage many scenarios where an offender has benefited from wildlife crime and is liable for offences under Cap. 586, yet there is insufficient evidence to establish he ‘dealt’ with the proceeds (as is required for a successful prosecution under section 25). In such cases, were Cap. 586 offences included in Schedule 1, the benefits of the offending could still be confiscated by the courts. Currently this is not possible.



# CURRENT OSCO PROVISIONS AND POWERS RELEVANT TO WILDLIFE CRIME

## SUMMARY OF PROVISIONS

26. Only a very limited number of ‘specified offences’ under OSCO may currently be utilized to pursue wildlife crime offenders. These include theft (which is currently used to prosecute gangs who steal incense trees), handling stolen goods, import and export offences and money laundering. A table of these offences is included in Table 1.
27. Commission of a “Schedule 1 offence” is defined to include, not just the commission of the offence itself, but also conspiracy to commit, inciting another to commit, attempting to commit and aiding, abetting, counselling or procuring another to commit any of the offences in Schedule 1 (section 2(1)).<sup>26</sup>

**TABLE 1 Current Offences Listed in OSCO Schedule 1 Which Are of Relevance to Wildlife Crime**

Crime	Ordinance and section
Theft	Theft Ordinance, Section 9
Handling Stolen goods	Theft Ordinance, Section 24(1)
Importing or exporting unmanifested cargo	Import and Export Ordinance, Section 18
Import of certain prohibited articles	Import and Export Ordinance, Section 6C
Export of certain prohibited articles	Import and Export Ordinance, Section 6D(1) and (2)
Dealing with property known or believed to represent proceeds of indictable offence	Organized and Serious Crimes Ordinance, Section 25(1)

## OFFENCES UNDER THE THEFT ORDINANCE (CAP. 210)

28. Theft (section 9; OSCO Schedule 1) has been widely used to prosecute theft of incense trees (*Aquilaria sinensis*).<sup>27</sup> Handling stolen goods (section 24(1); OSCO Schedule 1) has also been used to prosecute theft of incense trees,<sup>28</sup> as well as theft of Buddhist pines<sup>29</sup> (*Podocarpus macrophyllus*; not protected under CITES or Cap. 586<sup>30</sup>). Annex IV sets out the usage of OSCO powers in a selection of cases involving theft of endangered flora (mainly incense trees) between 2006 and 2017.
29. The nine cases set out in Annex IV illustrate the manner in which courts are able to utilize OSCO enhanced sentencing to more effectively combat wildlife crime. In each of the decisions, the judges emphasised the need for deterrence, utilising aggravating factors including the prevalence of illegal felling of incense trees, the vulnerability of the trees and the species’ survival, the financial value of the gain from the crime, and the harm caused to the community and the environment as a basis to pass more severe sentences. Judges then enhanced the sentences passed by 25% after prosecutors made applications suggesting the

crimes were organized and serious. The courts in some of these cases mentioned CITES or PESAPO (although the defendants were not being charged under PESAPO) in order to underscore the need for deterrence when endangered species are involved.

**OFFENCES UNDER THE IMPORT AND EXPORT ORDINANCE (CAP. 60)**

30. Wildlife crimes often involve smuggling, and as such, usually constitute “unmanifested cargo”, i.e. cargo that, when being taken into or out of Hong Kong, has not been declared to customs through the requisite documentation referred to as a “manifest”. These include the following offences as documented in Annex V:
1. *Importing or exporting unmanifested cargo (section 18; OSCO Schedule 1):*
  2. *Assisting, etc., in export of unmanifested cargo (section 18A; OSCO Schedule 2)*
  3. *Assisting, etc., in carriage of prohibited, etc., articles (section 35A; OSCO Schedule 2)*
  4. *Importing certain prohibited articles (section 6C; OSCO Schedule 1) and exporting certain prohibited articles (section 6D; OSCO Schedule 1)*
31. The five cases set out in Annex V involved enhancement of sentences ranging from 10% to 50%. The judges in these cases emphasized the need for deterrence in large scale smuggling, and when deciding the level of enhancement took into account: the extent of loss of revenue to the government and impact on the economy, the sophistication of planning or organization, and the extent of participation of the individual defendant.

