

**President's ruling on
Committee Stage amendments to
Air Pollution Control (Amendment) Bill 2008
proposed by Hon Audrey EU Yuet-mee, SC, JP**

Hon Audrey EU Yuet-mee has given notice to move Committee Stage amendments (CSAs) to the Air Pollution Control (Amendment) Bill 2008 (the Bill), if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council (LegCo) of 9 July 2008. Before making a ruling on the admissibility of the CSAs, I have invited the Secretary for the Environment (SEN) to offer his comments on the CSAs, and Ms EU to offer her response. I have also sought the advice of Counsel to the Legislature.

Hon Audrey EU Yuet-mee's proposed CSAs

2. Ms EU's proposed CSAs seek to add carbon dioxide (CO₂) as the fourth type of air pollutants that would come under the regulation of the Bill.

Relevant rule in the Rules of Procedure

3. Rule 57(4)(a) of the Rules of Procedure (RoP) provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

The Administration's views and the Member's response

4. SEN is of the view that Ms EU's proposed CSAs are not relevant to the subject matter of the Bill and should not be admissible under Rule 57(4) of RoP. Ms EU does not agree to SEN's views. SEN's comments and Ms EU's response are summarized in the **Appendix**.

Advice of Counsel to the Legislature

5. Counsel to the Legislature has given his opinion, which is summarized in the following paragraphs.

6. Counsel explains that the subject matter of the Bill is a composite one as indicated by the fact that the four substantive purposes of the Bill as set out in its long title are independent of each other. The first purpose in the long title is to regulate the emission of sulphur dioxide, nitrogen oxides and respirable suspended particulates as a result of the conduct of certain electricity works by measures including the allocation to specified licence holders of the

entitlement to emit those pollutants from premises used for the conduct of such electricity works, the imposition of relevant terms and conditions on the specified licences, and the specification of the manner in which such terms and conditions may be complied with.

7. Counsel points out that an examination of the provisions on these regulatory measures (i.e. provisions other than clauses 1, 2(1), and 8 to 11 of the Bill) confirms that the purpose referred to above can be regarded as one of the subject matters of the Bill. Counsel further points out that this subject matter of the Bill is relevant to the consideration of the admissibility of Ms EU's proposed CSAs as she is seeking to add CO₂ as the fourth type of air pollutant that would come under the regulation of the Bill.

8. Counsel states that he would agree with Ms EU's view that whether a proposed CSA is relevant to the subject matter of a bill is a matter of substance. Government policy objectives behind the introduction of a bill as stated in LegCo Briefs or other relevant documents which contain useful information may be considered by the President when forming a view on the subject matter of the Bill. However, such information is not determinative of what the subject matter of a bill is. Ultimately, it is a matter for the President to form a view on the subject matter of the Bill, after having studied the bill concerned and considered all relevant information where necessary.

9. Counsel is of the view that having regard to the fact that one of the policy objectives underlying the Bill is to regulate the emission of three specified pollutants, namely sulphur dioxide, nitrogen oxides, and respirable suspended particulates, from the power plants in Hong Kong in 2010 and beyond, and having examined the relevant details of the Bill, the subject matter of the Bill in relation to the regulation of emission of these pollutants has a clearly defined scope. Any proposed CSA to add other types of pollutant to the list of pollutants specified in the Bill for regulation would be introducing matters which are beyond the scope of the Bill.

10. Counsel's advice is that Ms EU's proposed CSAs are beyond the scope of the Bill and should be considered as not relevant to the subject matter of the Bill.

My opinion

11. Ms EU's proposed CSAs seek to amend the Bill to regulate the emission of CO₂, in addition to sulphur dioxide, nitrogen oxides and respirable suspended particulates, as a result of the conduct of certain electricity works. My opinion is that nothing in the long title of the Bill, its provisions, Explanatory Memorandum and LegCo Brief suggests that the scope of the Bill include the regulation of emission of pollutants other than the three specified types. It is very clear that Ms EU's proposed CSAs are not relevant to the subject matter of the Bill.

Ruling

12. Having considered SEN's comments, Ms EU's response and the advice of Counsel to the Legislature, I rule that Ms EU's proposed CSAs are not relevant to the subject matter of the Bill. It is not admissible under Rule 57(4)(a) of RoP.

(Mrs Rita FAN)
President
Legislative Council

7 July 2008

Air Pollution Control (Amendment) Bill 2008

**Summary of Hon Audrey EU Yuet-mee's proposed Committee Stage amendments,
Secretary for the Environment's comments on the admissibility of the CSAs under Rule 57(4)(a) of the Rules of Procedure
and Ms EU's response to such comments**

CSAs	Secretary for the Environment's comments	Hon Audrey EU Yuet-mee's response
To amend the long title and clause 2(3)	<p>The policy objective of the Bill is to amend the Air Pollution Control Ordinance (Cap. 311) to regulate the emission of three specified pollutants, namely sulphur dioxide, nitrogen oxides and respirable suspended particulates, from the power plants in Hong Kong in 2010 and beyond. This objective has been clearly stated in the long title and the Explanatory Memorandum of the Bill, as well as the LegCo Brief issued on 4 February 2008. It is not the policy objective of the Bill to regulate other types of pollutant, including CO₂, and nothing in the above mentioned documents suggests otherwise.</p> <p>Having considered the above, the Administration's view is that Hon Audrey EU's proposed amendments are not relevant to the subject matter of the Bill, thus they do not comply with Rule 57(4) of RoP.</p> <p>As to Rule 57(6) of RoP, the Administration's view is that Hon Audrey EU's proposed amendments do not have any charging effect regarding any part of the</p>	<p>The sole opposition raised by the Administration is based on the ground that the proposed amendments are not relevant to the subject matter of the Bill and do not comply with Rule 57(4) of RoP.</p> <p>The Administration is referring to Rule 57(4)(a) which provides that "An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates". The other sub-paragraphs of Rule 57(4) are not relevant. There is no requirement in RoP or in Rule 57(4) that the proposed amendments must be mentioned in the long title or the Explanatory Memorandum of the Bill or the LegCo Brief. Whether the proposed amendments are relevant must be a matter of substance. The Administration argues that it is not the policy objective to regulate other types of pollutant, including CO₂, and nothing in the above mentioned documents suggests otherwise. This is reading the subject matter of the Bill to the Air Pollution Control Ordinance too restrictively and without regard to international</p>

CSAs	Secretary for the Environment's comments	Hon Audrey EU Yuet-mee's response
	revenue or other public moneys of Hong Kong.	concern and public sentiment or indeed to the substance of the Bill. The purpose of the Bill is to regulate emission by power companies and to control air pollution. There is no doubt that the capping of CO ₂ emission is a major concern and absolutely relevant to air pollution caused by power companies.

Abbreviations

CSAs Committee Stage amendments
 LegCo Legislative Council
 RoP Rules of Procedure
 CO₂ carbon dioxide