

立法會
Legislative Council

LC Paper No. LS20/08-09

**Paper for the meeting of the Subcommittee on
Technical Memorandum for Allocation of Emission Allowances
in respect of Specified Licences ("Technical Memorandum")**

Proposal to add an expiry provision

At the meeting of the Subcommittee on Technical Memorandum on 25 November 2008, members expressed the concern that the emission caps on the three specified pollutants namely, sulphur dioxide, nitrogen oxides and respirable suspended particulates (specified pollutants) need to be further reduced in future to achieve better air quality. To address this concern, members proposed to amend the Technical Memorandum by adding an expiry provision ('sunset' clause) so that the Secretary for the Environment (the Secretary) will be obliged to submit to the Legislative Council (LegCo) a new technical memorandum before the existing one expires.

2. Advice was sought on whether this proposal is consistent with the power to issue the Technical Memorandum under section 26G of the Air Pollution Control Ordinance (Cap. 311) (Ordinance).

3. In July 2008, the Air Pollution Control (Amendment) Ordinance (31 of 2008) was enacted to regulate the emission of three specified pollutants from the power plants. A new section 26G was added to empower the Secretary to set out emissions caps of the three specified pollutants in a technical memorandum and allocate the emission allowances to each power plant for each year commencing on or after 1 January 2010 as well as the method and principle in achieving the allocation.

4. Section 37B of the Ordinance provides that the technical memorandum may be amended in any manner whatsoever consistent with the power to issue such technical memorandum. To consider whether an addition of an expiry provision to the Technical Memorandum is so consistent, reference has to be made to the relevant provision in the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO) which deals with the power to make instruments under an enactment.

5. Section 46(d) of IGCO provides that where any ordinance confers power upon any person to issue an instrument (such as the Technical Memorandum in the present case), such power shall include the power to declare the period of operation of any such instrument.

6. In the light of section 46(d) of IGCO, LegCo's power to amend a technical memorandum under section 37B of the Ordinance should include a power to add an expiry provision so that in effect an operation period of the technical memorandum is declared.

7. Whilst an expiry date may be added to the Technical Memorandum on the basis of the above understanding, it is noted that section 26G(4) of the Ordinance provides that an allocation of emission allowances does not have effect in respect of an emission year unless the relevant technical memorandum has commenced to have effect at least four years before the emission year in question. As a result of that restriction, any expiry date that may be added to the Technical Memorandum (being the first technical memorandum) may not be earlier than 31 December 2013. This would allow time for the second technical memorandum to be made not less than the four years which must elapse under the section before the allocation specified in that second technical memorandum may take effect immediately after the expiry date of the Technical Memorandum so as not to leave any vacuum in which no technical memorandum will be in force. If the earliest of an expiry date that would not leave such a vacuum is added, the second technical memorandum may have to be made and gazetted as early as towards the end of 2009.

Prepared by

TAM Shuk-fong, Clara
Assistant Legal Adviser
Legislative Council Secretariat
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