**SECTION 25(1) OSCO: MONEY LAUNDERING.<sup>31</sup>**

32. OSCO’s definition of “dealing” is quite broad, covering: receiving or acquiring the property, concealing or disguising the property, disposing of or converting the property, using the property as security, or bringing into or removing from Hong Kong the property (section 2(1)). Further details of these provisions are provided in Annex VI.
33. Since PESAPO was amended in 2018 to enable prosecution of Cap. 586 offences on indictment,<sup>32</sup> money laundering charges may be laid against persons “dealing with the proceeds” of PESAPO crimes. However, without the listing of Cap. 586 offences in Schedule 1, the coercive powers in OSCO remain unavailable to C&ED in investigating wildlife offences. Convictions for money laundering charges in connection with wildlife crime are yet to be reported.
34. It is notable that in addition to UN calling on countries to leverage anti money laundering laws in the fight against wildlife trafficking<sup>33</sup>, the Financial Action Task Force on money laundering (“FATF”), an inter-governmental body which sets international standards and promotes effective implementation of legal, regulatory and operational measures for combatting money laundering, announced in November 2019 that helping countries to follow the money involved in illegal wildlife trade and combatting wildlife crime through anti money laundering tools will be their priority in the coming year. While Hong Kong has been commonly regarded as having a relatively robust anti money laundering tools regime, there are still certain areas where Hong Kong has yet to comply with FATF’s recommendations, one of which is the failure to include another category of the 21 designated predicate offences prescribed by FATF in Hong Kong’s anti money laundering tools legislation, i.e. environmental crime including wildlife crime.

**PARALLELS SHOWING HOW OSCO POWERS CAN BE USED TO COMBAT WILDLIFE CRIMES**

35. The Courts have used OSCO powers in cases involving theft, handling stolen goods, unmanifested cargo and money laundering offences, not only to enhance sentences (and to receive evidence on the impact of the crime to support enhancement), but also to make confiscation or restraining orders, stripping offenders of the proceeds of their crimes. Annex VII sets out a summary of the use of OSCO powers in such cases. It is mandatory for a judge to consider passing an enhanced sentence, if the prosecution makes application to it that the crime was organized, although whether an enhanced sentence is passed is ultimately a matter for the court to decide.
36. The Customs and Excise Department detected 434 cases of smuggling of endangered species in 2017, 745 in 2018 and 659 in 2019.<sup>34</sup> Apart from using the offence of ‘theft’ to tackle gangs targeting endangered flora (such as agarwood) with enhanced sentences, there have not been any other instances in which prosecutions of wildlife crime offenders utilized OSCO powers. Although the offences of importing or exporting unmanifested cargo, assisting in carriage of prohibited articles and money laundering are, all specified offences, no use of OSCO provisions has been made in connection with wildlife crimes committed under PESAPO.<sup>35</sup> It is clear that the enhanced powers available for existing offences under Schedules 1 and 2 and the money-laundering provision<sup>36</sup> are currently under-utilized, to combat wildlife crime. According to the Financial Services and the Treasury Bureau (FSTB) there have been no prosecutions for money-laundering in connection to any of 6,086 “environmental crimes” (including 2,542 cases of smuggling of endangered species) investigated between 2015 and 2019.<sup>37</sup>

**Comparison of Investigative Powers Under PESAPO and OSCO**

37. PESAPO Part 6 sets out the power of authorized officers to require the production of documents. These powers are limited. Officers may require a person to produce licencing documents or other documents to show that possession or control is not in contravention of PESAPO however the special investigatory powers in sections 3 and 4 of OSCO are not applicable to Cap. 586 offences.
38. PESAPO Part 7 deals with return or forfeiture of items seized under PESAPO, but there is no equivalent to OSCO’s confiscation or restraint orders over assets. The PESAPO provisions only provide for the forfeiture of an item seized or the proceeds of sale of the item.<sup>38</sup>

