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**Bills Committee on
Air Pollution Control (Amendment) Bill 2008**

**Background brief prepared for the
meeting on 10 April 2008**

Purpose

This paper gives a summary of discussion by the Panel on Environmental Affairs (the Panel) on the proposal to amend the Air Pollution Control Ordinance (Cap 311) (APCO).

Introduction

2. To improve air quality, the Hong Kong Special Administrative Region Government (HKSARG) reached a consensus with the Guangdong Provincial Government in April 2002 to reduce the emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x), respirable suspended particulates (RSP) and volatile organic compounds by 40%, 20%, 55% and 55% respectively by 2010 as compared to 1997.

3. Power generation is the largest emission source in Hong Kong, accounting for 91% of SO₂ and half of NO_x and RSP emitted locally in 2005. For Hong Kong to achieve the 2010 emission reduction targets, it is essential for the power companies to reduce substantially their emissions of SO₂, NO_x and RSP by 2010. To this end, the Administration has been engaging the two local power companies since 2003 regarding the imposition of emission caps in 2010. Since 2005, emission caps on the power stations have been imposed upon renewal of their respective Specified Process Licences (SPLs). These emission caps will be progressively tightened to ensure that Hong Kong can meet the 2010 emission reduction targets.

4. To ensure a smooth, timely and transparent implementation of the emission caps for the power sector, the Administration considers it appropriate to stipulate by legislation the maximum quantity of emission permissible for the power plants and allow them to use emissions trading as an alternative means for achieving the emission caps. Opportunity is also taken to amend the appeal provisions to ensure the independent and impartial operation of the Appeal Board under APCO.

The Bill

5. The Bill aims to –

- (a) cap the emissions of SO₂, NO_x and RSP of power plants in Hong Kong in 2010 and beyond;
- (b) facilitate the use of emissions trading as a means to comply with the emission caps for power plants; and
- (c) repeal the provision that enables the Authority (i.e. the Director of Environmental Protection) to refer an Appeal Board's decision made under APCO for review by the Chief Executive in Council and bar public officers from serving on an Appeal Board, except that a judge may still be appointed as the Chairman of the Appeal Board.

Major issues raised by the Panel

6. The Panel received a briefing on the proposal to amend APCO at its meeting on 17 December 2007.

Capping the emissions of the power sector

7. The Panel noted that the emission allowances for the power sector and the methodology for allocating these emission allowances would be set out in a Technical Memorandum (TM) under APCO. Emission allowances would be allocated to individual power plants on a pro-rata basis in accordance with their respective share of the total amount of electricity generated for local consumption. To cater for the change of the market share in electricity generation, the allocation would be updated regularly, and in any event not less than once every three years in accordance with their total amount of electricity generation for local consumption for the immediate past five years. In addition to the regular updating according to individual power plants' respective market share, the overall emission caps for the power sector might also need to be revised in future in view of the need to continuously improve air quality. To provide sufficient lead time for power companies to adjust their operation, any change in the allocation of emission allowances, including that resulted from the regular updating, an advance notice of not less than four years would be given. To cater for the requirements of potential new comers, a small amount of emission allowances broadly equivalent to 1% of the total emission allowances for the power sector would be allocated to the new power plant entering the local electricity market. The two power companies had raised no in-principle objection to the proposed legislative amendments to impose the emission caps.

8. Some members expressed concern that the high-handed approach adopted by the Administration to cap the emissions of the power sector through legislative means would set a bad precedent for other sectors. The imposition of emission caps might

also increase the cost of electricity generation, which would likely be transferred to consumers. Other members were disappointed that greenhouse gases, particularly carbon dioxide, were not included in the emission caps for the power sector.

Facilitating emissions trading

9. The Panel noted that to facilitate the power plants in Hong Kong to comply with the emission caps through emissions trading with other power plants in Hong Kong and in the Pearl River Delta (PRD) Region, emission allowances allocated to a SPL holder of power plant would be tradable. Emission allowances granted under an SPL could be transferred or traded locally subject to a joint written notification by the concerned SPL holders being duly made to the Authority. Trading of emission allowances with other power plants in PRD Region would be conducted and coordinated in accordance with the framework set under the Emissions Trading Pilot Scheme for Thermal Power Plants in the Pearl River Delta Region. To distinguish between the two, the emissions traded under the Pilot Scheme were named “emission credits”. In cases where the emissions trading partner failed to deliver the emission credits under the Pilot Scheme but due diligence had been exercised by the SPL holder in contracting for and implementing a trading contract, additional and non-transferable emission allowance no more than the amount of undelivered emission credits would be issued to the SPL holder at a uniform cost of HK\$20,000 per tonne of air pollutant solely for reconciling the excess amount of air pollutants of the concerned year. For events completely beyond the control of the SPL holder which resulted in excess emissions, the Authority might issue additional and non-transferable emission allowances no more than the excess emissions incurred to the SPL holder at no cost solely for reconciling the excess amount of air pollutants of that particular year.

10. Some members considered that a pilot scheme should be carried out before the actual implementation of emissions trading as the local power companies had indicated that they were not very clear about the implementation details. Others questioned the basis upon which the charge of \$20,000 for additional emission allowance was arrived at and whether this conformed to international practices. To facilitate a better understanding, the Administration had provided an information paper explaining the operation of the Pilot Scheme, relevant overseas experience on emissions trading and charging rate for additional emission allowance (LC Paper No. CB(1)804/07-08(01)).

Amending the Appeal Board provisions

11. The Panel noted that the proposed amendment to repeal section 35 of APCO, which empowered the Authority to refer an Appeal Board’s decision for review by the Chief Executive in Council if the Authority considered that exceptional circumstances required such a review in the public interest, was to streamline the process. To further enhance the independence and impartiality of the Appeal Board, public officers would be barred from serving on an Appeal Board.

12. Members generally supported the amendments to the appeal provisions. To facilitate a better understanding on the composition of the Appeal Boards, the Administration had provided the composition and membership list of the Appeal Board (LC Paper No. CB(1)804/07-08(01)).

Relevant papers

Information paper provided by the Administration for the Environmental Affairs Panel meetings on 17 December 2007

<http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea1217cb1-418-7-e.pdf>

Supplementary information paper provided by the Administration for the Environmental Affairs Panel meetings on 17 December 2007

<http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea1217cb1-804-1-e.pdf>

Minutes of the Environmental Affairs Panel meeting on 17 December 2007

<http://www.legco.gov.hk/yr07-08/english/panels/ea/minutes/ea071217.pdf>

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