# FEASIBILITY: THE LEGISLATIVE AMENDMENT PROCEDURE

39. There have been various important changes to OSCO over the years.<sup>39</sup> A number of serious offences, including the use of weapons of mass destruction, chemical weapons, copyright infringement, and fraud under section 16A of the Theft Ordinance, have been added to OSCO Schedule 1. As a result, OSCO provisions are applicable to organized crimes involving these offences.
40. All previous instances of additions into Schedule 1 OSCO were amended via a Government-initiated Amendment Bill or Order. Such amendment bills and orders can be classed into five categories for ease of reference (Table 2).
41. It is suggested that adding the existing offences in Cap. 586 to Schedule 1 (Category 1), is the most appropriate route to more effectively combat wildlife crime. This is achieved through passing subsidiary legislation, which can be achieved in the case of OSCO under the enabling provision section 31 OSCO granting power to amend.<sup>40</sup>

**TABLE 2 Categories of OSCO Amendments**

Cat.	Nature	Example
1	Existing offences in existing ordinances added into Schedule 1	The Organized and Serious Crimes (Amendment of Schedule 1) Order 1999 added paragraphs 14A (contrary to the Trade Descriptions Ordinance (Cap. 362)) and 18 (contrary to the Copyright Ordinance (Cap. 528) to Schedule 1
2	New offences created and added into an existing relevant ordinance, with a consequential amendment clause in the bill to add the new offences in Schedule 1	<ul style="list-style-type: none"> <li>The Theft (Amendment) Ordinance added paragraph 12 (fraud contrary to s.16A Theft Ordinance) to Schedule 1</li> <li>The Prevention of Bribery (Amendment) Ordinance added paragraph 9 (anti-bribery offences) to Schedule 2</li> </ul>
3	New offences created by way of a new ordinance, with a consequential amendment clause in the bill to add the new offences into Schedule 1	<ul style="list-style-type: none"> <li>The Chemical Weapons (Convention) Ordinance added paragraph 19 (prohibition of use of chemical weapons) to Schedule 1</li> <li>The Weapons of Mass Destruction (Control of Provision of Services) Ordinance added paragraph 17 (prohibition of weapons of mass destruction) to Schedule 1</li> </ul>
4	The wording of an existing offence in Schedule 1 is amended by amending the wording of the offence in the relevant ordinance	The Copyright (Amendment) Ordinance amended the wording of the offences at paragraph 18 (contrary to the Copyright Ordinance (Cap. 528)) to Schedule 1
5	Existing offences in existing ordinances added into Schedule 2	In the Securities and Futures (Amendment) Ordinance 2014, market misconduct offences under the Securities and Futures Ordinance (“SFO”, Cap. 571) were added to Schedule 2 of OSCO.

42. Analogously, the Organized and Serious Crimes (Amendment of Schedule 1) Order 1999, was passed specifically to include existing copyright piracy and trademark counterfeiting offences contained in two separate ordinances into Schedule 1. Specifically, the offences at paragraphs 14A (contrary to the Trade Descriptions Ordinance (Cap. 362)) and 18 (contrary to the Copyright Ordinance (Cap. 528)) were added to OSCO Schedule (Annex III). This was for the purpose of enabling Customs and Excise officers to draw on the special powers available under OSCO to combat more serious instances of these offences.<sup>41</sup>

43. Such amending subsidiary legislation is initiated by a resolution made by the Chief Executive in Council.<sup>42</sup> A Legislative Council Brief is produced by the Government; the proposed Order is tabled for discussion at the Legislative Council. Unlike proposed bills, such a proposed Order does not go through the usual First, Second and Third Reading stages although the proposed amendments are still debated in the House Committee and Bills Committee. A detailed timeline and legislative amendment procedure for the Organized and Serious Crimes (Amendment of Schedule 1) Order 1999 is provided in Annex VIII.

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## CONCLUSION

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44. The Category 1 route is recommended to amend OSCO to include Cap. 586 offences in Schedule 1. This route makes use of the existing offences in Cap. 586 and brings them under the existing OSCO's purview, without the need to draft a significant amount of new legislation. This subsidiary legislation route also makes the process slightly simpler than passing an amendment bill which has to go through the First, Second and Third Reading stages, thereby possibly saving time in the legislative timetable. The rationale for inclusion

of existing Cap. 586 offences (or the more serious Cap. 586 offences, e.g. those relating to Appendix 1 species (most endangered species)) would be similar to the rationale for introducing heavier penalties under the 2018 Amendment Ordinance to Cap. 586. The purposes of introducing heavier penalties under the Amendment Ordinance were to "provide a strong deterrent against illicit wildlife trade and to show that the Government is very serious about deterring these crimes".<sup>43</sup>



# END NOTES & REFERENCES

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1. Legislative Council Secretariat (2018) *Report of the Bills Committee on Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017*. LC Paper No. CB(1)508/17-18). Paragraph 48. Available at: <https://www.legco.gov.hk/yr16-17/english/bc/bc06/reports/bc0620180131cb1-508-e.pdf>; ISD (2018) *LCQ22: Prohibiting the trade of products containing ingredients from bear bile*. Accessed at: <https://www.info.gov.hk/gia/general/201805/30/P2018053000640.htm>
2. Regulation in Cap. 586 follows the structure of regulation of species as listed under CITES according to their level of being endangered (viz. listed under Appendices I, II or III; with Appendix I species being the most endangered). Part 2 of Cap. 586 provides for the restriction of import, introduction from the sea, export, re-export and possession of Appendix I species, which are threatened with extinction. Offences are created for contravention of provisions under this Part. Part 3 sets out the restriction of import, introduction from the sea, export, re-export and possession of Appendix II species and Appendix III species.
3. Based upon data from the Wildlife Product Seizures Database (“WiPS”) maintained by ADM Capital Foundation (“ADMCF”).
4. Hong Kong Government Press Releases, Controlling Officers Replies to the Finance Committee and responses to Legislative Council Questions.
5. Hong Kong Wildlife Trade Working Group (2018) *Trading in Extinction the Dark Side of Hong Kong’s Wildlife Trade*. ADMCF: Hong Kong.
6. C&ED (2019) *Hong Kong Customs mounts joint operation with Mainland Customs to combat cross-boundary endangered species smuggling activities (with photos)* - 1 February 2019. Accessed at: [https://www.customs.gov.hk/en/publication\\_press/press/index\\_id\\_2441.html](https://www.customs.gov.hk/en/publication_press/press/index_id_2441.html).
7. Conversion based on the assumption that the scales arriving from African nations are potentially White-bellied pangolin (*Phataginus tricuspis*), with an average scale weight of 0.6kg per animal. Those arriving from Asian nations are potentially Sunda pangolin (*Manis javanica*), which averages 0.36kg per animal.
8. UNODC (2020) *World Wildlife Crime Report: Trafficking in protected species*. United Nations: Vienna. p. 67.
9. According to the IUCN, all eight species of pangolin are threatened with extinction:
  - Chinese pangolin (*Manis pentadactyla*) – Critically Endangered
  - Sunda Pangolin (*Manis javanica*) – Critically Endangered
  - Philippine Pangolin (*Manis culionensis*) – Endangered
  - Indian Pangolin (*Manis crassicaudata*) – Endangered
  - Temminck’s Ground Pangolin (*Smutsia temminckii*) – Vulnerable
  - White-bellied Pangolin (*Phataginus tricuspis*) – Vulnerable
  - Giant Ground Pangolin (*Smutsia gigantea*) – Vulnerable
  - Black-bellied Pangolin (*Phataginus tetradactyla*) – Vulnerable
10. Aisher, A. (2016) *Scarcity, Alterity and Value: Decline of the Pangolin, the World’s Most Trafficked Mammal Conservation and Society*. 14(4): 317-329.
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21. Two recent seizures are indicative of this – e.g. 7.2MT ivory container 2018 and 7.1MT Pangolin scales 2018 – are known not to have been prosecuted and case closed – Sources: C&ED (2020) *Personal Communication*.; AFCD (2020) *Personal Communication*.
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24. The full provision (under section 2(1)) provides that organized crimes means an Schedule 1 offence that “(a) is connected with triad activities; (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more Schedule 1 offences and involves substantial planning and organization; or (c) is committed by 2 or more persons, involves substantial planning and organization and involves (i) loss of the life of any person, or a substantial risk of such a loss; (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or (iii) serious loss of liberty of any person.”
25. As defined in OSCO section 25(1).
26. Section 2(1) of OSCO provides: “Schedule 1 offence (附表1所列罪行) means— (a) any of the offences specified in Schedule 1; (b) conspiracy to commit any of those offences; (c) inciting another to commit any of those offences; (d) attempting to commit any of those offences; (e) aiding, abetting, counselling or procuring the commission of any of those offences.”
27. HKSAR v *Xie Jinbin* [2011] 2 HKLRD 631; HKSAR v *Wang Quanwen* (CACC 263/2014, 27 March 2015).
28. HKSAR v *Cui Chelong* (DCCC 826/2014, 9 December 2014); HKSAR v *Liu Hongzan* (DCCC 720/2013, 12 September 2013).
29. HKSAR v *Yeung Lap* (CACC 385/2007, 21 April 2008).
30. HKSAR v *Xie Jinbin* (CACC 195/2010, 28 January 2011) at paragraph 9; Hong Kong Herbarium entry on *Podocarpus macrophyllus* at <http://www.herbarium.gov.hk/subpages.aspx?id=9338>
31. Section 25(1) in full reads: “Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person’s proceeds of an indictable offence, he deals with that property.”
32. Environment Bureau (2017) *Protection of Endangered Species of Animals and Plants Ordinance (Chapter 586)*. Legislative Council Brief. Paragraph 10. Accessed at: [https://www.legco.gov.hk/yr16-17/english/bills/brief/b201706024\\_brf.pdf](https://www.legco.gov.hk/yr16-17/english/bills/brief/b201706024_brf.pdf).
33. The UN General Assembly Resolution A/RES/69/314 and A/71/L.88 respectively:
  1. calls upon Member States to make illicit trafficking in protected species of wild fauna and flora involving organized criminal groups a serious crime, in accordance with their national legislation and article 2(b) of the United Nations Convention against Transnational Organized Crime (“UNTOC”);
  2. calls upon Member States to review and amend national legislation, as necessary and appropriate, so that offences connected to the illegal trade in wildlife are treated as predicate offences, as defined in the UNTOC for the purposes of domestic money laundering offences and are actionable under domestic proceeds of crime legislation, and so that assets linked to illegal trade in wildlife and wildlife products can be seized, confiscated and disposed of; and
  3. encourages Member States to make use, to the greatest extent possible, of legal instruments available at the national level to tackle illicit trafficking in wildlife, including through legislation related to money-laundering, corruption, fraud, racketeering and financial crime.
34. C&ED (2020) *Personal Communication*.
35. One of the reasons for this is that most Cap. 586 offences were prosecuted as summary offences prior to the 2018 amendment to Cap. 586, and these proceedings in the Magistrates’ Courts are not always published.
36. OSCO s 25(1).
37. ISD (2020) LCQ18: *Predicate offences for money laundering involving environmental crimes*. Accessed at: <https://www.info.gov.hk/gia/general/202007/08/P2020070800288.htm>.
38. Cap. 586 s 40.
39. *Annotated Ordinances of Hong Kong: Organised and Serious Crimes Ordinance, Cap. 455*, Introduction Chapter, sets out the full description.
40. Section 31 OSCO reads, in full: “Subject to the approval of the Legislative Council, the Chief Executive in Council may by order amend the amount specified in section 8(4) and the Schedules.” Any subsidiary legislation which requires the approval of the Legislative Council has to be submitted to the Council, which may by resolution approve or amend it. Section 35 of the Interpretation and General Clauses Ordinance (Cap. 1) provides the legal basis for this procedure.
41. Trade and Industry Bureau (1999) *Organized and Serious Crimes Ordinance (Chapter 455)*. TIB 09/46/12 (27). 14 October 1999. Paragraph 7. Accessed at: [https://www.legco.gov.hk/yr99-00/english/panels/ti/papers/ti0111\\_5.pdf](https://www.legco.gov.hk/yr99-00/english/panels/ti/papers/ti0111_5.pdf).
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